

# **Effectiveness of the Governance of the Northern Land Council**

Northern Land Council

Department of the Prime Minister and Cabinet

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Canberra ACT  
20 June 2017

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Northern Land Council and the Department of the Prime Minister and Cabinet titled *Effectiveness of the Governance of the Northern Land Council*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. 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

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### **Audit Team**

Andrew Morris

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# Summary and recommendations

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## Background

1. The Northern Land Council (NLC) was established in 1974, to represent the views of Aboriginal people to the Federal Government's Aboriginal Land Rights Commission inquiry into the recognition of Aboriginal land rights in the Northern Territory. Some two years later, recommendations in the second report of the Commission were enacted through passage of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Aboriginal Land Rights Act) that, among other things: delivered statutory powers and responsibilities to the NLC to assist Aboriginal people to acquire and manage their traditional land and seas; established the Aboriginals Benefit Account<sup>1</sup>; and provided for the creation of Land Trusts.<sup>2</sup> The NLC is also a native title representative body, pursuant to the *Native Title Act 1993* (Native Title Act).

2. In March 2013, the report of an external review of the NLC's governance framework identified a 'fundamental breakdown in the governance framework at the NLC', resulting in serious failings in almost all aspects of the council's administration. On 27 February 2015, the NLC's Chief Executive Officer and senior officials appeared before the Senate Finance and Public Administration Committee, following the Australian National Audit Office's financial statements audits that found weaknesses in the NLC's financial management and reporting. The committee was highly critical of the NLC's progress in improving internal management systems.

## Audit objective, criteria and scope

3. The objective of the audit was to assess the effectiveness of the governance of the Northern Land Council in fulfilling its responsibilities and obligations under the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993* and *Public Governance, Performance and Accountability Act 2013*. To form a conclusion against this objective, the ANAO adopted high level criteria that the Northern Land Council's:

- operations, through the Full Council, Regional Councils and Executive Council are effective in representing the interests of Aboriginal people in the region;
- administrative arrangements and systems—including documents management, human resources management and information and communications technology systems—support the council's functions and delivery of services; and
- corporate planning and performance reporting are effective and meet legislative requirements.<sup>3</sup>

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1 The Aboriginals Benefit Account receives the equivalent of mining royalty moneys derived from mining operations on Aboriginal land in the Northern Territory, to be paid to Land Councils and Aboriginal people in the Northern Territory.

2 In the Northern Territory an Aboriginal Land Trust is a statutory body under the Aboriginal Land Rights Act. Land Trusts hold title to the land for the benefit of Aboriginal people. Land Trusts act under direction of the Land Councils, which must have regard to the interests of, and shall consult with and obtain the consent of, Traditional Owners.

3 While focussing on the NLC, findings in this audit report may be relevant to other Land Councils.

## Conclusion

4. The Northern Land Council is some two years into a wide-ranging reform agenda covering almost all aspects of the governance and administration of the council. While tangible improvements have been made to date to raise the standard of administration from a very low base, considerable work remains for the council to be administratively effective. Throughout the conduct of this audit, there was a notable energy and commitment from staff and managers to achieve the aims of the reforms over the longer term.

5. The NLC is improving its processes for representing the interests of Aboriginal people in the region, but more remains to be done to demonstrate that these processes are effective. The NLC has yet to implement measures to assess the performance of the Full Council, Regional Councils and Executive Council and of council members, in engaging with NLC constituents and representing their rights and interests. A review and restructure of the Secretariat branch aims to streamline and improve its support for the operation of the council, with a branch plan and performance indicators recently developed.

6. Subsequent to substantial criticisms about failed administrative processes, practices and controls, the NLC has commenced a range of initiatives to better support its functions and the delivery of services. These initiatives have included enhanced financial reporting capability and records management, and the establishment of a competent Audit Committee to oversee reforms across key corporate functions and policies. Some progress has been made in modernising the NLC's dysfunctional information and communications technology systems, with further improvements subject to available funding. Improvements in service delivery are supported by management and budget information that was not previously available to managers. The NLC could more effectively manage its reform agenda given the extent of the changes underway.

7. The NLC is improving its planning in line with requirements under the *Public Governance, Performance and Accountability Act 2013*, but it is still some way from developing a robust set of qualitative and quantitative performance indicators. The NLC's planning and performance reporting cycle could be better supported by an update of the funding process administered by the Department of the Prime Minister and Cabinet, to align it with the Commonwealth Performance Framework. In engaging with the department and government, the lack of a shared understanding of the extent of the use of powers, and the roles and responsibilities of the NLC, the department and the responsible Minister has not supported a strong and productive relationship between the various parties.

## Supporting findings

### Operation of the Council

8. The NLC is improving its representation processes but has collected insufficient information to demonstrate how effective representation has been in practice. In this regard, the council has commenced initiatives to monitor and assess councillors' performance, manage complaints and conduct stakeholder surveys that will potentially provide useful information on the effectiveness of its performance in representing the interests of the Aboriginal people in the region. However, the NLC has yet to implement an internal audit function to provide assurance



that administrative processes and procedures are being followed. The council has been assessed by the Department of the Prime Minister and Cabinet as satisfactorily performing its functions as a native title representative body. The NLC has complied with some requirements under the *Aboriginal Land Rights (Northern Territory) Act 1976* for nominating councillors and conducting council meetings and is working towards full compliance.

9. The NLC has reviewed and restructured the Secretariat branch to streamline services to councillors and the Chief Executive Officer. Most recently, the outcome of a workshop held in late March 2017 renamed the branch (to the Executive branch), better defined the responsibilities of each function within the branch, identified branch priorities, and developed a business plan and performance measures to assess the effectiveness of the branch in supporting the operations of the council. There was no business plan and few procedural documents from previous years upon which to base the work of the branch, going forward.

### **Administration and service delivery**

10. The NLC's administrative arrangements do not yet effectively support the work of the council. Prior to 2015, the management and maintenance of core enabling functions, including information and communications technology systems, human resource management and records management was poor, with serious weaknesses in financial management, fraud control and the management of risk. Commencing in 2015, the council is implementing an extensive reform agenda across all administrative functions, with progress having been achieved in corporate planning and reporting, financial reporting and in internal governance through the operations of an Audit Committee. Other reforms, including in human resource and records management, are well underway with an overhaul of the council's information and communications technology systems in the early stages.

11. Commencing in 2015, the NLC is also implementing numerous reforms aimed at improving the delivery of services. Some reforms are weighted towards improving the efficiency and standard of services provided to stakeholders, particularly improvements in the administration of royalty payments, while others reflect specific goals set out in the NLC's *Strategic Plan 2016–20*. The NLC's leadership group is developing key result areas and associated performance measures for the services, to be incorporated in the 2017–18 planning and reporting cycle. Prior to the reforms now being implemented there was little by way of planning or coordination of service delivery, and no evidence of measures against which services could be assessed.

12. The NLC is achieving progress in implementing its reform agenda, but the pace and extent of the changes could be better supported by improved monitoring and coordination of the reform activities, and communication with staff.

### **Planning, performance and engagement**

13. The NLC is working towards effective planning and reporting of performance. The NLC's planning framework consists of a strategic plan, corporate plan and branch business plans. While not fully refined, including to incorporate business plans and performance indicators at branch level, the NLC aims to complete the planning and reporting cycle at all levels of the organisation in 2017–18. The NLC has mostly met planning and reporting requirements in the *Public Governance, Performance and Accountability Act 2013* and enhanced Commonwealth Reporting

Framework (2015), not meeting timeliness requirements to publish the plan. The NLC's planning, development and reporting of performance could be better supported by an update of the funding process for operational and capital expenditure, so that it aligns with the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Performance Framework.

14. Some 40 years on from the Royal Commission, the NLC remains wary of government intent and of the bureaucracy, with respect to its independence in representing the views of its constituents. The relationship between the department, the responsible Minister and the NLC Executive is complex (given the statutory independence and the advocacy role of Northern Territory Land Councils) but it has not been defined, irrespective of recommendations that it should be. The establishment of biannual strategic forums in 2016, involving representatives from the Australian Government, Northern Territory Government and the Land Councils presents an opportunity to establish a more productive and collaborative relationship with the NLC.

## Recommendations

**Recommendation No. 1** To support the administrative and strategic reforms underway, the Northern Land Council:

**Paragraph 3.68**

- (a) develops and maintains an action plan to monitor the progress of reform initiatives and projects; and
- (b) develops a communication strategy to inform staff of the changes.

**Northern Land Council's response:** *Agreed.*

**Recommendation No. 2** The Department of the Prime Minister and Cabinet, in consultation with the Northern Land Council, reviews the process for the provision of operational and capital expenditure under s.64(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, to develop a funding framework that:

**Paragraph 4.28**

- (a) supports the council in achieving outcomes linked to its strategic and corporate plans, and is aligned with the *Public Governance, Performance and Accountability Act, 2013*;
- (b) provides for appropriate guidance on what is required in the council's funding submissions, transparency as to how bids are assessed, and an explanation as to funding decisions; and
- (c) allows for certainty, where results are achieved, for funding certain activities beyond the current year.

**Northern Land Council's response:** *Agreed.*

**Prime Minister and Cabinet's response:** *Agreed.*

## Entity responses

15. The summary response of the Northern Land Council is provided below. The formal responses of the Northern Land Council and the Department of the Prime Minister and Cabinet are at Appendix 1.

### Northern Land Council

The Northern Land Council (NLC) welcomes the Australian National Audit Office's report on the 'Effectiveness of the governance of the NLC'. Further, we accept the report's two formal recommendations.

The NLC has willingly co-operated with the audit, and the audit team has dealt with the NLC fairly throughout.

The council is pleased that the ANAO report acknowledges the extensive reforms that are being implemented across the whole organisation. The process of reform began with the arrival of Mr Joe Morrison as Chief Executive Officer in February 2014, and was on foot at the time of the Senate Finance and Public Administration Committee hearing in February 2015, which the audit report refers to at paragraphs 1.18 and 1.19.

The development and implementation of the reforms are still a work in progress, but the NLC feels proud that it is already a much more efficient and accountable organisation, and much better placed to serve its Aboriginal membership and constituents.

The ANAO's performance audit has been a worthwhile exercise; it has, in fact, proved to have been an aid to the NLC's reform process. We will continue to monitor the progress of the reform initiatives and the benefits which will flow from them.



## **Audit Findings**



# 1. Background

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## Introduction

1.1 The Northern Land Council (NLC) and Central Land Council (CLC) were established in 1974, as part of the Federal Government's *Aboriginal Land Rights Commission 1973* (also known as the Woodward Royal Commission) to inquire into the appropriate way to recognise Aboriginal land rights in the Northern Territory. The function of the Land Councils at that time was to represent the views of Aboriginal people to the commission.

1.2 Some two years later, recommendations in the second report of the commission were enacted through passage of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Aboriginal Land Rights Act) that, among other things: established the NLC and CLC as independent statutory authorities with powers and responsibilities to assist Aboriginal people to acquire and manage their traditional land and seas; provided for the establishment of other Land Councils in the Northern Territory<sup>4</sup>; established the Aboriginals Benefit Account<sup>5</sup>; and provided for the creation of Land Trusts.<sup>6</sup>

1.3 The Aboriginal Land Rights Act also makes provision for Land Councils to administer and distribute payments received on behalf of Traditional Aboriginal Owners for activities undertaken on Aboriginal land under the Aboriginal Land Rights Act. Land access and use payments (commonly referred to as royalty payments) are to be distributed in accordance with the Land Councils' statutory duty under s.35 of the Aboriginal Land Rights Act.

1.4 The NLC and CLC are also Native Title Representative Bodies, pursuant to the *Native Title Act 1993* (Native Title Act) that provides for claimants to apply to the Federal Court to have their native title recognised by Australian law. Native title is the recognition (in Australian law) that some Aboriginal people continue to hold rights to their land and waters that come from traditional laws and customs. The NLC is the representative body for Aboriginal people living in the northern region of the Northern Territory (including the Tiwi Islands and Groote Eylandt), and the CLC represents those within the territory's central region.

1.5 An overview of the Aboriginal Land Rights Act and the Native Title Act is at Appendix 2. Key legislated functions of a Land Council under section 23 of the Aboriginal Land Rights Act, and of a native title representative body under section 203B of the Native Title Act are at Appendix 3. In general terms, under both Acts, the NLC is responsible for consulting with and representing the

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4 Other Land Councils established under the Aboriginal Land Rights Act are the: Anindilyakwa Land Council established in 1991, representing the Aboriginal people of the Groote Eylandt archipelago; and Tiwi Land Council established in 1978, representing those on Bathurst and Melville Islands.

5 The Aboriginals Benefit Account receives the equivalent of mining royalty moneys derived from mining operations on Aboriginal land in the Northern Territory, to be paid to Land Councils and Aboriginal people in the Northern Territory.

6 In the Northern Territory an Aboriginal Land Trust is a statutory body under the Land Rights Act. Land claimed under the Aboriginal Land Rights Act is formally held by Aboriginal Land Trusts, and is inalienable—it cannot be bought, sold, traded or given away (although s. 19(4) of the Act does provide that Land Trust land can be transferred to another Land Trust or surrendered to the Crown in certain circumstances). Land Trusts hold title to the land for the benefit of Aboriginal people entitled by Aboriginal tradition to the use and occupation of land. Land Trusts act under direction of the Land Councils, which must have regard to the interests of, and shall consult with and obtain the consent of, Traditional Owners.

views of Aboriginal people living in the region, and assisting them to acquire and to manage their traditional lands and seas.

1.6 As at February 2017, Aboriginal people held freehold title (under the Aboriginal Land Rights Act) to approximately 50 per cent of the Northern Territory land mass and to 85 per cent of its coastline, and approximately 17 per cent of Northern Territory land and waters was subject to Native Title.<sup>7</sup>

1.7 The four Land Councils also deliver a range of land and sea management services funded under the Australian Government's Working for Country program<sup>8</sup> (also referred to as the Caring for Country program), and other environmental and or liaison functions for Australian Government and Northern Territory Government departments. Land Councils' delivery of these services is authorised by the functions specified in s.23(1) of the Aboriginal Land Rights Act.

1.8 Land Councils are Corporate Commonwealth Entities<sup>9</sup> under the *Public Governance, Performance and Accountability Act 2013*. The Chairman and Chief Executive Officer (CEO) of each Land Council is the Accountable Authority under this Act, with a range of duties, responsibilities and obligations to meet in discharging their responsibilities.<sup>10</sup> Land Councils are in the portfolio of the Minister for Indigenous Affairs, within the broader portfolio of Prime Minister and Cabinet. Table 1.1 outlines the core legislative framework for Northern Territory Land Councils.<sup>11</sup>

**Table 1.1: Legislative framework for Northern Territory Land Councils**

Legislation	
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Enabling legislation of the Northern Territory Land Councils.
<i>Native Title Act 1993</i>	Provides for responsibilities of native title representative bodies.
<i>Public Governance, Performance and Accountability Act 2013</i>	Requirements of Land Councils as Corporate Commonwealth entities.

Source: ANAO.

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

8 Established in 2007, the Working for Country program includes the Indigenous Ranger program, that creates employment, training and career pathways in remote areas for Indigenous people in land and sea management. Refer PM&C website, available at <<https://www.dpmc.gov.au/indigenous-affairs/environment/indigenous-rangers-working-country>> [accessed 14 March 2017].

9 The Aboriginal Land Rights Act established Land Councils as bodies corporate under the Act. 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.

10 Responsibilities include: a duty to govern the Commonwealth entity; establishing and maintaining systems relating to risk and control; encouraging cooperation with others and minimising administrative requirements that are imposed on other parties; and keeping the relevant Ministers informed. *RMG 200 – General duties of accountable authorities*, Department of Finance. Available at: <<https://www.finance.gov.au/resource-management/accountability/accountable-authorities2/>> [accessed 14 March 2017].

11 The NLC also has functions under other legislation, including the: *Aboriginal Land Act (NT)*; *Coburg Peninsular Aboriginal Land, Sanctuary and Marine Park Act 1996 (NT)*; *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*; *Mining Management Act 2015 (NT)*; *Mineral Titles Act 2016 (NT)*; *Territory Parks and Wildlife Conservation Act 2006 (NT)*; and *Kenbi Land Trust Act 2011 (NT)*.



## Northern Land Council

1.9 The NLC covers an area of approximately 605 800 square kilometres that includes the four major (predominantly non-Aboriginal) centres of Darwin, Nhulunbuy, Katherine and Jabiru, and some 200 Indigenous communities (including homelands and outstations).<sup>12</sup> Many of these communities are in remote parts of the region, and are accessible only by four wheel drive vehicles across unsealed roads (that are subject to flooding in the wet season) or by air, and the standards of telecommunication services vary. Approximately 36 000 Aboriginal people live in the area (some 80 per cent of them in remote locations) the majority of whom are multi-lingual and speak an Aboriginal language as their first language. Customary law continues to be practiced in many communities.

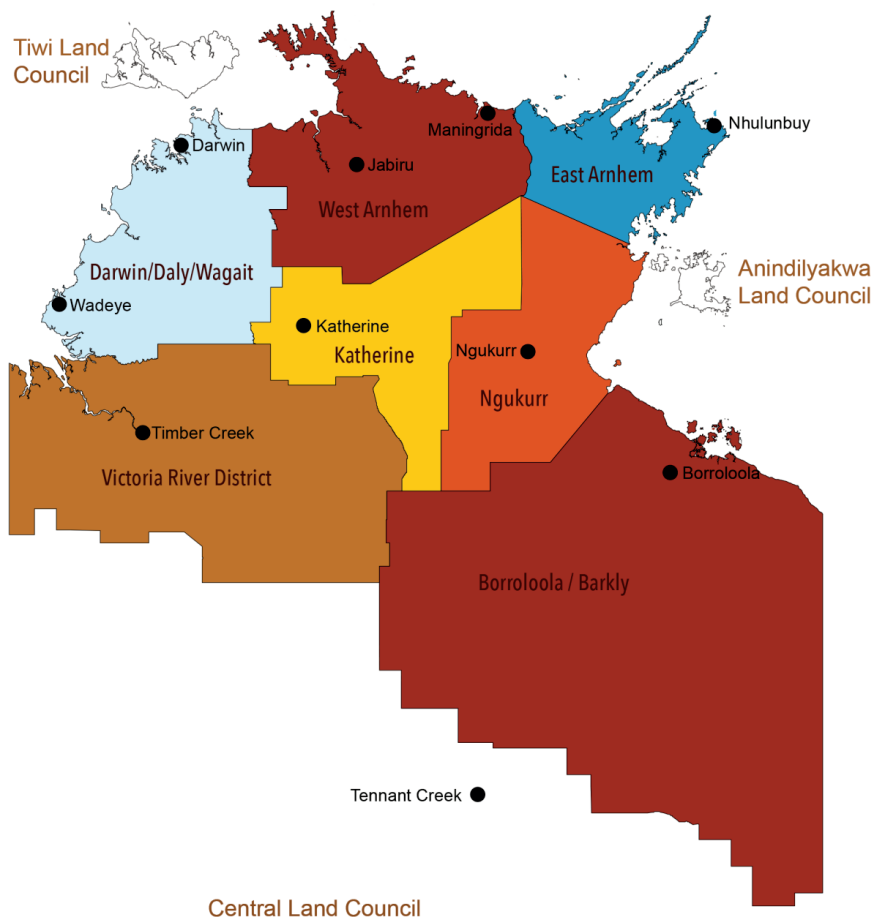
1.10 The NLC is divided into seven regions: Darwin-Daly-Wagait, West Arnhem, East Arnhem, Katherine, Victoria River District, Ngukurr and Borroloola-Barkly. As at 1 May 2017, the NLC had 288 staff<sup>13</sup> located in the head office in Darwin and in regional offices in Katherine, Jabiru, Maningrida, Nhulunbuy, Timber Creek, Tennant Creek, Ngukurr, Borroloola and Wadeye (Figure 1.1). A new office is planned to be opened at Galiwinku on Elcho Island in July 2017.

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12 Comparatively the: CLC covers an area of 780 000 square kilometres, with some 15 language groups and an Aboriginal population of approximately 24 000; Tiwi Land Council covers an area of 8000 square kilometres with a population of 2500; Anindilyakwa Land Council covers an area of approximately 2300 square kilometres with 14 clan groups and an estimated population of 1539.

13 As at 9 March 2017 the NLC employed 247 permanent staff (203 full-time and 44 part-time) and an additional 31 casual staff. Of the total 247 permanent staff, 139 were Aboriginal employees. Some 100 staff were employed in the Caring for Country / Indigenous Ranger program (subject to seasonal variations in the land and sea management work undertaken).

**Figure 1.1: Northern Land Council regions and offices, 1 May 2017**



Note: The southern parts of the Borrooloola Barkly region are serviced by an NLC regional office located in Tennant Creek, situated within the CLC region. Tennant Creek is the centre for the Borrooloola Barkly region.

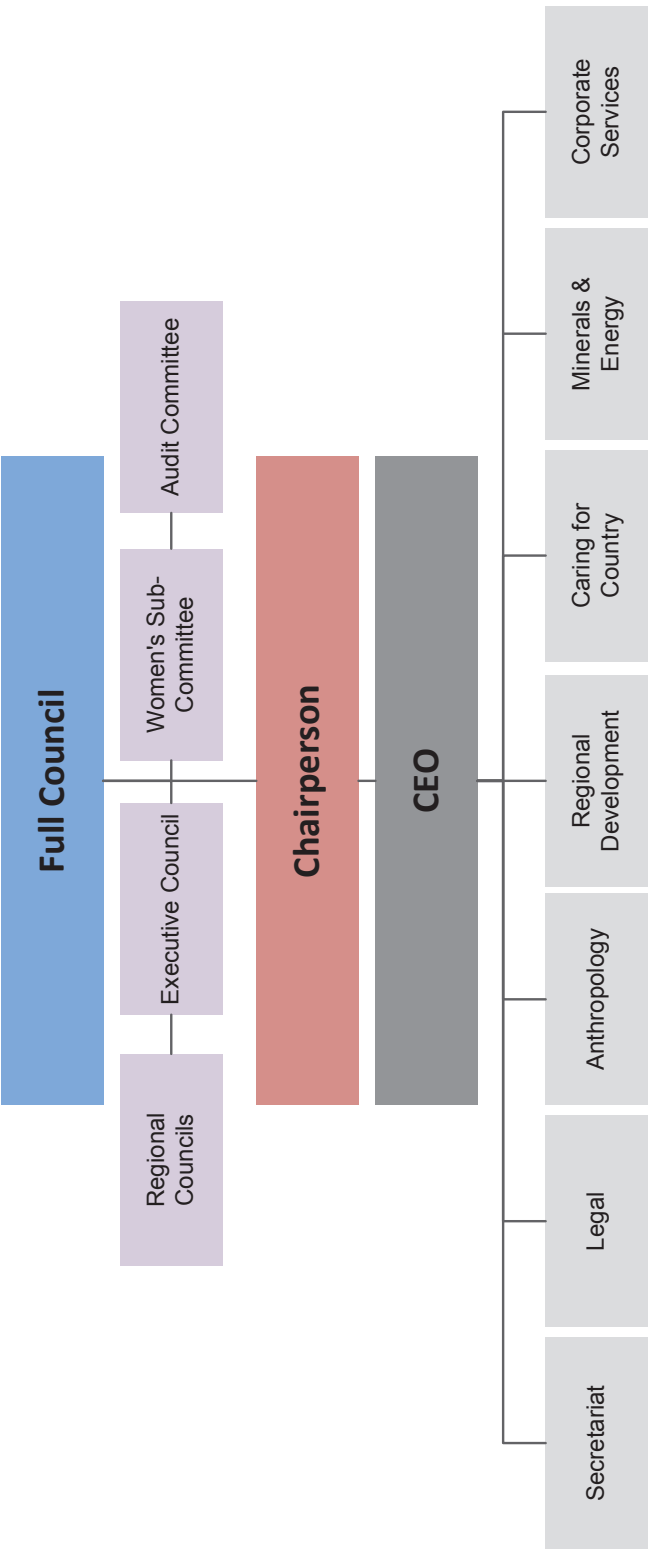
Source: Northern Land Council.

1.11 In 2015–16, the NLC’s operational expenditure was \$39.1 million, funded by revenue of \$20.2 million from the Aboriginals Benefit Account (under section s.64(1) of the Aboriginal Land Rights Act); \$4.9 million from consolidated revenue for functions under the Native Title program; \$11.3 million from the Australian and Northern Territory governments for a range of grants and programs, including the Caring for Country program, and own source income of \$2.7 million.

### Organisational structure and functions

1.12 The NLC consists of elected representatives of Aboriginal people living in the region, referred to as members of the Full Council, and an administrative arm managed by the NLC’s Chief Executive Officer (CEO). The NLC combines its functions under the Aboriginal Land Rights Act and as a native title representative body under the Native Title Act, and the council’s corporate functions support the administration of the Caring for Country program. The NLC’s organisational structure as at 1 March 2017 is shown in Figure 1.2.

Figure 1.2: Northern Land Council organisational structure, 1 March 2017



Source: ANAO review of NLC documents.

## *Full Council*

1.13 The Full Council represents the rights of the Aboriginal people within the NLC region, shapes the policy and strategic direction of the council, and approves agreements regarding the use of Aboriginal land under the Aboriginal Land Rights Act. The NLC has 83 members: 78 are elected by their communities, outstations or an incorporated body within the region for a three-year term, and there are five positions for women, co-opted to serve on the Full Council to promote women's participation.

1.14 The Chairman and Deputy Chairman of the Full Council are elected from and by members of the Full Council. The Chairman is an employee of the NLC and his salary is determined by the Remuneration Tribunal.<sup>14</sup> The three-year term of the current Full Council commenced in November 2016 at the 114th meeting of the Northern Land Council. At this meeting the Chairman was returned for a second term.<sup>15</sup> Meetings of the Full Council are convened twice a year.

1.15 Members of the Full Council also serve on seven Regional Councils and on an Executive Council, under s.29A of the Aboriginal Land Rights Act that allows for the appointment of committee(s) of members to assist the Full Council to perform its functions or exercise its powers. The role of the:

- Regional Councils includes to: consult communities in their region about issues directly relevant to the Land Council; communicate important issues back to their communities; and communicate with the Executive Council any issues affecting their local community. Regional Councils meet twice a year; and
- Executive Council is to manage business between Full Council meetings and exercise powers delegated by the Full Council. The Executive Council comprises the Chairs of the seven Regional Councils, and the Chairman and Deputy Chairman of the Full Council. The Executive Council meets six times a year, and has the delegated authority to approve agreements (up to a term of 40 years) under the Aboriginal Land Rights Act.

## *Chief Executive Officer*

1.16 The Executive Council appoints the CEO<sup>16</sup> who has day-to-day responsibility for the administration and operation of the council. He is supported by a team of eight managers of the NLC's seven branches (the Regional Development branch has two managers) who deliver the NLC's services and form the Leadership Group for the council's administration.

## **Administrative and strategic reform**

1.17 In March 2013, the report of an external review of the NLC's governance framework (undertaken shortly after the resignation of the NLC's CEO) identified a 'fundamental breakdown

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14 Remuneration Tribunal, *Determination 2016/19: Remuneration and Allowances for Holders of Full-Time Public Office*, p. 8. Available from < <http://remtribunal.gov.au/media/documents/2017/2016-determinations/2016-19-principal-determination-remuneration-and-allowances-for-holders-of-full-time-public-office/2016-19-FTOH-Principal-Determination-8.12.2016.pdf> > [accessed 5 April 2017].

15 The elections for Chairman and Deputy Chairman were conducted by the Australian Electoral Commission on a fee for service basis.

16 The NLC's current CEO took up his appointment in February 2014 and has recently been re-appointed for a further three years.

in the governance framework at the NLC', resulting in serious failings in almost all aspects of the council's administration.<sup>17</sup> (The position of CEO was not permanently filled between the resignation of the former CEO in October 2012 and the appointment of the current CEO). On 10 December 2014, the Minister for Indigenous Affairs wrote to the NLC expressing his concern about issues of the council's financial management, and requested a financial management strategy for the council's operating budget.

1.18 On 27 February 2015, the NLC's CEO and senior officials appeared before the Senate Finance and Public Administration Committee, following the Australian National Audit Office's financial statements audits that had found weaknesses in the NLC's financial management and reporting. The committee was highly critical of the NLC's progress in improving its internal management systems, and raised concerns about the operation of the NLC's Audit Committee. Two months later, on 30 April 2015, the Minister for Indigenous Affairs wrote to the NLC Chairman expressing his concern with aspects of the council's internal governance, compliance with financial reporting requirements and financial sustainability.<sup>18</sup>

1.19 In the *Northern Land Council Annual Report 2014–15*<sup>19</sup>, the CEO refers to the NLC's appearance before the Senate Finance and Public Administration Committee as a 'serious wake-up call' about the operation, culture and efficiency of the council, and outlined a reform agenda:

In the months since, with assistance from the Department of the Prime Minister and Cabinet, we have worked tirelessly to implement significant improvements to our governance, financial, administrative and other systems. The Leadership Group has met several times to deal with those matters; a new audit committee has been appointed; BDO Financial Services have been hired to prepare the annual accounts; new staff, including a Chief Financial Officer, will be appointed by the end of the 2015 calendar year.

Within this short period, we have focused on much tighter financial management and budgetary control and I am proud to report that we have made significant improvements in our financial position. There are continuing reviews of all facets of operations across all NLC branches. Efficiencies and needs are being identified, and that information will be fed into future budget preparations.

1.20 The NLC is also undergoing review and reform of its strategic direction. In his introduction to the *NLC Strategic Plan 2016–20*, the Chairman notes that the functions of the NLC (as set out in the Aboriginal Land Rights Act and Native Title Act) continue to make up most of the council's

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17 Deloitte, *Northern Land Council, Independent review of Governance Framework Processes*, 20 March 2013, p. 5. The review was commissioned by the NLC in November 2012 collaboratively with the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs.

18 In early 2015, the NLC engaged a consultant to provide advice on how recurring weaknesses in the NLC's governance and financial management (identified in the Deloitte review and in the ANAO's financial statements audits) could be rectified, and on the implementation of recommendations in these reports. *Northern Land Council, Initial report into resolution of financial management and corporate governance issues*, 25 March 2015 (further discussed in Chapter 3).

19 Northern Land Council, *Annual Report 2014–15*, p. 22. Available from <[http://www.nlc.org.au/files/pdfs/NLC0005\\_Annual\\_Report\\_web.pdf](http://www.nlc.org.au/files/pdfs/NLC0005_Annual_Report_web.pdf)> [accessed 20 January 2017].

workload, but the NLC ‘must look forward to this era of post-determination’<sup>20</sup>, and the strategic plan can be read as the blueprint for how the NLC proposes to realise that vision.

We want to be an integral force in the growing push to develop Northern Australia...the NLC must position itself to have a primary role on behalf of Aboriginal people in the planning for northern development, so that our constituents can enjoy the economic benefits on their own terms, without any adverse impact on their culture.

## Department of the Prime Minister and Cabinet

1.21 The Indigenous Affairs Group within the Department of the Prime Minister and Cabinet (PM&C) is responsible for the department’s strategic priority to ‘enhance the ability of Aboriginal and Torres Strait Islander people to improve their lives’ (primarily through administration of the Australian Government’s Indigenous Advancement Strategy<sup>21</sup>), and provides advice and support to the Minister for Indigenous Affairs, including in relation to Land Councils and the exercise of his powers under the Aboriginal Land Rights Act and Native Title Act.

1.22 The Indigenous Affairs Group operates through six divisions<sup>22</sup> divided into 28 branches, with staff located in PM&C’s Canberra offices and in a network of 39 regional offices across Australia (five in the Northern Territory). For 2016–17, the Indigenous Affairs Group within PM&C had a budgeted average staffing level of 1520 staff, with a departmental budget for program support of \$280 million.

1.23 Land Councils engage with departmental staff in Canberra and in the regional network subject to their various responsibilities, including the administration of funds for operational and capital expenses (from the Aboriginals Benefit Account), the Native Title program and the Indigenous land management programs. There is also a Portfolio Bodies section (within PM&C’s Financial Accounting branch of the Financial Services Division) that engages with Land Councils primarily about their annual reporting obligations.

## Audit objective, criteria and scope

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

1.25 To form a conclusion against this objective, the ANAO adopted high level criteria that the Northern Land Council’s:

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- 20 The era of post-determination refers to the period when all Northern Territory land claims are settled and the focus is on the management of Aboriginal land.
  - 21 In September 2013, responsibility for the majority of Indigenous-specific policy and programs (from eight separate entities) was transferred into PM&C. From May 2014, the Indigenous Advancement Strategy consolidated these programs under a single outcome. The Indigenous Advancement Strategy was the subject of the ANAO’s performance audit, Report No.35 2016–17, *Indigenous Advancement Strategy*. The report is available from <[https://www.anao.gov.au/sites/g/files/net2766/f/ANAO\\_Report\\_2016-2017\\_35.pdf](https://www.anao.gov.au/sites/g/files/net2766/f/ANAO_Report_2016-2017_35.pdf)>, [accessed 15 March 2017].
  - 22 The divisions are: Schools, Information and Evaluation; Community Safety and Policy; Housing, Land and Culture; Program Integrity and Engagement; Community and Economic Development; and Indigenous Employment and Recognition.

- operations, through the Full Council, Regional Councils and Executive Council are effective in representing the interests of Aboriginal people in the region;
- administrative arrangements and systems—including documents management, human resources management and information and communications technology systems—support the council’s functions and delivery of services; and
- corporate planning and performance reporting are effective and meet legislative requirements.

1.26 While focussing on the Northern Land Council, findings in this audit report may be useful and / or relevant to other Land Councils.

## Audit approach

1.27 The ANAO:

- examined records and interviewed staff in the NLC’s head office in Darwin and in the Katherine regional office, and held a phone conference with staff in the Tennant Creek regional office;
- attended a meeting of the NLC Executive Council;
- attended two meetings of the NLC Leadership Group and one meeting of the Audit Committee;
- examined records and interviewed staff from the Department of the Prime Minister and Cabinet, located in Canberra and in Darwin; and
- met with staff from the Northern Territory Government.

1.28 The Audit has been conducted in accordance with the ANAO’s auditing standards at a cost to the ANAO of approximately \$410 000.

## 2. Operation of the Council

### Areas examined

This chapter examines the effectiveness of the operation of the Northern Land Council (NLC) in representing the interests of the Aboriginal people in the region, and of the secretariat in supporting the work of the council.

### Conclusion

The NLC is improving its processes for representing the interests of Aboriginal people in the region, but more remains to be done to demonstrate that these processes are effective. The NLC has yet to implement measures to assess the performance of the Full Council, Regional Councils and Executive Council and of council members, in engaging with NLC constituents and representing their rights and interests. A review and restructure of the Secretariat branch aims to streamline and improve its support for the operation of the council, with a branch plan and performance indicators recently developed.

### Areas for improvement

The ANAO suggests that both the NLC and the Department of the Prime Minister and Cabinet improve the management of complaints about the NLC's performance (paragraphs 2.39 to 2.43).

### Does the Northern Land Council effectively represent the interests of the Aboriginal people in its region?

The NLC is improving its representation processes but has collected insufficient information to demonstrate how effective representation has been in practice. In this regard, the council has commenced initiatives to monitor and assess councillors' performance, manage complaints and conduct stakeholder surveys that will potentially provide useful information on the effectiveness of its performance in representing the interests of the Aboriginal people in the region. However, the NLC has yet to implement an internal audit function to provide assurance that administrative processes and procedures are being followed. The council has been assessed by the Department of the Prime Minister and Cabinet as satisfactorily performing its functions as a native title representative body. The NLC has complied with some requirements under the *Aboriginal Land Rights (Northern Territory) Act 1976* for nominating councillors and conducting council meetings and is working towards full compliance.

2.1 The NLC's annual reports from 2004–05 provide performance information on a range of services and functions delivered by the council including the number of: permits (to access Aboriginal land) processed; consultations held with Traditional Owners relating to mining activities on Aboriginal land; and land use agreements finalised.

2.2 The information provides quantitative data on the NLC's workload (including that services continued to be delivered irrespective of the governance and financial reporting concerns in recent years), but gives little insight into how well the NLC performs against its undertaking to: consult with and act with the informed consent of Traditional Owners in accordance with the Aboriginal Land Rights Act; communicate clearly with Aboriginal people taking into account the linguistic diversity of the region; be responsive to Aboriginal people's needs and effectively



advocate for their interests; be accountable to the people we [the NLC] represents; and treat our stakeholders with respect.<sup>23</sup>

2.3 To assess the NLC's performance in representing the interests of the Aboriginal people in its region, the ANAO examined:

- the extent to which the NLC is compliant with legislative requirements in Part III of the *Aboriginal Land Rights (Northern Territory) Act 1976*, that underpin transparency and accountability in the operations of the council;
- how the council performs its functions as a native title representative body;
- the development and publication of a corporate plan and annual report (including from 2015–16, an annual performance statement) as required under the *Public Governance, Performance and Accountability Act 2013*, to set and communicate the council's directions and priorities;
- the monitoring and oversight of councillors' conduct and performance in undertaking their roles and responsibilities;
- the management of complaints; and
- mechanisms, such as the conduct of stakeholder surveys and internal audit and quality assurance functions, that provide independent assessment of performance.

2.4 The NLC's Accountable Authority has an important role in ensuring that the council complies with its legislative requirements and delivers on its commitments. The appointment of two positions (the NLC Chairman and Chief Executive Officer (CEO) as the Accountable Authority under the *Public Governance, Performance and Accountability Act 2013* reflects the complex legislative and cultural environment in which Land Councils operate. Established by government as independent statutory authorities to represent Northern Territory Aboriginal people regarding the ownership and use of their lands, the councils must be accountable to their constituents and also to the broader community, via Parliament, for their use of government resources.

### **Legislated requirements under the Aboriginal Land Rights Act**

2.5 The NLC's compliance with legislative requirements under the Aboriginal Land Rights Act pertaining to the nomination and appointment of council members, and to the conduct of council meetings, is summarised in Table 2.1. It shows a mixed performance in complying with these requirements, many of which had been neglected for a number of years. In discussion with the ANAO in late 2016 and early 2017, the NLC revealed a number of initiatives to progress the compliance matters, discussed below.

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23 Northern Land Council Annual Report 2015–16, p. 17

**Table 2.1: Northern Land Council compliance with selected requirements of the Aboriginal Land Rights Act**

Legislative requirement pertaining to the nomination and appointment of council members, and conduct of council meetings	NLC compliant
<b>Aboriginal Land Rights (Northern Territory) Act 1976</b>	
<i>Section 29(1): Methods of Choice for Membership of a Land Council</i>	Yes
<i>Section 29AA: Register of interests of members of Land Council</i>	Yes
<i>Section 31(7A-D): Written Rules</i>	Yes
<i>Section 31(10-11): Minutes of Meetings</i>	partial
<i>Section 29A: Establishment of Committees</i>	partial
<i>Section 28: Delegations</i>	partial

Source: ANAO.

2.6 With regard to compliance, advice from the Department of the Prime Minister and Cabinet (PM&C) is that the Aboriginal Lands Rights Act has compliance requirements relevant to the powers, functions and responsibilities of several parties<sup>24</sup>, and that:

- it appears that many compliance provisions in the [Aboriginal Land Rights Act] effectively operate as guidance and specific provisions for the treatment of instances of non-compliance are limited. In many instances the relevant treatment is implicit by reference to related provisions;
- instances of non-compliance by both Land Councils and the Minister are not unknown, but may have little or no material effect on dealing with the particular matter at hand; and
- the Minister appears to have substantial discretionary latitude in responding to instances of non-compliance by a Land Council.

2.7 While it is the responsibility of the NLC's Accountable Authority to ensure the council's compliance with legislative provisions, there may be benefit in engaging with other Land Councils and with PM&C (perhaps through the bi-annual strategic forums, discussed in Chapter 4) on the management and monitoring of compliance requirements in the Aboriginal Land Rights Act.

#### *Method(s) of choice for membership of a Land Council*

2.8 Section 29 of the Aboriginal Land Rights Act deals with the membership of Land Councils. Specifically, section 29(1) includes that members shall be Aboriginal people living in the area of the Land Council, chosen by the Aboriginal people in the area in accordance with a *method(s) of choice* approved by the Minister from time to time.

2.9 The ANAO reviewed the documentation relating to nominations to the NLC's Full Council in November 2016. Based on this limited work, there was nothing to indicate that the process had

24 The parties are the: Northern Territory Land Councils; Minister with responsibility for Indigenous Affairs; Aboriginal Land Commissioner; certain Aboriginal corporations; Northern Territory Minister with responsibility for mining; and parties seeking access to and use of Aboriginal Land, and those holding validly granted interests in Aboriginal Land (for example, lease holders and those with exploration and resource production rights on Aboriginal land).

not been conducted in line with the NLC's *method(s) of choice* approved by the responsible Minister in 2001. There were extensive files that included nominations from the 54 Aboriginal communities or outstations within the NLC region from which members can be elected, documentation of processes to appoint the appropriate number of members from each community, and kits that combined all the necessary information for potential members.<sup>25</sup> However, the process is complicated and lengthy, and would need to be subject to an internal audit or quality assurance process to provide confidence that it was properly carried out.

2.10 The NLC had submitted a revised *method(s) of choice* to the Minister for Indigenous Affairs on 27 June 2016, but approval was not received until November, too late to be applied to nominations for the new Full Council. The revised *method(s) of choice* detail the *Terms and Conditions for Membership* (not in the earlier version) providing clarity on how a member continues to hold office, or is removed by the NLC or nominating organisation or community.

2.11 The NLC advised in November 2016 that a comprehensive review of council membership (endorsed at the 112th meeting of the Full Council held in May 2016) will be undertaken over the following two years and will examine whether the present geographical spread and membership numbers (as set out in the *method(s) of choice 2001*) provide adequate representation for NLC constituents, some 15 years on.

### *Register of interests of members*

2.12 Section 29AA of the Aboriginal Land Rights Act provides for the keeping of a register of interests of members of a Land Council, in accordance with a determination of the Minister.<sup>26</sup> The Department of the Prime Minister and Cabinet advised that in 2015 the Minister for Indigenous Affairs declined to agree to the Department engaging with the Northern Territory Land Councils about the drafting of such a determination.

2.13 In the absence of a determination, council members are currently expected to comply with NLC policy and declare a conflict of interest as items arise during council meetings, and either remove themselves from, or not participate in, the subsequent discussion and voting. The declarations are recorded in council meeting minutes. In this regard, the minutes of seven meetings of the Full Council (May 2014 to November 2016) and four meetings of the Executive Council (May 2016 to December 2016) recorded members declaring conflicts of interest and removing themselves from the meetings on 20 occasions.

2.14 The NLC is, however, developing registers of members' interests to assist with compliance for agreements and for reporting and auditing purposes. As at January 2017, the NLC has produced books for each of the NLC's seven regions to be developed as registers of members' interests and conflicts of interests, as they are declared at meetings and / or are brought to the attention of the council.

25 As outlined in Chapter 1, the elections for Chairman and Deputy Chairman were conducted by the Australian Electoral Commission.

26 *Aboriginal Land Rights (Northern Territory) Act 1976*, s.29AA(1)(2)(3) requires each member of a Land Council to make written disclosures of the member's interests in accordance with a determination of the Minister, and that the Council must keep a register of the interests disclosed in accordance with the determination.

## *Written rules*

2.15 Section 31 of the Aboriginal Land Rights Act deals with meetings of Land Councils. Specifically, section 31(7A-D) requires that a Land Council must make written rules in relation to the convening and conduct of council meetings and make them available to the Traditional Owners and other Aboriginal people living in the region for inspection. The rules must be approved by the Minister.

2.16 The NLC has developed a handbook, the *2016 Rules for Councillors* (October 2016), to assist elected members fulfil their roles.<sup>27</sup> The handbook was approved by the Minister for Indigenous Affairs on 11 November 2016 as the NLC's 'written rules' for the conduct of council meetings. The *2016 Rules for Councillors* handbooks have been professionally printed, distributed to all council members, with copies freely available through NLC offices.<sup>28</sup>

## *Minutes of Land Council meetings*

2.17 Section 31(10-11) of the Aboriginal Land Rights Act requires Land Councils to keep minutes of their meetings and make them available (other than the parts of the minutes that relate to an excludable matter<sup>29</sup>) to the Traditional Owners of land in the area of the council, and to any Aboriginal people living in the region. Minutes of council meetings are included in Agenda Books (prepared for council meetings) for endorsement and resolution, but, for reasons of confidentiality, they are not distributed outside of the meetings. The minutes are recorded on digital files and stored securely, with access limited to the CEO and his executive assistant, but available on request from Aboriginal people living in the area.

2.18 In April 2017, the NLC advised that work is underway to rewrite and republish the handbook, *2016 Rules for Councillors* — some of the content needs to be more explicit and new matters will be added, including the rights of councillors to access minutes and how they can go about that. The information is also to be provided orally at all council meetings. The NLC further advised that councillors are responsible for keeping their constituents informed, but the NLC will further review the process of circulating minutes of council meetings.

## *Committees and delegations*

2.19 Section 29A of the Aboriginal Land Rights Act allows for the appointment of committees of members to assist the Council in relation to the performance of its functions or exercise of its powers. As at December 2016, the NLC's s.29A committees are the NLC's Regional Councils, the Executive Council and the Women's Sub-Committee. The resolution establishing the Regional

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27 Amongst other things, the handbook: provides information on the conduct of meetings; explains governance, 'a set of rules and policies to do with how we conduct business'; identifies the key legislation that applies to the operation of the NLC; and provides specific guidance on the separation of powers between 'governance' by council members and 'management' by the administrative arm.

28 The NLC advised that the previous handbook, *Draft Full Council Members' Induction Handbook 2013–16*, had not been submitted for Ministerial approval.

29 Section 3(1) of the Aboriginal Land Rights Act provides definitions of an 'excludable matter', such as: a matter involving personal hardship suffered by a person; or a trade secret or other information having a commercial value the disclosure of which would adversely affect a person's lawful business, professional, commercial or financial affairs. The Northern Land Council, as an Aboriginal Land Council, is an exempt agency in respect of the provisions of the *Freedom of Information Act 1982*.

Councils and Executive Council was made at the Full Council meeting of 1 October 1996, and remains in place.

2.20 The Act includes the requirement that the appointment of a committee is by a notice in writing and the Land Council must make written rules relating to the convening and conduct of meetings. The 'written rules', in the form of the NLC's handbook, *2016 Rules for Councillors* (referred to above), also applies to the Regional Councils and Executive Council. The NLC advised that it has not met the requirement to issue notices in relation to committees, but will include this in an update to the procedure for council nominations and elections.

2.21 Section 28 of the Aboriginal Land Rights Act allows a Land Council to delegate some of its functions or powers, including to the Chairman, a committee of the Council, or to an NLC staff member. The NLC maintains an Instrument of Delegation that records the delegations of the Full Council, including the meeting at which the delegation was endorsed. In March and April 2017, the NLC advised:

In 1996 the Full Council resolved to delegate its delegable function and powers to various levels of the council and staff. The Instrument of Delegation came into effect on 10 March 2000 when the document was executed under seal and still stands. Since then a number of amendments have been made to the delegations considered desirable to align with legislation and management changes, they have been similarly executed under seal.

The various amendments are yet to be consolidated into a single document. The CEO has established an internal working group to comprehensively review all delegations within the organisation with a view to consolidate the delegations into a single instrument. The single instrument (and any proposed changes to delegations) will be presented to the Full Council for approval.

2.22 As at 11 May 2017, the NLC advised that the review had been completed and the various amendments consolidated into a single document, and that the document was approved by the Executive Council at the council meeting of 20 April 2017 (and recorded in the minutes of the meeting).

### **Conduct of functions as a native title representative body**

2.23 The NLC combines its functions as a representative body under the Native Title Act with its statutory functions under the Aboriginal Land Rights Act to improve administrative efficiency and reduce management costs, but is required to report on them separately.<sup>30</sup>

2.24 Section 203BA of the *Native Title Act 1993* deals with how functions of native title representative bodies are to be performed (refer Appendix 3Appendix 1). Specifically, section 203BA(2) deals with the entity's organisational structures and processes that must (among other things): promote the satisfactory representation of the body of native title holders; promote the effective consultation with Aboriginal people and Torres Strait Islanders living in the area; and operate in a fair manner, particularly with regard to opportunities for Aboriginal peoples' and Torres Strait Islanders' participation, consultation, and decision making.

30 Section 203DA(2) of the *Native Title Act 1993* requires a native title representative body to keep accounts and records separate from any other accounts and records for other business or services conducted by the organisation. The ANAO Financial Statements Audit 2015–16 of the NLC as native title representative body included that the financial statements 'present fairly' the financial position of the NLC as at 30 June 2016.

2.25 Under the Native Title Act, eligible bodies can apply to become a native title representative body at the invitation of the responsible Minister.<sup>31</sup> On 5 May 2016, the Minister for Indigenous Affairs wrote to the NLC that, based on the NLC application and advice from PM&C, he was 'satisfied that the NLC satisfactorily performs its existing functions as a representative body under the Act and would be able to continue to do so', and recognised the NLC as the native title representative body for the prescribed area, for the period 1 July 2016 to 30 June 2018.<sup>32</sup>

### Development and publication of a corporate plan and annual report

2.26 Under sections 35, 39 and 42 of the *Public Governance, Performance and Accountability Act 2013*, Accountable Authorities of Commonwealth entities are required to: develop and publish (on the entity website) a corporate plan annually for the entity; and report annually on its operations and finance. Commencing in 2015–16, with implementation of the enhanced Commonwealth Performance Framework, the annual report must include an entity's (non-financial) performance statement. Both documents should be provided to the responsible Minister and the Finance Minister.

2.27 The NLC has developed and published a strategic plan and corporate plans.<sup>33</sup> The:

- *Northern Land Council Strategic Plan 2016–2020* sets out the council's strategic direction and describes 'the way we intend to carry out our statutory responsibilities, the goals we set to achieve and our vision for the future'<sup>34</sup>; and
- *Northern Land Council Corporate Plan 2015/16–2018/19* and *Northern Land Council Corporate Plan 2016–17 to 2019–20* set out the activities and strategies to achieve the strategic goals.

2.28 The NLC has published its corporate plans and included the publication of the required performance statement in its annual report, *Northern Land Council Annual Report 2015–16*. The annual report was provided to the Minister within the required time frame. (The NLC's planning and performance reporting is further discussed in Chapter 4).

### Performance of council members

2.29 The NLC handbook *2016 Rules for Councillors* sets out the roles of the members and functions of the various parties (the Full Council, Regional Councils, Executive Council, Chairman, Deputy Chairman and Chief Executive Officer) and provides a mix of quantitative and qualitative measures against which their respective performance will be assessed.

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31 The NLC has been a native title representative body since 1994. Eligible bodies must be re-appointed under section 203AD(3A) of the *Native Title Act 1993*. The Minister's recognition of an eligible body as a representative body must be for at least one year but not more than six years.

32 The two-year period was granted to all native title representative bodies, to allow time to adjust to new outcomes-based funding arrangements introduced from 1 July 2016.

33 Minutes of the 110th meeting of the Northern Land Council (19 June 2015) record that the *Strategic Plan 2016–2020* and *Northern Land Council Corporate Plan 2015/16–2018/19* plans were considered by the Full Council with a resolution that endorsement of the plans be delegated to the Executive Council. Minutes of the 117th meeting of the Executive Council (25 February 2016) recorded endorsement of the strategic plan. There is no record of the corporate plans being endorsed by the Executive Council.

34 Northern Land Council, *Strategic Plan 2016–2020*, Introduction.

2.30 The measures align with the NLC's goal of good governance articulated in the strategic plan and corporate plans. The roles and performance measures for the Full Council, Regional Councils and Executive Council are shown in Appendix 4. The previous version of the written rules, *Draft Full Councils Members Induction Handbook 2013–16*, also set out roles and responsibilities, but did not provide performance measures.

2.31 As at December 2016, several of the quantitative measures are recorded by the NLC (for example, councillors' attendance at meetings is noted for the payment of sitting fees, and the number of agreements passed is included in the NLC's annual reports). However, more needs to be done to be able to assess the qualitative measures, for example, 'respect other council members, staff and visitors to council meetings' and 'manage conflicts of interest'.<sup>35</sup>

2.32 If fully implemented—that is, performance targets are established, performance is monitored and recorded, and results are provided to and reviewed by council members—the performance measures will provide insight into the effectiveness of the operations of the council, and the standards of governance provided by council members.

### *Governance training*

2.33 Governance training for members of the Full Council was delivered on the first day of the Full Council meeting held in November 2016, and involved the active participation of all members. A report compiled after the meeting collated members' opinions about the training. Feedback was generally very positive, with the training well received and considered beneficial.

2.34 Minutes of the Executive Council meeting, 13–14 December 2016, record that the CEO has engaged Deloitte to assist with on-going governance training, and to deliver tailored governance training for members of the Executive Council. A letter of engagement from Deloitte, 7 March 2017, sets out the terms of reference for the training, to be delivered over five two-hour sessions throughout the year.

### **Managing complaints**

2.35 Complaints about the operation of the NLC may be lodged with the council, PM&C or the Minister's office, as well as other Commonwealth agencies including the Commonwealth Ombudsman and Fair Work Ombudsman.

### *Complaints lodged with the NLC*

2.36 The NLC's *External Complaints Policy and Procedures, August 2015*, sets out the process for managing and reporting complaints, with the NLC's risk management framework referencing the importance of effective complaints handling. While comprehensive, as at 1 March 2017 the document has not been formally endorsed by the NLC executive and implemented across the organisation. An online form for lodging a complaint is included in the re-design of the NLC's website (the contract has been finalised for the development of the new website, and work commenced in March 2017).

2.37 Since February 2015, the NLC has allocated a staff member to manage external complaints and maintain a register to record and track them. The register is manually maintained on an Excel

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35 The NLC advised that it will engage an external agency to conduct this evaluation.



spreadsheet. As at 31 March 2017, 55 complaints had been registered, of which 45 were closed. The complaints relate mostly to matters of traditional ownership and royalty payments (or a lack of progress in resolving the issues). The NLC's responses are approved and signed by the CEO. Of the 55 complaints, one involving the Fair Work Ombudsman and eight raised by the Commonwealth Ombudsman were resolved.

2.38 The *External Complaints Policy and Procedures, August 2015* includes that a consolidated report on complaints should be provided annually to the Audit Committee. There is no evidence of such a report being made to the Audit Committee, in minutes of the 10 committee meetings convened between April 2015 and November 2016.

2.39 To support the full implementation of the complaints management process, the NLC should consider providing training in complaints handling for selected staff, and, more broadly, make staff aware of how to respond when people refer to lodging a complaint. For example, could the matter be dealt with appropriately without escalation to a formal complaint, or by the provision of information?

2.40 The NLC should also consider how complaints are reported, in addition to the report to the Audit Committee. Senior managers have visibility of complaints relevant to their branch, but regular reporting, perhaps every six months, to the Leadership Group would ensure managers are aware of all matters raised through complaints.

#### *Complaints lodged with PM&C and / or the Minister for Indigenous Affairs*

2.41 PM&C maintains a dedicated email address and hotline for the lodgement of complaints, and manages correspondence addressed to the Minister for Indigenous Affairs through the department's Ministerial Correspondence Unit. Advice from the department's Governance Audit and Reporting Branch (21 December 2016) is that: 'searches of PM&C's data holdings managed by the Governance Audit and Reporting Branch (Fraud and Complaints), the Portfolios Section and the Ministerial Correspondence Unit for complaints made to the Department about the NLC, resulted in a nil find.'

2.42 With regard to the Ministerial Correspondence Unit, there is no specific procedure set out in the *Guide to preparing and handling Ministerial Correspondence, 23 April 2015* for the management of complaints—complaints are not categorised as such in the database used to manage the correspondence. For the purpose of this audit, PM&C manually reviewed the Ministerial Correspondence Unit database and identified complaints about the NLC lodged with the Minister's office from 2013. The list of complaints provided did not support analysis of the nature and / or volume of complaints lodged, and provided no information as to how they were resolved.

2.43 PM&C does not have procedures to comprehensively monitor or undertake any routine analysis of these complaints that would provide insight into aspects of the NLC's operations and performance. The department could consider tracking and analysing complaints processed by the Ministerial Correspondence Unit, and engaging more closely with the NLC as to their content.

### **Stakeholder surveys, internal audit and quality assurance**

2.44 As at March 2017, the NLC has no internal mechanisms to provide independent assessment of council members' performance, or assurance that the NLC's processes are being



properly implemented. Going forward, the NLC intends to conduct council and stakeholders' satisfaction surveys across the NLC region<sup>36</sup>; and agreed at the November 2016 Audit Committee meeting to consider establishing an internal audit function within the financial year (further discussed in Chapter 3). In the longer term, the NLC could also consider implementing some form of quality assurance function, such as the conduct of a peer review, of the council's legal and anthropology services.

## Does the Secretariat branch effectively support the operation of the Northern Land Council?

The NLC has reviewed and restructured the Secretariat branch to streamline services to councillors and the Chief Executive Officer. Most recently, the outcome of a workshop held in late March 2017 renamed the branch (to the Executive branch), better defined the responsibilities of each function within the branch, identified branch priorities, and developed a business plan and performance measures to assess the effectiveness of the branch in supporting the operations of the council. There was no business plan and few procedural documents from previous years upon which to base the work of the branch, going forward.

### Secretariat branch structure

2.45 The structure and functions of the Secretariat branch have been subject to change in recent years, illustrated in the NLC's annual reports from 2014–15 and in the council's corporate plans over the same period. The most recent re-structure of the branch, taking effect in October 2016, resulted from an internal review of position descriptions and the functions of the branch, and the need to fill positions that had been vacant for some time.

2.46 In an email to all staff, 3 October 2016, the NLC's CEO informed staff that the re-structure aimed 'to streamline the functions around support for the Council, Chairman and CEO by utilizing a flat structure with a view to efficient delivery of the branch's functions and delivery of the strategic plan as set by the Council'.<sup>37</sup> Changes included:

- abolishing the Communications branch and amalgamating the media and publications / communications functions with policy functions in the Secretariat branch, to reflect the outwards focus of policy development deriving from the council;
- the transfer of corporate compliance functions to the Corporate Services branch; and
- the sharing of logistics—contacting council members and arranging their travel to meetings—with the NLC's Regional Development branch<sup>38</sup> (this arrangement applied for the 114th meeting of the Full Council held in November 2016), as well as responsibility for the management of permits (to access Aboriginal Land).

36 Presentation by the CEO and endorsed at the 114th meeting of the Northern Land Council in November 2016.

37 All staff email from the NLC's Chief Executive Officer, 3 October 2016.

38 Located in the NLC's regional offices, staff in this branch are typically the first point of contact with the NLC for people outside of the Darwin area, and have local knowledge.

2.47 At the meeting of the Executive Council held on 13–14 December 2016 the new branch manager provided an overview of the functions of the re-structured Secretariat branch.<sup>39</sup> While the NLC had provided secretariat services to the council, there was no business plan from previous years on which to build, and few documented procedures for the secretariat functions in the branch. For example, there was no documented information about the activities that comprise ‘council services’, and more complex processes, such as organising the nominations for a new three-year term of the Full Council, relied on the experience of staff in the branch rather than documented guidance or procedures.

2.48 The NLC subsequently held a workshop on 24 March 2017 (convened by an external consultant) to define the responsibilities of each function within the branch, identify priorities, and develop a business plan and performance measures for the branch. The outcomes of the workshop included a proposal to rename the branch to the Executive branch (to more clearly define the role of the branch) and the identification of five core activities.<sup>40</sup>

#### *Payment of sitting fees and other entitlements*

2.49 In August 2016, in a joint initiative, the Secretariat branch and Finance section issued a new procedure for the payment of sitting fees to council members. Section 77 of the Aboriginal Land Rights Act provides for the payment of sitting fees and allowances to members of Land Councils, with rates determined by the Remuneration Tribunal.<sup>41</sup> Sitting fees are currently \$293 per sitting day (also allows for half day attendance), and members are entitled to travel allowance, currently \$28 per day.

2.50 Taking effect at the meeting of the Full Council held in November 2016, the NLC advised that it had stopped providing any cash payments at council meetings, and that at the November meeting: sitting fees were paid by electronic bank transfer the following week<sup>42</sup>; and travel allowances were also paid daily (from the first day of the meeting) by electronic bank transfer.

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39 The functions included to: provide support to the NLC Chair and CEO, including through monitoring government and other issues; overseeing arrangements for council meetings; responsibility for internal and external policies and policy research; drawing up submissions to parliamentary committees; all communications and publications; and oversight of the NLC website and its redevelopment.

40 The activities were to: provide leadership to the administrative arm of the NLC through the CEO; support the functioning of the elected arm of the NLC; facilitate strategic policy development for the NLC; foster and incubate new initiatives and special projects; and support leadership development of Councillors, through the Chairman.

41 Current sitting fees for members are set in accordance with Determination 2015–20, and travel allowances are set in accordance with Determination 2016–17 with effect from 28 August 2016. The Chair of the Land Council is required to certify the total time claimed by the office holder prior to payment of a sitting fee.

42 The fees had previously been paid partly in cash each day, requiring administrative staff to transport upwards of \$90 000 in cash to the meeting venue.

### 3. Administration and Service Delivery

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#### **Areas examined**

This chapter examines the effectiveness of the Northern Land Council's (NLC's) administrative arrangements to support its functions and the delivery of services. The chapter also examines the NLC's progress in implementing administrative reforms.

#### **Conclusion**

Subsequent to substantial criticisms about failed administrative processes, practices and controls, the NLC has commenced a range of initiatives to better support its functions and the delivery of services. These initiatives have included enhanced financial reporting capability and records management, and the establishment of a competent Audit Committee to oversee reforms across key corporate functions and policies. Some progress has been made in modernising the NLC's dysfunctional information and communications technology systems, with further improvements subject to available funding. Improvements in service delivery are supported by management and budget information that was not previously available to managers. The NLC could more effectively manage its reform agenda given the extent of the changes underway.

#### **Areas for improvement**

The ANAO suggests that the NLC improve its procurement processes (paragraph 3.15) and the format for internal management reports (paragraph 3.60). The ANAO recommends that the NLC better manage and monitor its reform agenda and communication with staff about the changes (paragraph 3.68).

### **Do administrative arrangements effectively support the work of the Northern Land Council?**

The NLC's administrative arrangements do not yet effectively support the work of the council. Prior to 2015, the management and maintenance of core enabling functions, including information and communications technology systems, human resource management and records management was poor, with serious weaknesses in financial management, fraud control and the management of risk. Commencing in 2015, the council is implementing an extensive reform agenda across all administrative functions, with progress having been achieved in corporate planning and reporting, financial reporting and in internal governance through the operations of an Audit Committee. Other reforms, including in human resource and records management, are well underway with an overhaul of the council's information and communications technology systems in the early stages.

3.1 In early 2015 the NLC's Chief Executive Officer (CEO) commenced a 'complex change management initiative where it is not simply about changing systems and procedures—as large a

task as that already is—but also about changing the way we work and aligning our day-to-day corporate culture to our vision and mission’.<sup>43</sup>

3.2 As at March 2017, extensive reforms were underway at the NLC. Almost all aspects of the council’s administration and service delivery, including governance functions and corporate services, are subject to review and reform. There is little ‘business as usual’ activity in the organisation, with new and recent appointments to most of the council’s senior management positions and specialist positions.

### **Information and communications technology systems**

3.3 An external review of the NLC’s information and communications technology (ICT) systems completed in October 2016<sup>44</sup> found the NLC’s ICT environment to be ‘dysfunctional, reliant on numerous manual processes and exposes the NLC to significant operational and security risk’. The review identified over 20 serious weaknesses in the ICT systems that undermined the council’s capacity to carry out core activities, with the ‘current ICT team consumed by *keeping the lights on* and reacting to issues as they arise’.

3.4 Weaknesses identified in the review impact across the organisation and included: no functioning intranet; duplication of client and project databases<sup>45</sup>; security vulnerabilities leading to significant data loss; inconsistent core ICT practices (including document management and the resulting reliance on manual processes); lack of visibility and inability to share information between branches; and no appropriate backup or disaster recovery strategies.

3.5 The review outlined seven ICT initiatives encompassing 30 individual projects to be undertaken over a two-year period, including the immediate need to establish a project management office and recruit staff with the necessary expertise.

3.6 Advice from the NLC as at 1 March 2017 was that it intended to establish a project management office while undertaking, where possible, urgent projects that could be managed within existing capabilities or that were already funded, including an upgrade of the email system and installation of a new human resource management system. In the longer term, other projects will depend on available funding.

3.7 The NLC has developed an ICT project plan that lists the various projects to be implemented over a two-year period (to December 2018), with associated timelines, costs and staff responsibilities. As at April 2017, work underway includes consolidating the NLC’s various databases, and improving video conferencing and technical capabilities in the regional offices and for staff working in remote locations.

3.8 From February 2017, NLC staff also have access to a new intranet site. While still being populated, the NLC advised that the new features include: a centralised calendar showing all the activities across the organisation to facilitate better coordination and planning of remote

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43 Northern Land Council, *Annual Report 2014–15*, p. 22: available from [http://www.nlc.org.au/files/pdfs/NLC0005\\_Annual\\_Report\\_web.pdf](http://www.nlc.org.au/files/pdfs/NLC0005_Annual_Report_web.pdf) [accessed 20 January 2017].

44 Ernst & Young Australia, *ICT review, Northern Land Council*, October 2016.

45 The *Northern Land Council Strategic Review of the ‘Royalties’ System* reported in October 2015 that, in applying to use NLC computing facilities, new starters are given a choice of 26 separate databases to access, on a form that is out of date as it does not include all databases.

meetings and consultations across the region; project management and reporting tools (initially for processing land use agreements); and messaging services.

### Financial management and reporting

3.9 The NLC budget comprises several funding sources (shown for 2015–16 in Table 3.1) administered through the Department of the Prime Minister and Cabinet (PM&C), as well as specific purpose grants from various Australian and Northern Territory Government agencies, and own source income.

**Table 3.1: NLC funding sources, 2015–16**

Activity/function	Funding source	Value 2015–16
Operational and capital expenditure	Aboriginals Benefit Account, administered through PM&C	\$20.2 million
Native title representative body	Appropriation, administered through PM&C	\$4.9 million
Indigenous Ranger Program	Appropriation, administered through PM&C	\$2.1 million
	Aboriginals Benefit Account: administered through PM&C <sup>1</sup>	\$2.3 million
Environmental and liaison functions	Special purpose grants	\$6.9 million
Own source income	Rendering of services <sup>2</sup> and interest from deposits.	\$2.7 million

Note 1: Additional critical operational funding for the NLC Ranger Program was provided from the Aboriginals Benefit Account (subsection 64(1) of the Aboriginal Land Rights Act) as a one-off allocation for 2015–16 only.

Note 2: Operating on a cost-recovery basis, including from the processing of applications for minerals-based exploration licences and petroleum-based exploration permits.

Source: ANAO, from NLC *Annual Report 2015–16*.

3.10 Prior to November 2015 and the appointment of a new Chief Financial Officer, the NLC's financial management and internal reporting capabilities were poor, including not meeting reporting requirements for the various funding sources. The NLC used only the basic transactional capacity of their financial system (SAGE), and rudimentary reports were generated using a combination of custom built add-ons to the financial system and Excel spreadsheets. They did not easily provide a consolidated picture of the NLC's finances, and contained minimal budgetary information against which actual expenditure could be monitored.

3.11 The situation improved in 2016, through: enhanced reporting capabilities (albeit manually using Excel spreadsheets); and upgrading the financial system in readiness to implement, in early 2017, automated reporting together with Project Job Costing and Asset Management modules. The NLC advised that further planned upgrades will make the system more stable, and expand the reporting capability.

3.12 Prior to February 2016, the NLC executive and senior staff had no visibility of the organisation's allocation of resources and internal budgets. Throughout the year, the NLC finance team developed and refined its management information reports, and by December 2016, monthly reports were being provided to the:

- Leadership Group, Executive Committee and Audit Committee. Consolidated reports provide comprehensive information on total budgeted and actual income and

expenditure for the NLC, including breakdowns by funding source, branch and project. They also provide a balance sheet and cash flow summary and specific information on consultancy expenditure and debtors; and

- branch managers and project managers. Branch reports detail budgeted and actual branch level income and expenditure by funding source as well as by individual project.

3.13 Improvements in the financial systems also support the NLC's implementation of recommendations in the ANAO's audit of its financial statements 2015–16, which identified weaknesses in expenditure controls including in the processing of purchase orders. From early 2016, online processing of purchase orders (with the exception of travel) has been gradually implemented, with a slow phasing out of paper purchase order books.<sup>46</sup> From February 2017, procurement is linked to budgets, and system controls introduced to help ensure that purchase orders are correctly approved prior to a liability for goods and services being incurred and invoices raised.

3.14 With regard to the procurement of goods and services, as at 1 March 2017, the NLC did not have a procurement policy, and procurement practice did not meet requirements set out in the Commonwealth Procurement Rules. The NLC is not a prescribed corporate Commonwealth entity as listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014*, and is not required to comply with Commonwealth Procurement Rules. However, to do so voluntarily would promote better practice by encouraging: value for money; competition; efficient, effective and ethical procurement; and accountability and transparency in procurement.

3.15 Supplies of goods and/or services may be sourced or contracted by the NLC on the basis of a list of providers previously engaged, and there is limited evidence of competitive tendering or value for money consideration.<sup>47</sup> The NLC should improve its procurement process across the organisation.

### *Travel*

3.16 Travel is a significant expense for the NLC. The ANAO's 2015–16 financial statements audit examined the NLC's internal controls for the approval of individual staff travel, and found them to be appropriate: staff must have their travel approved by their line manager, and for senior staff, by the Chief Executive Officer (CEO).<sup>48</sup> The consolidated monthly reports provide the total expenditure on travel for the organisation. The amount spent on travel (excluding use of the NLC's fleet vehicles) as a percentage of staff costs reduced over the period 2013–14 to 2015–16 (Table 3.2).

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46 As at 1 March 2017, only one paper Purchase Order book was still in use by Regional Development, and no new order books were to be issued.

47 The NLC advised that: the procurement of consultants over \$5000 requires approval from the Chief Financial Officer, who also requires at least two quotes for the purchase of goods or services greater than \$5000; and procurement undertaken by the Caring for Country branch has more robust procurement practices.

48 Prior to 2015, staff could plan and book their own travel.

**Table 3.2: NLC travel costs and staff costs, 2013–14 to 2015–16**

	2013–14 \$'000	2014–15 \$'000	2015–16 \$'000
Total staff costs <sup>1</sup>	20 851	18 233	21 563
Travel costs	4 198	2 283	2 693
Travel costs as a percentage of staff costs	20.1%	12.5%	12.5%

Note 1: Total staff costs include wages and salaries, superannuation, and leave and other entitlements.

Source: ANAO, from NLC annual reports.

3.17 For 2014–15, the NLC's travel agency provided a comprehensive report on the NLC's expenditure by air travel, car hire and accommodation, and the destinations and hotels used by staff. From December 2016, the NLC has requested the report to be provided monthly. This report, and improved internal budget reporting, allows the NLC executive to analyse travel costs and consider if they are providing a good return to the council. Further reduction in travel costs may be possible, for example, through greater use of the video conferencing facilities.

### *Fleet management*

3.18 The NLC owns and manages a fleet of some 100 vehicles that includes quad bikes, four wheel drive vehicles and sedans. Issues with the road worthiness and safety of the fleet and NLC's fleet management procedures have been reported since 2011–12<sup>49</sup>, but remain outstanding as at March 2017 (referenced in Chapter 4).

### **Human resource management**

3.19 Staff in the NLC's Human Resource (HR) Management team have been primarily engaged in processing paper-based payroll functions—manually calculating wages and salaries, leave entitlements and various allowances—with little capacity for other HR functions. Managers largely worked independently to recruit staff and to manage performance, and there was little by way of a framework for staff training and development. A new HR manager, appointed in December 2016, is tasked with reforming the NLC's HR functions.

3.20 For the purpose of this audit, the new HR manager provided an overview of actions, as at 31 January 2017, to be implemented through the year. Two 'urgent' actions are the: implementation (commenced) of a new payroll and human resource management system, scheduled to 'go live' on 1 July (allowing HR staff to move away from processing functions); and finalisation of a new Enterprise Agreement (staff are employed under the *NLC Enterprise Agreement 2011*, which nominally expired in June 2014).

3.21 Actions with a 'high' priority include: a review of remuneration and job classifications (to align with the new Enterprise Agreement); an update of all HR policies and procedures, including all aspects of performance, performance management and staff development (HR policies and

49 The *NLC Annual Report 2011–12*, p. 56 includes that, since the introduction of the *Work Health and Safety Act 2011*, the NLC has worked closely with Comcare to assess risk management strategies and provide occupational health and safety training for managers. One of the major risks identified was the condition of the NLC vehicle fleet, including troop carriers that it cited as dangerous in its 2012–13 annual funding bid, referring to the opinion of the Department of Defence.

procedures are in a manual, the *Northern Land Council Human Resource Manual*, approved 14 April 2009, and are out of date); and design of a leadership development program. Actions rated as a 'medium' priority include an overhaul of the induction process for new staff to the NLC. To implement these actions, the HR manager is meeting with senior managers and staff, to engage them in the new processes.

## **Record keeping and document management**

3.22 The NLC maintains an electronic document management system (HP-TRIM<sup>50</sup>) that has been poorly utilised, with the organisation relying heavily on paper based files (maintaining a contract with an external provider for the off-site storage of these files), and in breach of the Australian Government Digital Transition Policy.<sup>51</sup> The sheer volume of paper files created by the NLC and the requirement to scan, log and index the files and subsequently transport them off-site, was resource intensive and put record keeping at risk.

3.23 In October 2016, the NLC appointed a new information management coordinator tasked with improving all aspects of the NLC's record keeping and document management. Activities to January 2017 included: a presentation in November 2016 to senior NLC staff on all aspects of records management; a request to the National Archives to review the NLC's *Check-up Digital* assessment (with the NLC assessed as level 1 on all measures<sup>52</sup>); a review and redraft of the NLC's records keeping policies and procedures; and re-negotiation of the off-site storage contract and clearing the backlog of paper files throughout the office.

3.24 An upgrade of the NLC's electronic document management system is underway, scheduled to be implemented in May 2017. The initiative will upgrade the version (from version 7 to version 9.1) of the HP-TRIM system currently used by the NLC (that is outdated and no longer supported by the developer) and provide a massive increase in the system's file storage capacity. The NLC advised that the new version is compliant with the National Archives of Australia standard for the digitalisation of records (VERS: the Victorian Electronic Records Strategy).

3.25 Advice from the NLC's information management coordinator as at 1 March 2017 was that all managers were engaged and committed to using TRIM. The NLC has employed an accredited TRIM administrator for some five years, but the position was never properly utilised given the reliance on paper based documents. Going forward, the NLC could consider developing a quality assurance process to ensure that staff are compliant with the NLC's business rules and protocols for electronic filing.

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50 HP-TRIM is an enterprise document and records management system for physical and electronic information designed to help organisations capture, manage and secure business information in order to meet governance and regulatory compliance obligations.

51 The Australian Government Digital Transition Policy, administered by the National Archives of Australia, requires agencies to move to digital records and information management for efficiency and other benefits.

52 There are five levels on the National Archives of Australia's *Check-up Digital*: 1 is the lowest level referred to as 'initial', through to level 5 where digitalisation of an organisation's records management is fully implemented and optimised.



## Internal policies

3.26 The NLC had not maintained a central register of its internal policies, or a process to review and update them. As at October 2016, of 44 policy documents provided by the NLC and reviewed by the ANAO, only five were current (that is, the policy had been reviewed and updated as required, and any changes had been approved).

3.27 As at 1 March 2017, policy documents were being filed in TRIM with any copies on share drives deleted. The NLC then had 49 policy documents in the TRIM file, with permissions attached to the electronic files to restrict edit rights and to track when the policy is accessed. The NLC also developed a standard template for all policies, with all existing policies transferred to the template format.

3.28 As at April 2017, the NLC has established a policy and procedures register recording 87 documents and their status (for example, approved or due for revision) with version control. Of the 87 documents shown on the register as at 19 April, 30 documents had been reviewed, updated and approved, with 16 ready for review.

## Internal committees

### *Work Health and Safety Committee*

3.29 The NLC has a Work Health and Safety (WHS) Committee of nine members convened under the authority of the CEO. The WHS Committee is governed by a Charter (approved by the Committee in April 2015) that outlines the functions and membership of the committee.

3.30 The committee met on 13 occasions in the period April 2014 to January 2017. A review of the minutes of these meetings found that the committee had complied with the requirements of the Charter, or (prior to April 2015) the draft Charter, in respect of all three matters examined: membership, frequency of meetings and whether there was a quorum.

3.31 The NLC is also updating and re-drafting its WHS policies and procedures. As at March 2017, the NLC had 20 WHS policies and procedures, including an overarching WHS policy; individual policies such as those for firearms and safety at sea; procedures for WHS implementation, issue resolution and consultation; and WHS risk management and audit plans. As at February 2017, 11 of the policies were current and had been approved, with a further six to be considered and approved by the Leadership Group. Some of the approved policies and procedures are available to staff on the NLC's new intranet platform.

### *Remuneration Committee*

3.32 In February 2017, the NLC advised that work had begun to establish a formal remuneration committee. To date, executive remuneration is assessed by the NLC's Chief Financial Officer and HR manager, with final approval by the CEO. A review of executive personnel files showed the process in place for NLC executive staff, but no established procedure for benchmarking the salary component or other benefits in the overall salary package, for example, the provision of airfares for private use.

3.33 At the request of the Chief Financial Officer, the HR manager has commenced a review of all executive staff remuneration packages. As at March 2017, one review had been completed. The review included comparison against: Hays Salary Survey (Hays Northern Territory (NT) Salary Information); comparable executive appointments across Local Government in NT (as the NLC

Enterprise Agreement 2011 refers to the Local Government Industry Award 2010); comparable Public Sector pay scales; and comparable 'Full-Time Public Office' positions as detailed in the Remuneration Tribunal Determination 2016/19. The review found the current remuneration appropriate.

### NLC Audit Committee

3.34 The Senate Finance and Public Administration Legislation Committee, at its estimates hearing of 27 February 2015, questioned the operation of the NLC's Audit Committee with regard to the frequency of its meetings and the expertise of its members.<sup>53</sup> In three of the NLC's Annual Reports for the period 2007–08 to 2013–14 there is no record of the Audit Committee having met; in another year there is reference to the audit committee being 'under redevelopment' (2008–09); and meeting once in 2012–13. Reporting of the membership of the Audit Committee over the same period reflects frequent change.

3.35 The *Northern Land Council Audit Committee Charter* (the Charter), was approved by the NLC's Accountable Authority (Chairman and CEO) on 5 June 2015. Table 3.3 provides the results of a review of the roles and responsibilities of the Audit Committee as set out in the Charter, against requirements of an audit committee under sections of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and associated rules.

**Table 3.3: NLC audit committee charter compliance with PGPA Act requirements**

Section	Requirement	Compliant
<b>PGPA Act</b>		
45(1)	The Accountable Authority of a Commonwealth entity must ensure that the entity has an audit committee.	Yes
45(2)	The committee must be constituted, and perform functions, in accordance with any requirements prescribed by the rules.	Yes
<b>PGPA Rule 2014 (for the purposes of subsection 45(2) of the PGPA Act)</b>		
17(1)	The Accountable Authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee for the entity.	Yes
17(2)	The functions must include reviewing the appropriateness of the accountable authority's: financial reporting for the entity; performance reporting for the entity; system of risk oversight and management for the entity; system of internal control for the entity.	Yes
17(3)	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. <sup>1</sup>	Yes

53 Commonwealth of Australia, Official Committee Hansard, Senate, Finance and Public Administration Legislation Committee, Estimates, 27 February 2015, p. 9.

Section	Requirement	Compliant
17(4)	On and after 1 July 2015, the majority of the members of the audit committee must, for a corporate Commonwealth entity—be persons who are not employees of the entity.	Yes
17(5)	The following persons must not be a member of the audit committee, the: accountable authority or, if the accountable authority has more than one member, the head (however described) of the accountable authority; Chief Financial Officer (however described) of the entity; and Chief Executive Officer (however described) of the entity.	Yes

Note 1: As at 22 November 2016, the external members have backgrounds in corporate law and governance, financial reporting, auditing and risk management, and business management within the not-for-profit sector.

Source: ANAO.

3.36 A review of the structure and operation of the NLC audit committee against the responsibilities set out in its Charter included the examination of: the minutes of ten meetings of the Audit Committee (held between 24 April 2015 and 22 November 2016); documentation considered at those meetings; and minutes of the Executive Council and Full Council.

3.37 The review found that the membership of the Audit Committee and the frequency of its meetings met the requirements of the Charter, and the committee was undertaking its responsibilities as set out in the Charter, for example: reviewing financial statements; liaising with external auditors; and considering legislative and policy compliance.<sup>54</sup>

3.38 Specifically, in regard to the Audit Committee's responsibility for the NLC's risk management and fraud control (the oversight of which is included in the NLC's Audit Committee Charter), at the meeting of 22 November 2016 the Audit Committee:

- endorsed a draft risk management policy, *NLC Risk Management Framework and Policy*<sup>55</sup> and a draft fraud control policy, *NLC Fraud Policy*, with input on better practice considerations from the ANAO's financial statement auditor. Both documents were considered and approved by the Leadership Group on 7 April 2017; and
- noted that the NLC's Chief Financial Officer would prepare a draft Risk Register and Risk Management Plan, as well as a draft Fraud Control Plan and a Whistle-blower Policy, for endorsement by the Audit Committee by 30 June 2017.

3.39 The Charter requires: the Audit Committee to regularly update the Full Council on its activities and make recommendations to the Full Council as appropriate; and the Chair of the Audit Committee to report on any matters that the Committee considers should be brought to the Council's attention.

54 The ANAO, in its Closing Letter to the 2015–16 financial statements audit, noted that the NLC does not have an established internal audit function, and recommended that the NLC consider the engagement of such a function in 2016–17. The ANAO subsequently suggested the Audit Committee (at its meeting of 22 November 2016) adopt a two-step approach: first, obtain advice on the improvements required to NLC's systems and processes and implement the required changes; second, once the baseline systems are in place, consider adopting an internal audit function subject to budgetary capacity. In April 2017, the NLC advised that it will consider introducing an internal audit function once baseline systems and processes are established, subject to funding.

55 As Corporate Commonwealth entities, Land Councils are not required to comply with the *Commonwealth Risk Management Policy* but, as a matter of good practice, should review and align their risk management frameworks and systems with this policy (p. 9).

3.40 A review of the minutes of five Full Council meetings—the 110<sup>th</sup> meeting (15–19 June 2015) to the 114<sup>th</sup> meeting (14–17 November 2016)—and the minutes of three Executive Council meetings held between May 2016 and September 2016 found that: the Full Council minutes did not contain any reference to an update by the Audit Committee; and the Executive Council meeting in September 2016 included reference to an email from the Audit Committee Chair outlining minor edits in relation to the wording of the draft Annual Performance Statement.

3.41 The Full Council may have delegated responsibilities to the Executive Council with regard to Audit Committee updates and reports, but there is no specific record of this and the Charter specifically refers to the Audit Committee reporting and making recommendations to the Full Council. While the Executive Council may have responsibility for implementing recommendations of the Audit Committee, the Full Council is the governing body of the organisation and council members must be informed of the business of the Audit Committee.

### **Are services effectively managed and delivered in line with the Northern Land Council's goals?**

Commencing in 2015, the NLC is implementing numerous reforms aimed at improving the delivery of services. Some reforms are weighted towards improving the efficiency and standard of services provided to stakeholders, particularly improvements in the administration of royalty payments, while others reflect specific goals set out in the NLC's *Strategic Plan 2016–20*. The NLC's leadership group is developing key result areas and associated performance measures for the services, to be incorporated in the 2017–18 planning and reporting cycle. Prior to the reforms now being implemented there was little by way of planning or coordination of service delivery, and no evidence of measures against which services could be assessed.

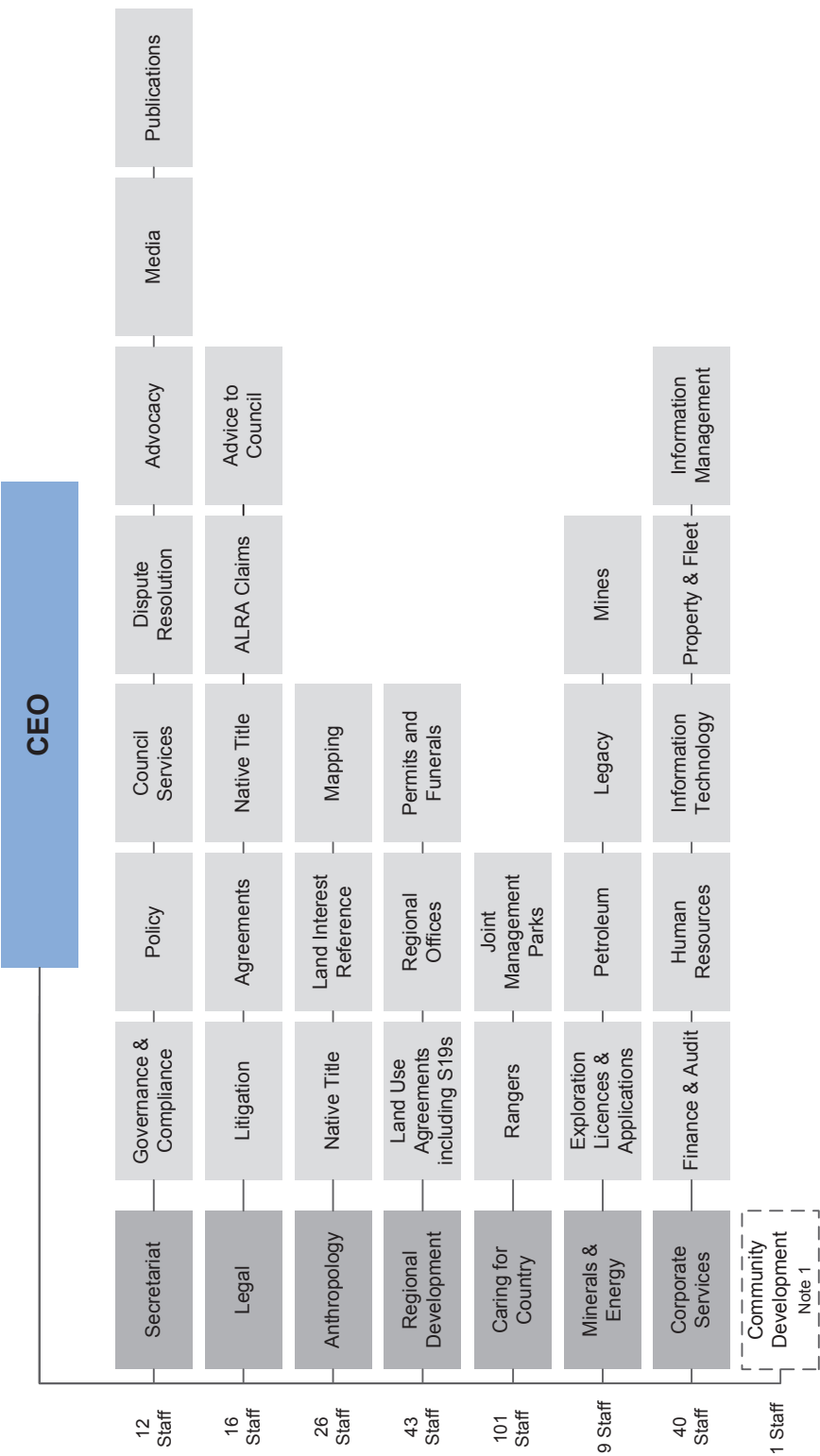
#### **Management and delivery of NLC services**

3.42 As at 1 March 2017, the NLC's services are delivered through seven branches, with an additional branch, Community Development, being established to support the council's strategic direction. The branch structure reflects the NLC's broad statutory functions to engage and consult with Aboriginal people in the region and, through the provision of legal and anthropological services, assist them to acquire and manage their traditional land and seas.

3.43 Engagement and consultation with people across the NLC region is facilitated by the Regional Development branch, with staff located in the NLC's seven regional offices providing local knowledge and a first point of contact with the council. The Caring for Country branch manages 17 Indigenous Ranger groups delivering a range of land and sea management services.

3.44 Applications for exploration licences, mineral leases and exploration and production permits for the mining and energy sector to operate on Aboriginal land are processed and managed by the Minerals and Energy branch. The Corporate Services branch has responsibility for the NLC's enabling functions. The NLC branch structure and functions as at 9 March 2017 is shown in Figure 3.1.

Figure 3.1: NLC branch structure, 9 March 2017



Note 1: NLC advised that, while Community Development will eventually become a branch, it currently sits under the Secretariat.  
Source: ANAO.

3.45 While the NLC's branch structure has remained relatively stable over the years, there is limited performance information to assess if services were effectively managed or the standards to which they were delivered. Each branch of the NLC has conducted a review and or workshop of their functions and staffing profile, and while there has been progress, continuous improvement is dependent on the scale and pace of changes in the NLC's corporate functions: branch managers now have budget information for planning and prioritising activities, and can build on the ongoing improvements in the NLC's record keeping, ICT systems and HR functions to manage their services.

3.46 A review of the NLC's *Strategic Plan 2016–2020*, *Corporate Plan 2015/16–2018/19*, and *Annual Report 2015–16* identified 55 initiatives across the NLC's branches aimed at increasing the efficiency of services, the standard of services delivered to stakeholders, or supporting the council's strategic direction. Initiatives that mostly relate to efficiency include: a review of the NLC's fleet and fleet utilisation; digitalisation of registers and databases; coordination of meetings with stakeholders; and the implementation of improved cost recovery for services.<sup>56</sup>

3.47 Other initiatives aimed at improving the standard of services delivered to stakeholders, include the: division of the Regional Development branch into 'northern' and 'southern' regions to support the implementation of the NLC's Regionalisation Strategy<sup>57</sup>; and measures to improve the administration of royalty payments.

#### *The administration and distribution of royalty payments*

3.48 The administration and distribution of royalty payments (the royalty process) is an important function of the NLC. In 2015–16, the NLC received \$52.6 million in royalty receipts for distribution to around 12 000 Traditional Owners listed in the system as recipients, with about 8000 individual transactions per quarter paying Traditional Owners their royalty payments.

3.49 Broadly, the royalties system includes the entire process of the *Aboriginal Land Rights (Northern Territory) Act 1976* (land use functions of the NLC) and its Native Title functions. This covers the receipt of an Expression of Interest for land use under the Aboriginal Land Rights Act, application under the Mining legislation or a Native Title Future Act<sup>58</sup>, or developing Land Use Agreements with third parties (proponents), the administration of those agreements and receipt and distribution of royalties.<sup>59</sup>

3.50 The NLC's administration of royalty payments had been poor in previous years. The ANAO's financial statements audits found weaknesses around the reporting, receipt and

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56 The NLC's cost recovery policy set out the process to recover costs in responding to proposals lodged by third parties (Proponents) that seek an interest or a right to access, use or operate on Aboriginal or native title land. The NLC expects proponents, who wish to submit any proposal/s to the NLC, to bear all reasonable costs associated with the provision of services.

57 The NLC's Regionalisation Strategy seeks to strengthen the council's services across the NLC region, recognising that nearly 80 per cent of Aboriginal people in the region live outside of the greater Darwin area while some 23 per cent of staff are located in the NLC's regional offices.

58 A future act is a proposal to deal with land in a way that affects native title rights and interests. Examples of future acts include the grant of a mining tenement or the compulsory acquisition of land. A future act will be invalid to the extent it affects native title unless it complies with the procedures set out in the *Native Title Act 1993*. Available at: <<http://www.nntt.gov.au/futureacts/Pages/default.aspx>>, [accessed 5 April 2016].

59 Northern Land Council, *Strategic review of the Royalties' system October 2015*, p. 2.

distribution of royalty monies over the last four years, including in the 2013–14 audit that the procedures manual had not been updated since 2003. A review of the NLC's system for administering royalty payments, *Northern Land Council, Strategic review of the Royalties' system October 2015* (the Royalties review) examined the findings of the financial statements audit, and included six recommendations to improve the royalty process.

3.51 The Royalties review noted the complexity of a process that had been exacerbated in the NLC by the lack of organisation-wide policies and procedures, 'and that the current system has been 'band-aided' by different branches trying to do their work', including maintaining their own data bases for what is essentially the same client group.

3.52 Throughout 2015–16, the NLC implemented (in the anthropology branch) a number of reforms to improve the royalty process<sup>60</sup> and to address a backlog of disputes amongst Aboriginal people that has contributed to the delay of distribution of payments.<sup>61</sup> With regard to disputes, the NLC anthropology branch advised that:

There are and always will be inherent tensions attending the royalty process. The passing of senior Aboriginal people, the changing attitudes and aspirations of younger generations, longstanding animosities and a number of other issues can result in seemingly intractable disputes across the NLC jurisdiction which may delay royalty payments being made.

3.53 In February 2017, the NLC Leadership Group reviewed progress to date and decided that more had to be done, specifically through establishing a discrete Royalties unit within the responsibility of the Chief Financial Officer. The NLC advised that scoping for the new unit should be complete within six months and the unit operational within the year.

### **Activities supporting the council's strategic direction**

3.54 Among the 55 activities identified in the NLC's planning and reporting documents, those supporting the council's strategic direction include: the development of an economic strategy for the use of Aboriginal land, and the establishment of a community development approach, specifically for the management of royalty payments.

60 The reforms include the: appointment of two dedicated staff to the administration of royalties; introduction of a royalty 'hotline'; systematic updating of banking and personal details; and introduction of standing instructions to permit the retention of monies on request. Detailed information about the reforms is provided in the NLC's *Annual Report 2015–16*, pp. 48–49. Available at:

<<http://www.nlc.org.au/files/various/NLCAnnualReport2015-16WEBa.pdf>>, [accessed 15 March 2017].

61 Under Part III, section 25 of the Aboriginal Land Rights Act, Land Councils must use their best endeavours by way of conciliation for the settlement or prevention, as the case may be, of a dispute. In a landmark decision, the Federal Court's decision in *RAC v NLC* [2017] FCAFC48 was that: the NLC may make payments under s.35(4) of the Aboriginal Land Rights Act irrespective of the consent of the Traditional Owners. In the NLC discharging its duty under s.35(4) of the Aboriginal Land Rights Act to make payments, there is no requirement for the NLC to consult with Traditional Owners and obtain their consent. If the NLC errs in making a payment, any remedy lies in review by the court.

3.55 In a joint initiative, the NLC and the Central Land Council are developing a strategy for the economic development of the Northern Territory. The introduction to the strategy, *Driving Development*, includes:

Aboriginal Territorians are essential to the successful development of Northern Australia. Aboriginal people are determined to engage in this development on their own terms, driving action to secure the full range of benefits and to contribute to the overall productivity of the NT.

3.56 The strategy identifies piloting an approach in six locations across the Northern Territory in the second half of 2017.

3.57 Community development supports Traditional Owners (who choose to use the NLC program) to identify and achieve social, cultural, environmental and economic development objectives, generally using income from land use agreements. In 2014, the Minister wrote to all Land Councils, encouraging them to implement such an approach. The strategy depends on agreement between Traditional Owners about how royalties should be spent, and success in promoting community development depends largely on mitigating the issues being dealt with through reform of the royalty process.

### **NLC leadership**

3.58 Notable among all the branch activities is the interdependence of the functions and services provided by each branch, and the importance of the NLC leadership culture. The report of an internal management review, *Northern Land Council, Initial report into resolution of financial management and corporate governance issues*, 25 March 2015, found that the NLC branches:

have operated in a silo culture with a low level of collegiate collaboration between Branches [and] the result of this silo-based corporate culture is that there is no effective oversight of an organisation-wide bigger picture. While the Branches focus on their Branch operations, they lose sight of how they need to collaborate to achieve corporate wide goals.<sup>62</sup>

3.59 A review of the minutes of 11 meetings of the leadership group (25 May 2016 to 30 January 2017) and of two leadership group retreats (25–26 August 2016 and 8–9 February 2017) reflects improved co-ordination and communication amongst the leadership group, demonstrated through collaborative (cross-branch) planning, and in the development of organisation-wide key result areas and performance indicators to meet strategic goals.

3.60 The minutes also record the provision of branch updates at each meeting. These updates vary in length and detail between branches, and could be improved. The NLC could consider developing a template for monthly executive updates. The template need not be an onerous reporting requirement, but could be populated by branch level information on workloads, key activities and the progress of branch projects, and further developed as the information from NLC's data bases improves. Such regular reports would ensure that the leadership group is across the administrative issues, and hold individual managers to performance measures.

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62 OTS Management Pty Ltd, *Northern Land Council, Initial report into resolution of financial management and corporate governance issues*, 25 March 2015, p. 5.



## What progress is the Northern Land Council achieving in implementing its reform agenda?

The NLC is achieving progress in implementing its reform agenda, but the pace and extent of the changes could be better supported by improved monitoring and coordination of the reform activities, and communication with staff.

3.61 In early 2015, the NLC engaged a consultant to provide advice on how recurring weaknesses in the NLC governance and financial management (identified in the Deloitte review and in the ANAO's financial statements audits) could be rectified, and on the implementation of recommendations in these reports.

3.62 The report, *Northern Land Council, Initial report into resolution of financial management and corporate governance issues*, 25 March 2015, included that the NLC 'should receive a practical interpretation of the Auditors' and Deloitte recommendations, and an action plan to implement them'<sup>63</sup> and concluded that the NLC should (among other things): appoint an external firm of accountants to assist with financial year end close; re-establish an effective Audit Committee; schedule monthly management reports; review and change the senior management structure responsible for financial and risk management including the creation of a Chief Financial Officer position; and ensure that financial reports are part of the overall corporate governance framework by providing the circumstances where non-finance branch managers are exposed to the meaning and interpretation of financial reports.

3.63 The NLC subsequently developed an action plan, the *Northern Land Council Action Plan 2015–16* that lists 38 activities (dealing with governance, finance and HR) and recognises the council's ability to deliver relied on 'adequate funding, the existing capacity and resources within our organisation; as well as the assurance to engage external expert services as required'.

3.64 At his request<sup>64</sup>, the action plan was provided to the Minister on 11 August 2015. In a ministerial brief (September 2015) the department advised that the action plan:

- is informed by the 2013 Deloitte review, ANAO reports, reporting and performance requirements under the *Public Governance, Performance and Accountability Act 2013* and recommendations of the 2015 OTS Management Report; and
- provides clear timeframes, key performance indicators and a responsible action officer for each measure that will be undertaken.

3.65 While many of the actions in the plan have been completed and others are underway, the NLC has not provided progress reports on outcomes against the plan, although agreeing to do so. In effect, the plan is not a 'living document' for the NLC's reform agenda. The NLC is progressing significant reforms across the organisation, and maintaining the action plan or similar record to track and monitor progress would be of benefit, including to reduce the risk of reforms being undermined by the departure of any of the senior managers, and assist in communicating the changes with staff and stakeholders.

<sup>63</sup> *ibid.*, p. 1.

<sup>64</sup> Letter of April 2015, asking the NLC to develop a plan that outlines how the council will address concerns about its operations.

3.66 Such a plan or record would also support the presentation of the calculation of costs and timing of funds required for specific reform projects, contingent in part on the Minister for Indigenous Affairs agreeing to provide adequate funds through operational budget allocations (further discussed in Chapter 4).

3.67 The NLC has not developed a communications strategy to ensure all staff are kept informed of the many changes underway at the council. The roll out of the new intranet site provides a means for communicating with staff and giving them access to information across the NLC. The NLC leadership should also consider adopting a more proactive role in engaging with staff about the reforms, and ensuring there is a consistent message across the organisation, through individual branch meetings and whole of staff updates, using video conferencing with regional staff. The HR manager may be well placed to provide input to the development of such a strategy.

### Recommendation No.1

3.68 To support the administrative and strategic reforms underway, the Northern Land Council:

- (a) develops and maintains an action plan to monitor the progress of reform initiatives and projects; and
- (b) develops a communication strategy to inform staff of the changes.

3.69 **Northern Land Council response:** *Agreed.*

## 4. Planning, Performance and Engagement

This chapter examines the Northern Land Council's (NLC's) planning, performance reporting, and engagement with the Department of the Prime Minister and Cabinet.

### Conclusion

The NLC is improving its planning in line with requirements under the *Public Governance, Performance and Accountability Act 2013*, but it is still some way from developing a robust set of qualitative and quantitative performance indicators. The NLC's planning and performance reporting cycle could be better supported by an update of the funding process administered by the Department of the Prime Minister and Cabinet, to align it with the Commonwealth Performance Framework. In engaging with the department and government, the lack of a shared understanding of the extent of the use of powers, and the roles and responsibilities of the NLC, the department and the responsible Minister has not supported a strong and productive relationship between the various parties.

### Areas for improvement

The ANAO made one recommendation aimed at improving the process for funding Land Councils' operations (paragraph 4.28), and suggests that there could be better follow up and communication about actions from biannual strategic forums (paragraph 4.54).

### Does the Northern Land Council effectively plan and report performance?

The NLC is working towards effective planning and reporting of performance. The NLC's planning framework consists of a strategic plan, corporate plan and branch business plans. While not fully refined, including to incorporate business plans and performance indicators at branch level, the NLC aims to complete the planning and reporting cycle at all levels of the organisation in 2017–18. The NLC has mostly met planning and reporting requirements in the *Public Governance, Performance and Accountability Act 2013* and enhanced Commonwealth Reporting Framework (2015), not meeting timeliness requirements to publish the plan. The NLC's planning, and development and reporting of performance could be better supported by an update of the funding process for operational and capital expenditure, so that it aligns with the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Performance Framework.

### Corporate planning

4.1 The NLC's planning framework (set out in its *Annual Report 2015–16*<sup>65</sup>) incorporates the council's strategic plan and corporate plan, and branch business plans. The NLC's *Strategic Plan 2016–20* sets out the council's goals and objectives to 2020 (Appendix 5), that are clearly identified in the NLC's *Corporate Plan 2015/16–2018/19* and *Corporate Plan 2016–17 to 2019–20*. These goals and objectives took into account the NLC's various functions and responsibilities under the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993* and the

65 Northern Land Council *Annual Report 2015–16*, p. 41.

delivery of the Caring for Country land and sea management activities. The corporate plans also outlined the strategies and activities to achieve the goals and objectives, including the need for reform of the council's administrative functions.

4.2 The strategic plan and corporate plans could have been clearer in the use of key terms (referring variably to goals, strategies, activities, objectives and priorities) and used them consistently and in a context that better supported the development of qualitative and quantitative performance indicators. For example: the strategic plan sets out the council's vision and strategic issues, and cascades down through goals and objectives, strategies to achieve the goals and objectives, and possible actions to meet the goals and strategies; and in the *Corporate Plan 2016–17 to 2019–20*, the goals, objectives and strategies in the strategic plan have been categorised into five long term priorities, and associated delivery strategies. There could be better alignment between the high level strategies and actual performance indicators.

4.3 Notwithstanding the further development required, on 28 September 2016 the Department of the Prime Minister and Cabinet (PM&C) advised the Minister for Indigenous Affairs that 'the quality of plans (referring to the corporate plans provided by the Land Councils and other Indigenous Portfolio Bodies) has improved since last year, complying with PGPA Rule 2014 requirements and presenting clearer information'. In his letter to the NLC (7 October 2016) acknowledging receipt of the *Northern Land Council Corporate Plan 2016–17 to 2019–20*, the Minister notes that the plan 'highlights improving internal governance and systems control as a key priority'.

4.4 An ANAO review of the NLC's corporate plans found that they mostly met mandatory requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) (Table 4.1).

**Table 4.1: Review of NLC's Corporate Plans 2015–19 and 2016–20 against requirements of the PGPA Act**

Requirement	2015–16	2016–17
The corporate plan must cover a period of at least four reporting periods.	Yes	Yes
The corporate plan must address six matters: introduction; purposes; environment; performance; capability; and risk oversight and management.	Yes	Yes
The corporate plan must be published on the entity's website by the last day of the second month of the reporting period.	– <sup>1</sup>	No <sup>2</sup>
The corporate plan must be given to the responsible Minister and the Finance Minister as soon as practicable after the plan is prepared and before the plan is published.	Yes	Yes
If the corporate plan is varied during the reporting period, it must be published as soon as practicable.	n/a	n/a

Note 1: No evidence provided.

Note 2: The NLC corporate plan was prepared in time but not published on the website until January 2017 due to an administrative oversight.

Source: ANAO. Table developed for the purposes of ANAO performance audit, *Corporate Planning in the Australian Public Sector*, No.6 2016–17.

### Branch plans

4.5 As at 1 March 2017, the NLC's branch plans were at various stages of development. Formal business plans had been completed by four of the seven branches, the: Regional Development branch; Caring for Country (Indigenous land management activities) branch; Legal branch; and Corporate Services branch.<sup>66</sup> The Secretariat branch (now Executive branch), as previously noted, has developed a draft business plan, and the Anthropology branch was reviewing its operations in the context of establishing a separate royalty unit. As at April 2017, the Minerals and Energy branch had been taking a lead in improving the NLC's policy and work flows for cost recovery, and had yet to commence work on its branch plan.

4.6 The minutes of 11 meetings of the NLC's Leadership Group, held between May 2016 and January 2017, and of the two leadership retreats (25–26 August 2016 and 8–9 February 2017) reflect the development of corporate and branch performance indicators, and the progress of organisation wide projects and strategies. Specifically, minutes of the leadership retreat held in February 2017 record the development of qualitative and quantitative performance measures to be included in the next corporate plan, and the agreement that branch plans (for 2017–18) would be finalised by 30 June 2017 for the coming annual planning and reporting cycle.

### Performance reporting as part of the Land Council funding process

4.7 In February 2003, the ANAO performance audit *Northern Territory Land Councils and the Aboriginals Benefit Account* found that due to a lack of available performance information, the audit was unable to assess whether Land Councils were fulfilling their functions and delivering their services in an effective and efficient way, and recommended that<sup>67</sup>:

Land Councils finalise the development of an outcomes and outputs framework that reflects their overall strategic direction, in consultation with the Minister and ATSIC.<sup>68</sup> The framework should provide the basis for preparing budget estimates and reporting on performance in their annual reports.

4.8 An Outcome and Output Groups Framework (the Framework) is included in the updated (2007) version of guidelines that support the provision of funds for Land Councils' operational and capital expenditure, *Guidelines for the funding of administration payments to Land Councils under the Aboriginal Land Rights (Northern Territory) Act 1976* (the funding Guidelines).<sup>69</sup> The funding Guidelines require Land Councils to use the Outcome and Output Groups Framework (Appendix 6) for their funding submissions under the Aboriginal Land Rights Act.<sup>70</sup>

66 The respective branch plans were the: *Regional Development Business Plan 2015–17; 2016–17 Caring For Country, Branch Plan; NLC Legal branch, Business plan mid-2016 –17 to 2017–18; and Corporate Services Branch Plan 2016–17.*

67 ANAO Report No.28 2002–03, *Northern Territory Land Councils and the Aboriginals Benefit Account*, pp. 83–84. Recommendation No.5 paragraph 3.62. All four land Councils agreed to the recommendation.

68 Reference is to the Aboriginal and Torres Strait Islander Commission, abolished in 2005.

69 The funding Guidelines were introduced on 1 July 1996, 'to provide certainty to Land Councils regarding the amount and timing of their administrative funding and to better enable management of the Aboriginals Benefit Account', p. 1.

70 There is no information as to the source of this Framework, whether it is that referred to in the ANAO's 2003 audit report, or whether it was developed later as part of the 2007 update to the funding Guidelines.

4.9 A review of Land Councils' annual reports from 2007–08 shows that the Framework has formed the basis of most of their annual performance reporting, although it is outdated. The Central Land Council (CLC), for example, has reported annual performance against the Framework, but includes in its corporate plan, the *Central Land Council Corporate Plan 2016 – 2020*, that:

the outcome is broad enough to remain relevant, but growth and expansion in CLC activities and functions over the years has meant that the outputs are no longer entirely relevant to CLC operations, and it has been recognised for some time that these require review.

The plan includes an alternative performance framework developed by the CLC for the basis of consultation with the Minister for Indigenous Affairs.<sup>71</sup>

4.10 In its most recent annual reports, *Northern Land Council Annual Report 2014–15* and *Northern Land Council Annual Report 2015–16*, the NLC has moved away from reporting against the Framework—reporting instead against activities in the *Northern Land Council Corporate Plan, 2015/16–2018/19* in the required performance statement for the 2015–16 annual report.

4.11 As previously noted (paragraph 4.2), there is still work to be done to refine NLC performance indicators. However, the approach is consistent with the intent of the enhanced Commonwealth Performance Framework, implemented in 2015–16, and designed to improve the line of sight between what an organisation intended to do and what was delivered:

Corporate plans are intended to be the primary planning documents of Commonwealth entities and represent the beginning of a performance cycle; and the publication of a performance statement in the entity's annual report represents the end of the performance cycle.<sup>72</sup>

4.12 The enhanced Commonwealth Performance Framework outlines the relationship between entities' Portfolio Budget Statements and performance statements in corporate plans and annual performance statements.<sup>73</sup> Entities now have to report on performance criteria in both their corporate plans and Portfolio Budget Statements in their annual performance statements at the end of each financial year / reporting period.<sup>74</sup>

4.13 Land Councils are subject to requirements in the enhanced Commonwealth Performance Framework and must report on performance criteria in their corporate plans and annual performance statements. Land Councils apply to the Minister for Indigenous Affairs for funding

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71 The plan refers to the 'dichotomy' of providing financial outcomes classified in accordance with the Aboriginals Benefit Account outcome structure, and what the Land Council actually does. *Central Land Council Corporate Plan 2016–20*, p. 63. Available at: <[http://www.clc.org.au/files/pdf/CLC\\_Corporate\\_Plan\\_2016-2020.pdf](http://www.clc.org.au/files/pdf/CLC_Corporate_Plan_2016-2020.pdf)> [accessed 19 January 2017].

72 Resource Management Guide No.130, *Overview of the enhanced Commonwealth performance framework*, p. 4 Department of Finance, July 2016. Available from: [http://www.finance.gov.au/sites/default/files/rmg-130-overview-of-the-enhanced-commonwealth-performance-framework\\_0.pdf](http://www.finance.gov.au/sites/default/files/rmg-130-overview-of-the-enhanced-commonwealth-performance-framework_0.pdf) [accessed 21 February 2017].

73 Implementation of the *Public Governance, Performance and Accountability Act 2013*, and the enhanced Commonwealth Performance Framework is the responsibility of the Department of Finance. To assist organisations to meet their obligations, the Department of Finance has developed a number of resource management guides available on the department's web site, conducts Communities of Practice, and is available for individual assistance.

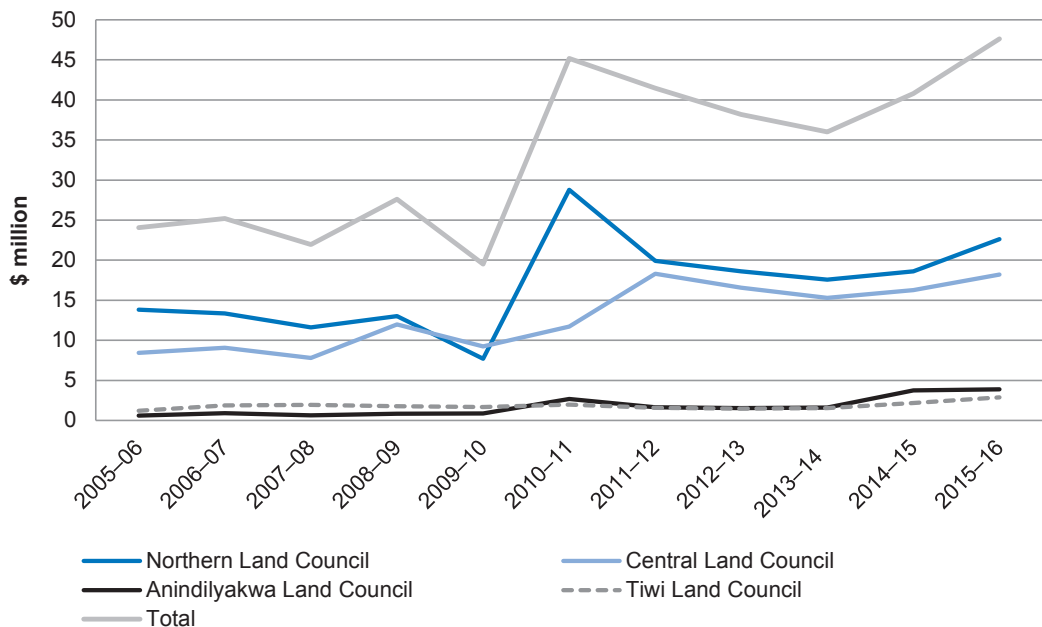
74 Department of Finance, Resource Management Guide No.132, *Corporate Plans for Commonwealth entities*, January 2017, p. 9. Available from: <[http://www.finance.gov.au/sites/default/files/RMG\\_132\\_Corporate\\_plans\\_for\\_Commonwealth\\_entities\\_30Jan17\\_0.pdf](http://www.finance.gov.au/sites/default/files/RMG_132_Corporate_plans_for_Commonwealth_entities_30Jan17_0.pdf)> [accessed 21 February 2017].

(from PM&C appropriations) for: operational and capital expenditure; their functions as native title representative bodies; and administration of the Caring for Country program (refer Table 3.1).

### Process for funding Land Councils' operational and capital expenditure

4.14 Land Councils are provided with operational and capital expenditure from the Aboriginals Benefit Account, provided under s.64(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Aboriginal Land Rights Act). Funding is provided quarterly. The value of payments to Land Councils under s.64(1) for the period 2005–06 to 30 June 2016 is shown in Figure 4.1. It shows considerable annual variability of funding for the NLC but a general increase over the period.

**Figure 4.1: Payments to Land Councils from the Aboriginals Benefit Account under s.64(1) of the Aboriginal Land Rights Act, 2005–06 to 2015–16**



Note: The spike in the Northern Land Council's 2010–11 payment of \$28.8 million includes \$11.4 million relating to entitlements owed to the Northern Land Council for 2006–07 and earlier.

Source: Aboriginals Benefit Account, Annual Reports 2005–06 to 2015–16.

4.15 Amendments to the Aboriginal Land Rights Act in 2006<sup>75</sup> included a change in how Land Councils would be funded under s.64(1): from funding based on a guaranteed formula (that was 40 per cent of the total amount of royalties transferred annually to the Aboriginals Benefit Account), to instructions outlined in an annual letter from the Minister to each Land Council.<sup>76</sup>

<sup>75</sup> *Aboriginal Land Rights (Northern Territory) Amendment Act 2006*.

<sup>76</sup> As previously noted, *Guidelines for the funding of administration payments to Land Councils under the Aboriginal Land Rights (Northern Territory) Act 1976* were updated in 2007 to reflect the changes.

### *The budget estimates process from 2006–07*

4.16 Land Councils are required to populate templates for estimates of their annual budget under three heads of expenditure (salaries, operating and capital), from costs allocated across the Outcome and Output Groups Framework (the Framework). The budget estimates show the amount of funding sought from the Aboriginals Benefit Account under s.64(1), and other funding sources that are primarily recoveries of costs, interest and proceeds from the sale of property.<sup>77</sup>

4.17 The Minister's letter to the NLC relating to funding for 2013–14 was typical of the funding process over the seven year period, 2007–08 to 2013–14:

Under current practice, Land Councils limit their annual draw on the Aboriginals Benefit Account to an amount calculated by indexing base (recurrent) funding<sup>78</sup> which includes increasing salaries according to your Enterprise Bargaining Agreement and Operating and Capital Expenditure in line with the Reserve Bank of Australia February inflation forecast. One-off payments are not included in calculating the above amount.

Based on this, the Northern Land Council should limit its 2013–14 draw on the Aboriginals Benefit Account for section 64(1) to \$17,556,350. This figure is calculated by increasing base funding included in your current Approved Estimates of Expenditure by 3 percent across each Head of Expenditure (salaries, operating and capital).

4.18 In 2014–15, the Minister for Indigenous Affairs exercised his powers under s.34(1) of the Aboriginal Land Rights Act and changed the instructions to Land Councils for the preparation of their budget estimates. Budget estimates for 2014–15 and 2015–16 were to be calculated from a 'zero base', rather than assuming an indexed amount from the Aboriginals Benefit Account. The Department advised that:

zero-basing was intended to re-calibrate operational costs against activities. Given there was no rebasing of activities (because activities were not expected to change year on year) the exercise was intended to 're-fresh' and force a root and branch review of how core activities were costed.

4.19 For the 2015–16 and 2016–17 budget estimates, in his annual letters to Land Councils the Minister for Indigenous Affairs also included five principles that would be applied in the assessment of their submissions, building on the zero-based approach:

- Land Council core funding is reflective of the 2014–15 zero-based process and should support the long-term sustainability of the ABA. (The annual balances held by the Aboriginals Benefit Account are provided at Appendix 7);
- funding should be directly linked to core Land Council functions with measurable outputs and key performance indicators demonstrating effective and efficient delivery of core services;
- budget bids should identify efficiencies consistent with efficiency dividends applied to all other Australian Government agencies and bodies;
- capital items must be supported by robust cost-benefit analysis and only be brought forward through the annual budget process; and

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77 Native Title funding, and grants for the Indigenous Ranger program are not referenced in these budget estimates for funding under s.64(1).

78 No information was available as to how the amount of base or recurrent funding had been established.



- wage increases should only be paid if offset by genuine productivity gains from within the organisation.

4.20 PM&C advised that meetings were held with Land Councils (commencing in February 2014) in the lead up to the change. Notification to Land Councils about the meetings included:

It is envisaged during the course of the meetings that the Department will gain an understanding of core and service programme activities and the correlation between funding and outcomes. This will include the development of a budget framework demonstrating clear delineation between strategic planning and performance reporting, where applicable the formulation of strategic and operational plans and key performance indicators.

4.21 No records of these meetings were kept, and there was no evidence as to the outcomes of the discussions and if they met their stated aims. There was no documented advice or guidance provided to Land Councils on the new approach.

4.22 An ANAO review of the documentation<sup>79</sup> related to the NLC funding under section 64(1) of the Aboriginal Land Rights Act for the period 2014–15 to 2016–17 found that the NLC:

- submitted a bid for \$23.8 million for 2014–15, advising in its covering letter that the bid had been prepared 'in accordance with the requirements'. The NLC bid was subsequently revised down by PM&C to \$16.95 million.<sup>80</sup> The NLC received \$18.8 million in annual and supplementary funding for that year (\$16.9 million and \$1.9 million respectively), which was a 6.8 per cent increase over the previous year; and
- submitted an initial bid for \$25.9 million for 2015–16, which it subsequently revised up to \$28.05 million in response to PM&C's request for clarification and justification of the bid. The NLC advised the Minister for Indigenous Affairs that the revised bid was 'formulated using zero-based budgeting principles whereby the budget has been prepared by costing the Corporate Plan and the Change Management Action Plan without reference to prior years' funding allocations.' The NLC received \$20.2 million in annual and supplementary funding for that year (\$20.1 million and \$0.1 million respectively), which was a 7.6 per cent increase over the previous year.

4.23 Broadly, there are shortcomings in the process for providing funds to the NLC under s.64(1) the Aboriginal Land Rights Act. There was little evidence that the zero-based approach and application of the funding principles had been followed by the NLC in submitting bids or by PM&C in assessing the bids, and a lack of transparency of the basis for the funding decisions.<sup>81</sup> As

79 Documentation for Land Councils' annual funding includes: each council's budget estimates submission; PM&C's assessment of the submissions and recommendation to the Minister; and the Minister's final approval and letter to the Land Councils informing them of his decision. PM&C advised that it also discussed the submissions with the councils, but did not provide any record or file notes of these discussions.

80 In its advice to the Minister for Indigenous Affairs, PM&C stated that it had worked with the NLC to reduce the amount of the NLC's annual funding submission.

81 In briefing the Minister, the department advises that funding decisions are reviewable under the *Administrative Decisions (Judicial Review) Act 1977*. This advice is not provided to the Land Councils in letters informing them of the decisions. As at January 2017, none of the Land Councils had appealed a decision about s.64(1) funding. In November 2015, the Federal Court ruled that the Minister for Indigenous Affairs did not have the power to overturn a decision by the previous Minister to grant \$10 million from the Aboriginals Benefit Account to the Machado-Joseph Disease (MJD) Foundation. In December 2015, the Minister lodged an appeal against the decision. On 3 March 2017, the full bench of the Federal Court dismissed the Minister's appeal. [http://mjd.org.au/cms/file\\_library/Other/Other\\_919.pdf](http://mjd.org.au/cms/file_library/Other/Other_919.pdf) [accessed 8 March 2017].

previously mentioned, the funding process and guidance for the NLC in preparing funding submissions had not been updated since 2007, and do not align with the requirements of the *Public Governance, Performance and Accountability Act 2013*.

### *Review of the funding process*

4.24 There is support in PM&C for a review of the funding process under s.64(1) of the Aboriginal Land Rights Act. In February 2014, the department proposed to the Minister for Indigenous Affairs that:

The current process would benefit from increased rigor with linking funding and outcomes. An option for improving transparency, accountability and efficiency between land council funding and performance is working with the land councils to develop a budget framework that will link land council strategic planning and performance reporting to the Budget Estimates process.

4.25 Most recently, in a brief of 17 August 2016, the department recommended to the Minister for Indigenous Affairs the development of an ‘earned autonomy’ approach that would provide multi-year funding arrangements to Land Councils that show good performance and financial management. Such an arrangement may not provide funds ‘upfront’, but provide in-principle agreement where Land Councils are implementing a project or renewal of major assets that would run for more than one year’s duration—with subsequent years’ funding subject to meeting agreed performance indicators and / or project milestones.<sup>82</sup>

4.26 Developing an ‘earned autonomy’ approach may also provide an opportunity to engage with Land Councils as to how funding arrangements could best be managed where Land Councils, while independent statutory bodies, have not met their governance and financial management obligations. The NLC for example, was failing in its accountability to its constituents and to government for some years prior to 2015. The issue is undoubtedly complex —a PM&C ministerial brief of 17 August 2016, included that:

The Land Rights Act, when established and subsequently amended, maintained as a core tenet that Land Councils would be funded independent of government. [and] The Minister’s role in approving Land Council budgets is designed to ensure budgets are appropriate but it is not intended to be an expansive power, such as exist under grants to organisations under the Indigenous Advancement Strategy.

4.27 An examination of the funding process under section s.64(1) could be pursued through the bi-annual strategic forums, discussed below.

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82 An ANAO analysis of the budget estimates process in relation to the NLC’s fleet is presented as a timeline at Appendix 8. Some six years after identifying the fleet as a major occupational health and safety risk, the matter is unresolved.

## Recommendation No.2

4.28 The Department of the Prime Minister and Cabinet, in consultation with the Northern Land Council, reviews the process for the provision of operational and capital expenditure under s.64(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, to develop a funding framework that:

- (a) supports the council in achieving outcomes linked to its strategic and corporate plans, and is aligned with the *Public Governance, Performance and Accountability Act 2013*;
- (b) provides for appropriate guidance on what is required in the council's funding submissions, transparency as to how bids are assessed, and an explanation as to funding decisions; and
- (c) allows for certainty, where results are achieved, for funding certain activities beyond the current year.

**Northern Land Council's response:** *Agreed.*

**Prime Minister and Cabinet's response:** *Agreed.*

4.29 *PM&C recognises the need for greater correlation between funding and outcomes, and is providing guidance and working collaboratively with the Northern Land Council (NLC) to assist in identifying Key Performance Indicators that better align with land council outcomes. The NLC has been advised of the Government's intention to move to three year rolling budgets. Together with annual reviews, this approach will provide greater certainty for land councils in the development of their budgets and long term planning.*

## Process for funding the functions of native title representative bodies

4.30 The Native Title program is a component of the Australian Government's Indigenous Advancement Strategy (funded through one consolidated appropriation). The amount of funding allocated to the Native Title program is determined by the Minister for Indigenous Affairs.<sup>83</sup> Native title representative bodies (there are 14 nationally) are required to submit annual bids for grant funding. The bids are assessed by the department and funding allocations are approved by the departmental secretary or delegate.

4.31 Prior to 2016–17 native title representative bodies were funded under an agreement whereby the department provided each one with a target figure based on the previous year's initial core funding, to be varied by the representative body on the amount of work anticipated, and subsequently moderated through an assessment process by officers from the department's native title funding team.

4.32 Commencing in 2016–17<sup>84</sup>, a new outcomes-based funding model was introduced. Under the model, representative bodies are required to base their funding submissions on an

<sup>83</sup> PM&C advised that the Native Title appropriation for 2016–17 was \$91.4 million, an increase over the years from approximately \$62.6 million in 2008–09.

<sup>84</sup> Land Councils were given notice in 2014–15 that the new arrangement would be introduced for the 2016–17 financial year.

assessment of all current activities, but were advised that they should consider 2015–16 estimates as a maximum. The department envisaged that budget estimates would actually be less than in previous years, on the basis that outcome workloads were reducing, but most representative bodies, including the NLC, sought increased funding. PM&C advised in July 2016 that:

Initially we undertook an analysis of each application in the same way as we have done previously, i.e. an assessment of the proposed workload, past record of achievement, whether costs looked reasonable, the balance between operational and corporate budgets. We then moderated these as a team. This resulted in recommended funding less than sought but still well in excess of the available amount.

4.33 The NLC received: \$4.5 million in 2013–14 and \$3.7 million in 2014–15. The departmental delegate approved proposed amounts of \$3.7 million in 2015–16<sup>85</sup>, 2016–17 and 2017–18, but the NLC actually received \$5 million in 2015–16 after funding for mid-year variations was also approved.<sup>86</sup>

### **Process for funding the Caring for Country Program**

4.34 Administration of the Working on Country (also referred to as Caring for Country) program was transferred (under machinery of government changes) from the Department of the Environment to the Environment branch (within the Indigenous Affairs group) in PM&C in September 2013. At this time, the NLC was in the first year of a five year agreement with the Department of the Environment for the administration of Indigenous Ranger groups across the NLC region. Funding for the five-year period was \$27.1 million, subject to meeting annual milestones, planning and reporting requirements.

4.35 In 2014–15, the Minister for Indigenous Affairs invited applications from the NLC and CLC for supplementary funding to provide critical on-ground operational support to the ranger groups from 2015–16 to 2017–18.<sup>87</sup> The NLC applied for \$11.8 million and \$7 million was approved. The supplementary funding for 2015–16 was drawn from the Aboriginals Benefit Account. Subsequent years' funding (2016–17 to 2017–18) will revert to appropriations through the Indigenous Advancement Strategy, with an agreed in principle increase in funding to \$7.8 million and \$8 million for the remaining two years of the original five year agreement.<sup>88</sup>

4.36 The Minister for Indigenous Affairs also advised the NLC (18 June 2015) that he expected the councils to continue to work with PM&C to 'ensure that any ranger groups interested in moving to alternative management arrangements are supported in their endeavours, and that any

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85 PM&C advised the NLC in June 2015 that, 'native title funds are extremely tight for next financial year and the department is considering bids based on allocations for the current year', and that the NLC should resubmit their bid to meet the planning figure of \$3.7 million

86 PM&C advised that it retains an 'uncommitted' portion of the total funds allocated to the Native Title program at the start of the year, for potential mid-year variations of the funds approved for individual Native Title representative bodies.

87 Support activities include routine repair and maintenance of vehicles, fuel, rental, coordinator flights, office supplies and equipment, as well as work, health and safety needs for the ranger groups.

88 The NLC also receives funding (\$1.2 million in 2015–16) from the Indigenous Land Corporation under the Real Jobs NT program for 12 Indigenous ranger positions across three ranger groups, three coordinators and a program coordinator. The NLC currently supports 17 Indigenous Ranger groups.

funding, assets and infrastructure approved through Commonwealth funding programmes for that group are transitioned with them’.

## Is there effective engagement between the Northern Land Council, the Department of the Prime Minister and Cabinet and Government?

Some 40 years on from the Royal Commission, the NLC remains wary of government intent and of the bureaucracy, with respect to its independence in representing the views of its constituents. The relationship between the department, the responsible Minister and the NLC Executive is complex (given the statutory independence and the advocacy role of Northern Territory Land Councils) but it has not been defined, irrespective of recommendations that it should be. The establishment of biannual strategic forums in 2016, involving representatives from the Australian Government, Northern Territory Government and the Land Councils presents an opportunity to establish a more productive and collaborative relationship with the NLC.

### Relationship between NLC, PM&C, and the Minister for Indigenous Affairs

4.37 Given the statutory independence and the advocacy role of Northern Territory Land Councils, the extent to which the relationship with the Government and Department can be codified is problematic and it has not been defined (there is no legislative requirement to do so), although recommendations (to define the relationship) have been included in three reports, the:

- *Review of the Corporate Governance of Statutory Authorities and Office Holders* 2003 (also known as the Uhrig Review) recommended that Ministers should issue Statements of Expectations to statutory authorities, to clearly articulate the Government's expectations of each body, whilst respecting areas of independence of the body in accordance with the legislation establishing it; with the authority responding with a Statement of Intent outlining how it proposes to meet the Minister's expectations.
- *Audit of the Northern Land Council—Governance Component Report on Recommendations*, May 2009, conducted by the Office of Evaluation and Audit, made a similar recommendation<sup>89</sup>; and
- The Deloitte review, *Northern Land Council, Independent review of Governance Framework Processes*, March 2013 found that there should be clear identification of powers, roles and responsibilities and accountabilities between the Minister, Executive Council and CEO, recommending the development of an Executive Council Charter that includes a clear definition of the relationship between the NLC, the Minister and the department.<sup>90</sup>

89 The NLC did not accept this recommendation, on the grounds that Land Councils are established as independent bodies governed by, and responsible to, Traditional Owners in their region and that the recommendation was inconsistent with this independence.

90 There is no evidence as to NLC's immediate response to this review, with poor governance and record keeping at the NLC and the transfer of responsibility for Indigenous programs from the Department of Families, Housing, Community Services and Indigenous Affairs to PM&C.

4.38 Most recently, PM&C, on behalf of the Minister for Indigenous Affairs, wrote to each Land Council (26 October 2015) inviting them to discuss a draft Statement of Expectations<sup>91</sup> that, once settled, would be followed by a Statement of Intent from each Land Council outlining how it would address the expectations.

4.39 In a joint response (13 November 2015), the NLC and CLC wrote that they viewed the draft Statement of Expectations as an unnecessary addition to reporting and accountability requirements already in place and referred to their corporate plans that:

set out the processes and timelines for achieving our statutory functions, responding to the aspirations of our constituents and ensuring high levels of governance and accountability. In addition, both our Land Councils are committed to delivering on key governance outcomes within their 2015–2016 Action Planning [and] the most practical and streamlined mechanisms for engaging in discussions about Land Councils' priorities and governance arrangements is through the corporate planning process [and] associated reporting processes.

4.40 No response was provided to the joint NLC / CLC letter. In letters to the Land Councils the following year (7 October 2016) the Minister for Indigenous Affairs wrote:

I have asked my Department to work with all Indigenous portfolio bodies to establish a voluntary process of engagement for future corporate plans, much like that used for the development of annual reports. Such a process would allow my timely consideration and comment prior to the publication date of 31 August. My focus would be on alignment of the strategic direction of the activities of each portfolio body with the priorities of the Government. Through this process we can work together to continue to deliver the best outcomes we can for Indigenous Australians.

4.41 As at March 2017, none of the Northern Territory Land Councils has engaged in the proposed Statement of Expectations / Statement of Intent. On 23 February 2017 PM&C wrote to all the Indigenous Portfolio Bodies inviting them to engage in the preparation of their corporate plans.<sup>92</sup> As at 6 March 2017, one Land Council has provided a response to the invitation.<sup>93</sup>

4.42 In the absence of documented internal procedures or guidance for engagement with Land Councils, PM&C prepared a paper for this audit, *Engagement between the Department of the Prime Minister and Cabinet and the Northern Land Council* (provided 16 January 2017). In the paper the department advised that: it is responsible for administering the Aboriginal Land Rights Act; primarily interacts with the NLC through the Land Branch; and that its role in relation to the NLC specifically, and Land Councils broadly is to:

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91 The draft Statement of Expectations for the NLC requested that the council incorporate Australian Government Indigenous Affairs priorities (including how communities use their royalty payments and to support leasing arrangements on Aboriginal land) into their approach to administering their legislated responsibilities, and maintain high standards of governance. Land Councils would be expected to provide six monthly progress reports on implementing the expectations.

92 Section 35 of the *Public Governance, Performance and Accountability Act 2013* includes that a corporate plan for a commonwealth entity must set out how the activities of the entity contribute to achieving the Australian Government's key priorities and objectives (where such a statement has been published); unless the entity has enabling legislation then the requirement applies only to the extent that it is not inconsistent with compliance with that legislation. Land Councils are established under the Aboriginal Land Rights Act.

93 In response, the Land Council referred to issues with meeting PM&C's proposed schedule for submitting a draft plan (given the timing of council meetings), and the timing of funding decisions. The response also referred to the excellent support provided by the Department of Finance in the 2016 planning and reporting cycle.

- manage the budget estimates process for Land Councils and provide advice to the Minister for Indigenous Affairs on the NLC's budget allocation, including supplementary bids for funds;
- monitor performance of the NLC, including the provision of best practice advice to the NLC on its funding, governance arrangements, functions under the Aboriginal Land Rights Act including settlement of land claims, reporting requirements of the *Public Governance, Performance and Accountability Act 2013* and corporate planning; and
- collaborate and consult with the NLC on operational and policy priorities, including on land use and access agreements and potential reforms to improve the administration of the Land Rights Act.

4.43 PM&C advised in January 2017 that this role description is not written anywhere else at present but,

would be supported and endorsed by virtue of the interactions the Department has with the Land Council on these matters. For example, the topics discussed as part of the NT Biannual Strategic Forum include budget, performance and policy issues. That the matters outlined [in this paper] have been discussed in this Forum indicates support for the Department's understanding of its role. The Land Councils would be aware, from experience, that the Department undertakes the roles outlined at various times under a range of circumstances.

4.44 PM&C has a central role in the budget estimates process, but there is little evidence of the department's monitoring of the NLC's performance<sup>94</sup> or providing best practice advice.<sup>95</sup> The department includes performance indicators related to the operations of Land Councils in its annual reports and in branch plans, but departmental activities contributing to the performance could not be explained, or the targets against which they were assessed.<sup>96</sup>

4.45 PM&C also advised that it consults and collaborates with the NLC, but referred throughout this audit to the complexity of dealing with Land Councils that are established as independent statutory bodies, and the political sensitivities in the area of Aboriginal land rights. On the other hand, the NLC is wary of government intent and protective of their independence. In a discussion paper<sup>97</sup> prepared for the bi-annual strategic forum, April 2016, (refer Table 4.2) the CLC expressed

94 In other communication, PM&C advised that the department does not formally monitor or provide guidance to Land Councils' compliance with requirements under the Aboriginal Land Rights Act, and that Land Councils' compliance varies.

95 For the 2015–16 annual reporting requirements, there is evidence of some support to the NLC in meeting its reporting requirements, including providing email links to information on the Department of Finance website. A checklist of reporting requirements was developed by PM&C for their internal use only, with the department advising the ANAO that Indigenous portfolio bodies engage with staff about their Annual Reports on a voluntary basis—a process that recognises the independence of Indigenous portfolio bodies and encourages them to take responsibility for the quality of their annual reports. As previously noted, PM&C commenced a similar process of voluntary engagement about Corporate Plans in February 2017.

96 The *PM&C Annual Report 2015–16* included, for example, the *number of Native Title claims finalised – on track*; and the *number of Indigenous ranger jobs contracted – met*. The Land Management Branch within the Housing, Land and Community Capability Division included in its Operational Plan for 2015–16 that it *work with the NLC to improve financial management, sustainability and governance*, including through NLC's appointment of a new Chief Financial Officer and the completion of internal reviews of staffing, fleet and management information systems.

97 Central Land Council, *Changing Role of the Central Land Council*, April 2016.



the view that ‘there has been a steady trend and concerted effort by the Australian Government to curtail the independence of land councils’.

4.46 The Aboriginal Land Rights Act and the establishment of Land Councils have provided certainty, since 1976, for Aboriginal people, the government and the broader community of a means of engagement and decision making about the ownership and management of traditional land and seas. However, the lack of a shared understanding of the extent of the use of powers, the roles and responsibilities between the NLC, PM&C and the responsible Minister has not supported a strong and productive relationship between the various parties.

4.47 In 2015, the Council of Australian Governments (meeting of 11 December 2015) agreed to implement the recommendations of a report into Indigenous land administration and use.<sup>98</sup> Recommendation 5(bi) was that Commonwealth and Northern Territory officials commit to a biannual strategic forum with Northern Territory Land Councils to support better and more forward looking engagement.

4.48 PM&C established the biannual strategic forums with Land Councils, convening two forums in 2016, on 28 April and 26–27 October. Attendees at the forums were representatives from the four Land Councils, the Australian Government (effectively the Land Branch from PM&C) and the Northern Territory Government.

4.49 In its paper, *Engagement between the Department of the Prime Minister and Cabinet and the Northern Land Council*, PM&C advised:

Through the establishment of the NT Biannual Strategic Forum...Land Branch has formalised and embedded formal structured engagement on key strategic policy matters with the NLC. It is our strategic intention to build a stronger relationship with the Land Councils and as one point of contact, the Strategic Forum has been a positive development. The Land Councils have provided feedback that they consider the Strategic Forum to be beneficial.

4.50 The PM&C document, *Overview – Northern Territory Indigenous Land Strategic Forum*, sets out the objectives of the forum, including to:

- build collaborative and productive working relationships and a shared understanding of each participant’s strategic priorities;
- discuss strategic Indigenous land issues and support more effective, regular and forward-looking engagement;
- support shared problem solving of identified issues;
- progress policies and strategies to support economic development on Indigenous land; and;
- better focus parties’ efforts and achievement of outcomes, including a more aligned approach across governments.

4.51 The objectives of the forum positions it well as a means of engagement with Land Councils and an avenue to address attendees’ priority issues (Appendix 9). However, it is important that all

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98 *Investigation into Indigenous Land Administration and Use*, report to the Council of Australian Governments, Senior Officers Working Group, December 2015. The report included six main recommendations that comprise some 20 sub-recommendations.



parties respect: that Land Councils' strategic policy settings (as they relate to the statutory functions of Land Councils) are those agreed by the councils' elected arms and may not align with the policies and priorities of the government of the day; and that differing policy settings should not undermine engagement between Land Councils and PM&C to achieve good governance and administration.

4.52 The success of the bi-annual strategic forums also relies on achieving results. A list of agreed action items is developed from each forum, reflecting a wide range of topics allocated for actioning, for example, the CLC preparation of a discussion paper on the future role of Land Councils (Table 4.2).

**Table 4.2: Actions from the Biannual Strategic Forum**

Subject	Action	Party	Due	Status
<b>29 April 2016 Forum</b>				
Discussion paper topic	Changing Roles: This discussion paper will contemplate how the roles of all parties under the Aboriginal Land Rights (Northern Territory) Act 1976 have, or ought to, change to support the transition from an Aboriginal land system that focusses on recognition and protection of rights to a system that supports Indigenous Australians to use those rights as part of the mainstream economy.	Central Land Council	Oct 2016	Completed 10/16

Source: Department of the Prime Minister and Cabinet, Action Items, *NT Biannual Strategic Forum*, April 2016.

4.53 The paper, while reflecting the views of the CLC, has immediate relevance to the broader engagement between Land Councils and government. The item is marked as 'completed', but little seems to have resulted from the discussion. PM&C advised that:

In terms of how things have progressed, this paper was discussed at the October Strategic Forum and the discussion is reflected in the draft summary of the Forum. While there was no explicit outcome relating to the changing roles paper – a number of action items relate to issues raised in the CLC's paper and subsequent discussion. For example, an action item was for PM&C to provide Land Councils with information on resources available for evaluation processes. This has been actioned and the Department is having an ongoing discussion with the NLC and CLC on evaluation.

4.54 As at 15 March 2017, PM&C could not identify any other actions relating to the issues raised in the paper. While the forums are at a very early stage, it is the responsibility of all parties to ensure that topics are followed up and are properly concluded. There may be benefit in scheduled updates either by email or phone or video conferencing between meetings of the forum, given there is at least a six months gap between meetings.



Grant Hehir  
Auditor-General

Canberra ACT  
20 June 2017



# Appendices



## Appendix 1 Entities' responses



11 May 2017

Ref: F2017/0555

Jane Whyte  
Senior Director  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Jane

The Northern Land Council (NLC) welcomes the Australian National Audit Office's report on the 'Effectiveness of the governance of the NLC'. Further, we accept the report's two formal recommendations.

The NLC has willingly co-operated with the audit, and the audit team has dealt with the NLC fairly throughout.

The council is pleased that the ANAO report acknowledges the extensive reforms that are being implemented across the whole organisation. The process of reform began with the arrival of Mr Joe Morrison as Chief Executive Officer in February 2014, and was on foot at the time of the Senate Finance and Public Administration Committee hearing in February 2015, which the audit report refers to at paragraphs 1.18 and 1.19.

The development and implementation of the reforms are still a work in progress, but the NLC feels proud that it is already a much more efficient and accountable organisation, and much better placed to serve its Aboriginal membership and constituents.

The ANAO's performance audit has been a worthwhile exercise; it has, in fact, proved to have been an aid to the NLC's reform process. We will continue to monitor the progress of the reform initiatives and the benefits which will flow from them.

Yours sincerely

**Samuel Bush-Blansi**  
**CHAIRMAN**

Katherine	Jabiru	Nhulunbuy	Borroloola	Ngukurr	Tennant Creek	Timber Creek	Wadeye
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**Australian Government**  
**Department of the Prime Minister and Cabinet**

Ref: EC17-000696

Ms Michelle Kelly  
Group Executive Director  
Performance Audit  
Australian National Audit Office  
OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Ms Kelly

Thank you for your email of 21 April 2017 regarding the proposed audit report on *Effectiveness of the Governance of the Northern Land Council*.

The Department provides the following response to recommendations:

The Department of the Prime Minister and Cabinet (PM&C) agrees Recommendation No. 2.

PM&C recognises the need for greater correlation between funding and outcomes, and is providing guidance and working collaboratively with the Northern Land Council (NLC) to assist in identifying Key Performance Indicators that better align with land council outcomes. The NLC has been advised of the Government's intention to move to three year rolling budgets. Together with annual reviews, this approach will provide greater certainty for land councils in the development of their budgets and long term planning.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Marie Taylor'.

Marie Taylor  
First Assistant Secretary  
Housing, Land and Culture Division  
19 May 2017

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## Appendix 2 Overview of the Aboriginal Land Rights Act and Native Title Act

	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	<i>Native Title Act 1993</i>
<b>Claimable Land</b>	Unalienated Crown land in the Northern Territory (not pastoral or town land).	Vacant, pastoral or town land in Australia.
<b>Claiming</b>	A Land Claim in the Northern Territory is decided by the Aboriginal Land Commissioner.	A Native Title Claim is decided by the Federal Court.
<b>Successful claim</b>	<p>Legal recognition by government of the Aboriginal system of land ownership through the creation of a unique statutory form of inalienable free-hold title defined as 'Aboriginal Land'.</p> <p>Land successfully claimed is granted by a Commonwealth Minister as an estate in fee simple, formally vested in an Aboriginal Land Trust. A grant of title is inalienable and cannot be bought, sold, traded or given away. The Land Trust will hold title to the land for the benefit of Aboriginal people entitled by tradition to the use and occupation of the land concerned.</p>	<p>The recognition by Australian law that Indigenous people have rights and interests to their land that come from their traditional laws and customs.</p> <p>Native title can coexist with the rights of other entities in the same area.</p> <p>A determination of Native Title is made by the Federal Court. This may be after a contested hearing if the parties do not agree some or all of the issues, or by consent determination if the parties do agree.</p> <p>When a determination recognising native title is made, the Native Title Act requires that native title holders establish a corporation to represent them and their native title interests. Those corporations are known as Prescribed Bodies Corporate (PBCs).</p>
<b>Decision makers about the land</b>	Land is granted to Aboriginal Land Trusts. Aboriginal Land Trusts are statutory bodies established by the Act, and act under the direction of Land Councils. The Land Council must have regard to the interests of Traditional Owners and must consult with them, and obtain their consent.	Native Title is held by a Prescribed Body Corporate. The PBC will manage the determined native title rights and interest in accordance with the objectives of the native title holding group. The PBC may seek the assistance of the land council in carrying out its functions.
<b>Rights over land</b>	Right to block mining and to lease land. Can control entry with permits. Can grant licences for rights to take produce from Aboriginal land.	Recognition of traditional rights to access and use land, for example for hunting, fishing performing ceremony and protecting sites. Where non-exclusive native title is recognised, there is no right to control entry onto that land. Right to negotiate through Indigenous Land Use Agreements, however no right to block development and cannot lease as no title is held to land.

Source: ANAO, based on the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*, revised by the NLC Legal branch.

## Appendix 3 Overview of key legislated functions of the Northern Land Council under the Aboriginal Land Rights Act and Native Title Act

<b>Aboriginal Land Rights (Northern Territory) Act 1976</b>	
23(1)(a)	To ascertain and express the wishes and opinion of Aboriginals living in the area of the Land Council as to management of their land in that area and as to appropriate legislation concerning that land.
23(1)(b)	To protect the interests of traditional owners of, and other Aboriginal interests in, Aboriginal land in the area of the Land Council.
23(1)(ba)	To assist Aboriginals to protect sacred sites, whether or not they are on Aboriginal land.
23(1)(c)	To consult traditional owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land.
23(1)(d)	Where the Land Council holds in escrow a deed of grant of land made to a Land Trust, to negotiate with persons having estates or interests in that land with a view to their acquisition by the Land Trust; and to the agreed use of that land by Aboriginals prior to its acquisition.
23(1)(e)	To negotiate with persons wanting to obtain an estate or interest in land in the area of the Land Council, that is held by a Land Trust or is the subject of an application for a traditional land claim, on behalf of traditional Aboriginal owners of that land and of any other Aboriginals interested in the land.
23(1)(ea)	To assist Aboriginals in the area of the Land Council to carry out commercial activities, without the Land Council incurring financial liability or receiving financial benefit.
23(1)(eb)	To assist the owner of land that is a community living area and in the area of the Land Council, if requested to do so, in relation to any dealings in the land.
23(1)(f)	To assist Aboriginals claiming to have a traditional land claim within the area of the Land Council in pursuing the claim, in particular by arranging for legal assistance for them at the expense of the Land Council.
23(1)(fa)	To negotiate with owners of estates or interests in land in the vicinity of Aboriginal land, where there is no practicable way of gaining access to the land except by crossing Aboriginal land, to agree a route across the Aboriginal land to enable its use or enjoyment.
23(1)(g)	To compile and keep registers of Land Council members; of members of Aboriginal Land Trusts in the area of the Land Council and descriptions of each such land holding.
23(1)(h)	To supervise and assist Aboriginal Land Trusts in the area of the Land Council.
23(2)	With the approval of the Minister, perform any functions that may be conferred on it by a law of the Northern Territory, including the protection of sacred sites, access to Aboriginal land, and schemes for the management of wildlife on Aboriginal land.
23(3)	In carrying out its functions with respect to any Aboriginal land in its area, a Land Council shall have regard to the interests of, and shall consult with, the traditional Aboriginal owners of the land and any other Aboriginals interested in the land, satisfying itself that the traditional owners understand the nature and purpose of the proposed action and, as a group, consent to it; and any Aboriginal community or group affected by the proposed action has been consulted and has had adequate opportunity to express its view .



<b>Native Title Act 1993</b>	
203B(1)	A native title representative body (NTRB) has the following functions: (a) the <i>facilitation and assistance functions</i> referred to in section 203BB; (b) the <i>certification functions</i> referred to in section 203BE; (c) the <i>dispute resolution functions</i> referred to in section 203BF; (d) the <i>notification functions</i> referred to in section 203BG; (e) the <i>agreement making function</i> referred to in section 203BH; (f) the <i>internal review functions</i> referred to in section 203BI; (g) the functions referred to in section 203BJ and such other functions as are conferred on representative bodies by this Act.
203B(2)	These functions are in addition to, not instead of, any functions conferred by other laws.
203B(4)	A NTRB must determine its priorities and allocate resources to perform functions efficiently; but must give priority to the protection of the interests of native title holders.
203BA(2)	Organisational structures and administrative processes must promote satisfactory representation of native title holders, and effective consultation with Aboriginal peoples and Torres Strait Islanders living in the area. They must operate in a fair manner. The NTRB must also have procedures for making and reviewing its decisions; rules or requirements for the conduct of its executive officers; and procedures for reporting back to native title holders and Aboriginal people or Torres Strait Islanders living in the area.
203BB(1)(a)	To research and prepare native title applications, and to facilitate such action.
203BB(1)(b)	To assist bodies and persons in consultations, mediations, negotiations and proceedings in matters relating to native title or the operation of the Act.
203BB(2)	Facilitation and assistance functions are only exercisable on request.
203BB(4)(5)	Consent is required from bodies or persons already represented before a new body or person can be represented in a matter relating to the same land or waters. However, this does not prevent the NTRB from facilitating alternative representation.
203BE	This section sets out certification functions for applications for determinations of native title, and applications for registration of Indigenous land use agreements.
203BF	This section sets out dispute resolution functions.
203BG	This section sets out notification functions.
203BH	To be a party to indigenous land use agreements after consulting with, and having regard to the interests of, the native title holders of the area subject to the agreement.
203BI	To provide internal review of its decisions and actions as requested by affected parties.
203BJ	Other functions as described in the Act, including identifying persons who may hold native title in the area it represents; promoting understanding among Aboriginal people and Torres Strait Islanders living in the area about matters relevant to the operation of the Act; informing native title holders of any matter that it considers may relate to, or may have an impact upon, native title in the area; and consulting with Aboriginal or Torres Strait Islander communities that might be affected by the matters dealt with.

Note: In the table above, 'bodies and persons' refers to any registered native title bodies corporate, native title holders or persons who may hold native title.

Source: ANAO, based on the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*.

## Appendix 4 Roles of council members

Role of Full Council Members	Measuring performance
<p>Keep Aboriginal law and culture strong</p> <p>Be aware of the Chair's and Chief Executive Officer 's (CEO's) responsibilities under the <i>Public Governance, Performance and Accountability Act 2013</i></p> <p>Develop an understanding of the Aboriginal Land Rights (Northern Territory) Act 1976 and the Native Title Act 1993</p> <p>Attend and participate in all Regional and Full Council Meetings</p> <p>Listen to the views of Traditional Owners and community residents</p> <p>Speak up at meetings about issues identified in their region and communities</p> <p>Make policy decisions and set the strategic direction of the NLC</p> <p>Follow up on issues raised at previous meetings and consultations</p> <p>Take information from Council meetings back to Traditional Owners and community residents</p> <p>Provide constructive advice and feedback to the Chair and CEO on the operations of the NLC</p> <p>Respect other Council members and staff of the NLC</p>	<p>Measure attendance at Full Council meetings</p> <p>Monitor Code of Conduct breaches at Full Council Meetings</p> <p>Manage conflicts of interest</p> <p>Record the number of agreements passed</p> <p>Record resolutions passed at Full Council</p> <p>With advice from the CEO, develop policy positions that benefit our land and sea, communities, culture and futures</p> <p>Respect other council members, staff and visitors to council meetings</p>

Role of Regional Council members	Measuring performance
<p>Show leadership of their community, outstation or area on issues directly relevant to the Land Council</p> <p>Consult communities in their region about issues to be raised at Regional Council meetings</p> <p>Notify their Regional Development Manager of any agenda items</p> <p>Make recommendations to the Full Council</p> <p>Present resolutions regarding regional and local issues (within delegations)</p> <p>Communicate with the Executive Member any issues affecting their local community, outstation or area</p> <p>Communicate important issues back to their communities</p>	<p>Measure attendance at meetings</p> <p>Measure the performance of actions from Regional Councils</p> <p>Take action on community issues raised</p>

Role of the Executive Council	Measuring performance
<p>Ensure all responsibilities of the NLC are fully discharged in accordance with the Aboriginal Land Rights, Native Title and PGPA Acts</p> <p>Appoint the Chief Executive Officer</p> <p>Chair Regional Council meetings and show leadership at key events on behalf of the NLC and its constituents</p> <p>Manage NLC business between Full Council meetings</p> <p>Consider agreements and where agreed, execute those agreements</p> <p>Communicate with their regional council on issues important to the community and the NLC</p> <p>Collaborate and work with other members of the Executive to support the Chair and Deputy in executing their statutory duties</p> <p>Represent and report back to their region</p> <p>Through the CEO, liaise and work with senior management</p> <p>Ensure and maintain a separation of powers is upheld between the Council and administration</p> <p>Nominate two members to the Audit Committee</p> <p>Report on the major decisions of the Aboriginal Investment Group.</p> <p>Be members and Directors of the Top End (Default PBC/CLA) Aboriginal Corporation which acts as the agent for some native title holders in the NLC region</p>	<p>Track the health and performance of the NLC through the CEO</p> <p>Establish, monitor and review the performance of the CEO through KPIs</p> <p>Record attendance at Regional, Executive and Full Council meetings</p> <p>Follow up actions from Regional, Executive and Full Council meetings</p> <p>Record numbers of agreements considered</p> <p>Record actions completed</p> <p>Attend important events as requested, when staff and funding are available</p> <p>Report on the sub-committees and other roles of the Executive Council – AIG [Aboriginal Investment Group], Imparja, Audit Committee, ABA [Aboriginals Benefit Account Advisory Committee] and others</p>

Source: Norther Land Council handbook, *2016 Rules for Councillors*.

## Appendix 5 Northern Land Council goals, 2016 to 2020

### NLC Goals 2016 to 2020

*The following are the goals of the NLC over the next four years:*

- *Strengthen internal and council governance processes to meet strategic organisational objectives and mandates, and achieve the Vision and Mission*
- *Strengthen the NLC's advocacy and negotiating capability through partnerships and relationships, and ensure resources are tied to these areas in order to provide support to claimants and Traditional Owners*
- *Facilitate regional economic development planning through a 'Prospectus for Indigenous Development'*
- *Develop strategic succession planning within management and in the regions by identifying youth and helping them develop into governance and leadership roles*
- *Extend and maintain consistent and effective communications programs and systems*
- *Secure funding for non-core activities*
- *Mediate and resolve disputes*
- *Implement a regionalisation strategy with appropriate investment*
- *Implement a long term strategy to grow the Ranger and Caring for Country programs*
- *Strengthen the engagement of women in the business of NLC*
- *Maintain good relationships with government and shires*

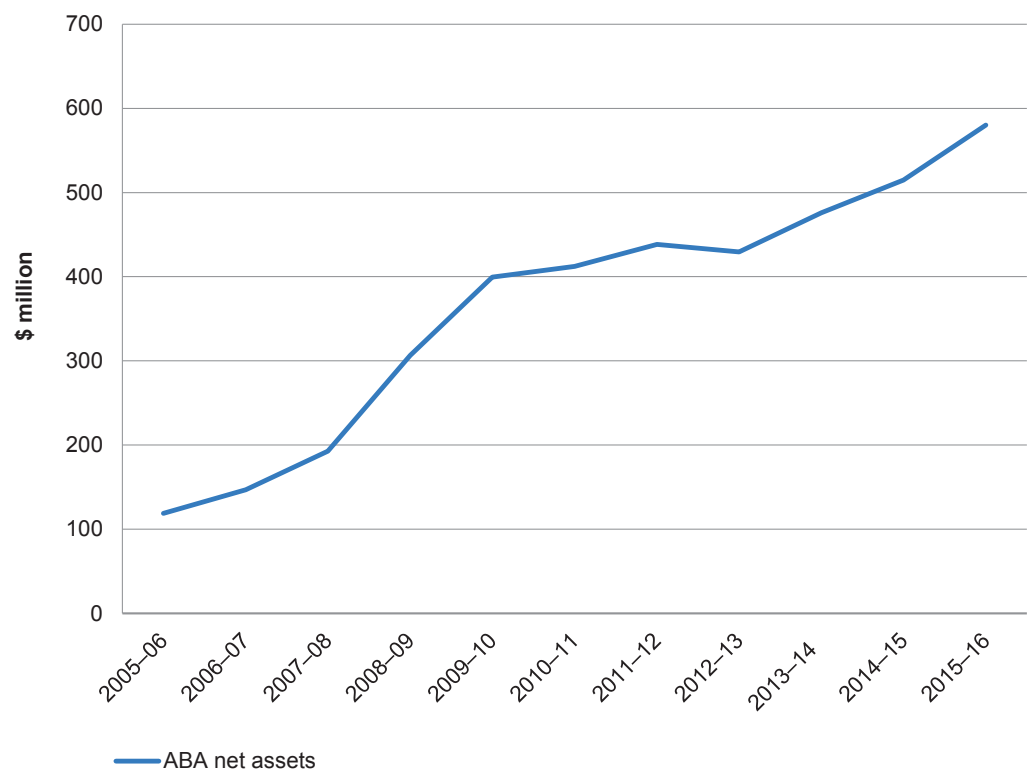
Source: Northern Land Council, *Strategic Plan 2016–2020*, p. 12.

## Appendix 6 Outcome and Output Groups framework

Outcome		
Enhanced social, political and economic participation and equity for Aboriginal people in the Land Council's area as a result of the promotion, protection and advancement of their land rights, other rights and interests.		
Output Groups	Output measures	
1. Land, Sea and Natural Resource Management support services	1.1	Administer and issue permits for access/closures to or through Aboriginal land and sea.
	1.2	Provide research and assistance as required to Aboriginal landowners and other Aboriginal people to manage land and sea and to undertake activities consistent with their ambitions and the sustainability of their resources.
2. Land Claims and Acquisitions support services	2.1	Provide assistance as required to Aboriginal claimants of land under the ALRA.
	2.2	Pursue all other appropriate avenues to achieve the acquisition of land for the benefit of Aboriginal people.
3. Economic Development and Commercial services	3.1	Process applications and assist in making land use agreements on Aboriginal land.
	3.2	Assist as appropriate in the economic advancement of Aboriginal people through employment, education and training, particularly in relation to land use proposals, within the Land Council region.
	3.3	Process applications for consent to explore and mine on Aboriginal land.
	3.4	Provide research and assistance and identify infrastructure requirements as appropriate to enable Aboriginal landowners and other Aboriginal people to undertake commercial activities.
4. Advocacy services	4.1	Promote public awareness on issues affecting Aboriginal people, their land and other rights.
	4.2	Provide advocacy and representation as appropriate to the Traditional Owners and other clients of the Land Councils.
	4.3	Provide cultural and heritage support as appropriate to the Traditional Owners and other clients of the Land Councils.
	4.4	Facilitate targeted Aboriginal community development initiatives as appropriate with the Traditional Owners and other clients of the Land Councils.
5. Administration and Support services	5.1	Administer and distribute statutory, negotiated and other payments as appropriate to the Traditional Owners and other clients of the Land Councils.
	5.2	Administer Land Trusts in accordance with the provisions of the ALRA.
	5.3	Assist in the resolution of disputes with respect to land as appropriate.
6. Native Title	6.1	Funded and reported on separately under the Native Title Act.

Source: Australian Government, *Guidelines for the Funding of Administration Payments to Land Councils under the Aboriginal Land Rights (Northern Territory) Act 1976*, Attachment C, p. 9.

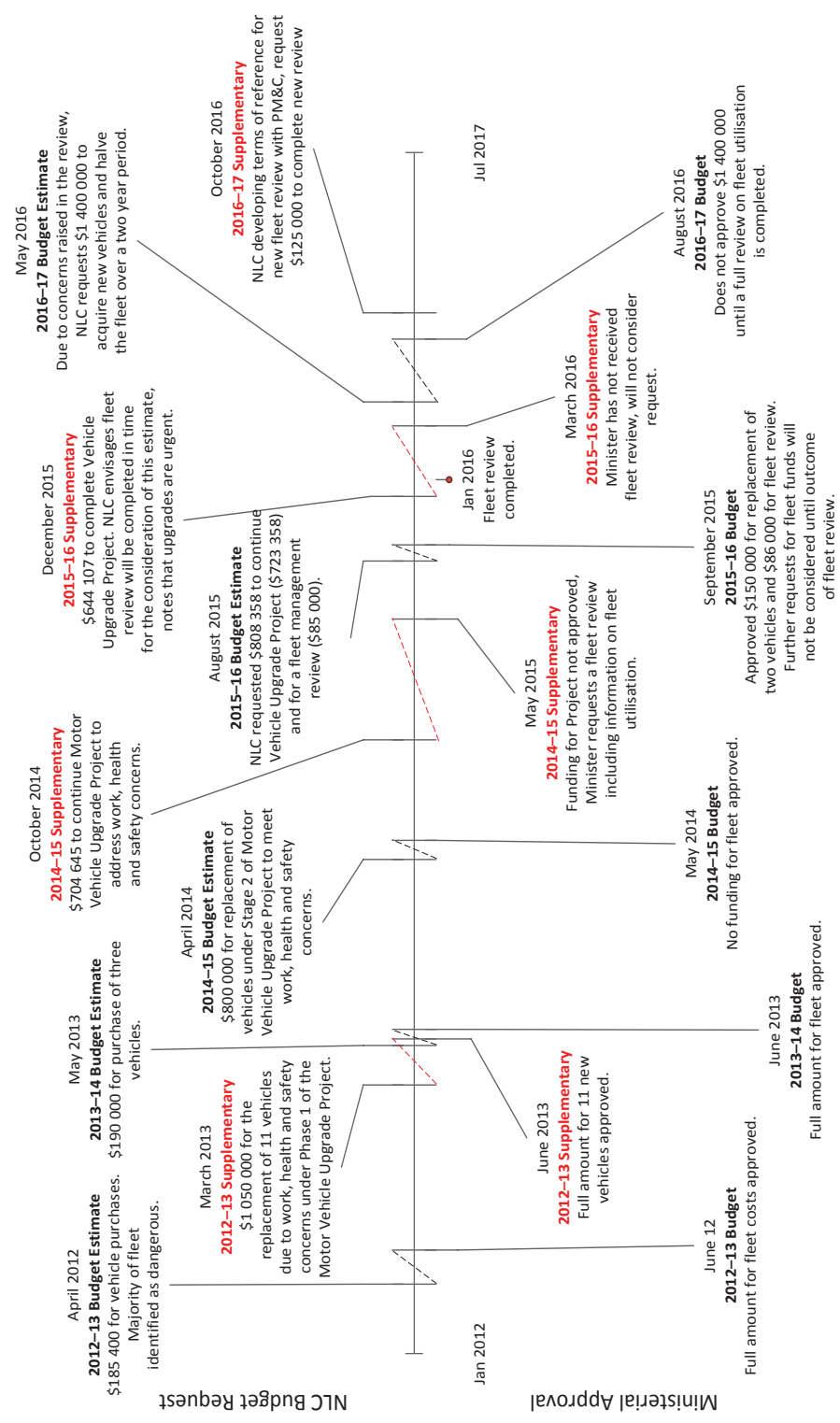
Appendix 7      **Aboriginals Benefit Account, 2005–06 to 2015–16**



Note 1: This graph shows the financial position of the Aboriginals Benefit Account at 30 June each year—that is, the retained surplus after all income and expenditure has been taken into account.

Source: ANAO, from Aboriginals Benefit Account Annual Reports.

# Appendix 8    Timeline of funding for Northern Land Council vehicle fleet



Source: ANAO, from NLC and PM&C documentation.

## Appendix 9      Bi-annual forum, attendees' priority issues

**Issues affecting economic development on Indigenous land:** This included moving from recognition of rights to using rights, alternative mechanisms for future economic development, better support for Aboriginal organisations, government tenure policies, community leasing models, funding support for small enterprises and balancing environmental preservation with economic development.

**Roles and functions of Land Councils:** Improving the way Land Councils do business was a focus, with discussions around improving royalty distribution processes, the benefit of Community Development Units, improving Land Council budget processes and creating more transparency and accountability around the Aboriginals Benefit Account. Managing competing priorities was also a focus as well as improving Land Council relationships with governments.

**Broader policy initiatives:** This included implementation of the Northern Australia White Paper recommendations, economic summits, funding for outstations and homelands, housing policy and funding for Rangers. The need for a holistic development approach was highlighted.

Source: Biannual strategic forum, minutes, October 2016.