

The Auditor-General
Audit Report No.28 2002-03
Performance Audit

Northern Territory Land Councils and the Aboriginals Benefit Account

Australian National Audit Office

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of Australia 2003

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Canberra ACT
7 February 2003

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present this report of this audit and the accompanying brochure. The report is titled *Northern Land Territory Councils and the Aboriginals Benefit Account*.

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

Yours sincerely



P. J. Barrett
Auditor-General

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

AUDITING FOR AUSTRALIA

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Contents

Abbreviations/Glossary	6
Summary and Recommendations	7
Summary	9
Conclusion	14
Agencies' responses	17
ANAO comment	19
Key Findings	21
Recommendations	26
Audit Findings and Conclusions	29
1. The role of the Land Councils and background to the audit	31
The <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	31
Functions of Land Councils	32
Funding to and by the Aboriginals Benefit Account (ABA)	37
Aboriginal land tenure in the Northern Territory	39
Stakeholders	40
Reviews	42
Reason for the audit	43
Objectives and scope of the audit	44
Audit criteria	44
Audit methodology	44
Structure of report	45
2. The Aboriginals Benefit Account and Land Council Funding	46
Background	46
Accordance with the legislation	51
Efficiency and effectiveness of ATSIC's administration of the ABA	60
Conclusion	63
3. Land Council Planning, Risk Management and Use of Performance Information	65
Background	65
Planning processes	73
Performance Information	75
Outcomes and outputs framework	77
Conclusion	83
4. Land Councils' Relationship With Stakeholders	85
Stakeholders	85
Service Charters	87
Performance Information	88
Conclusion	91
5. Land Council Operations	93
Background	93
Key Business Processes	93
Conclusion	110
Appendices	113
Index	127

Abbreviations/Glossary

ABA	Aboriginals Benefit Account
ABTF	Aborigines (Benefits from Mining) Trust Fund
AHL	Aboriginal Hostels Limited
ALC	Anindilyakwa Land Council
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAEPR	Centre for Aboriginal Economic Policy Research
CLC	Central Land Council
DBIRD	Northern Territory Department of Business, Industry and Resource Development
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DITR	Department of Industry, Tourism and Resources
ELA	Exploration Licence Application
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMOs	Finance Minister's Orders
HORSCATSIA	House of Representatives sub-committee on Aboriginal and Torres Strait Islander Affairs
ILC	Indigenous Land Corporation
NHT	National Heritage Trust
NLC	Northern Land Council
NT	Northern Territory
NTA	<i>Native Title Act 1993</i>
NTAC	Northern Territory Aboriginal Council
NTT	Northern Territory Treasury
TLC	Tiwi Land Council

Summary and Recommendations

Summary

Background

1. In February 1973, the Commonwealth Government set up a Royal Commission under Mr Justice Woodward to investigate how land rights for Aboriginal people might be achieved in the Northern Territory (NT). Justice Woodward's first report in July 1973 recommended that a Central Land Council (CLC) and a Northern Land Council (NLC) be established in order to present to him the views of Aboriginal people in the NT. Justice Woodward's second report was produced in April 1974. The recommendations contained in the Royal Commission report provided the basis for the Aboriginal Land Rights Act. The first recommendation was that 'Aboriginal land rights legislation should be introduced into the Australian Parliament.'
2. The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) was passed in 1976 and became law on 26 January 1977. The long title of the ALRA provides for the granting of Traditional Aboriginal Land in the NT for the benefit of Aboriginals, and for other purposes. The granting of title to an Aboriginal Land Trust¹ representing traditional owners is the final step in the land claim process.
3. The ALRA combines concepts of traditional Aboriginal law and property rights associated with land ownership². Under the ALRA, traditional owners who are granted land are able to exercise considerable control over mining and other activities on their land. For example, Part IV of the Act allows traditional owners to veto minerals exploration for ongoing five-year periods (section 48) or, alternatively, to negotiate the terms and conditions of exploration licences and mining interests (sections 44, 45 and 46).

Functions of Land Councils

4. While both the CLC and the NLC were established to assist the Royal Commission, the passing of the ALRA gave them statutory powers and responsibilities. The Tiwi Land Council (TLC), representing people of the Bathurst and Melville Islands, was created in 1978 following a successful strategy to secure their own Land Council independent of the two mainland Land Councils. The Anindilyakwa Land Council (ALC), representing Aboriginals in

¹ Under the ALRA, Aboriginal Land Trusts are established by the Minister for Immigration and Multicultural and Indigenous Affairs to hold title to land in the NT for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned (Section 4(1)).

² Land transferred under the ALRA cannot have its legal status changed. It cannot, for example, be converted into freehold title and then sold.

the Groote Eylandt archipelago, was established under subsection 21(3) of the ALRA, with effect from 1 July 1991. The area of the ALC was previously covered by the NLC.

5. The functions of the Land Councils are set out in section 23 of the ALRA (refer to Appendix 1), and include:

- ascertaining and expressing the wishes and the opinion of Aboriginals living in the area of the Land Council as to the management of Aboriginal land in that area, and as to appropriate legislation concerning the land;
- protecting the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council;
- assisting Aboriginals claiming to have a traditional land claim to an area of land within the area of the Land Council in pursuing the claim;
- consulting with traditional Aboriginal 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; and
- assisting Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities).

6. Since the ALRA was enacted in 1977, 44 per cent of the land in the NT has become Aboriginal land. Of this, title to 19 per cent was granted at the commencement of the ALRA. Title to most of the other 25 per cent has been granted to traditional Aboriginal owners after successful land claims undertaken by two Land Councils, the CLC and NLC. The remainder of the 25 per cent has been acquired as a result of amendments to Schedule 1 of the ALRA.

Service delivery

7. The functions outlined in section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) (refer to Appendix 1) require the Land Councils to deliver a variety of services to a range of stakeholders, including traditional owners, other Aboriginals, mining companies and tourists. These services include consulting with traditional owners regarding the use and management of their land, arranging for access to Aboriginal land, and negotiating arrangements between traditional owners and external parties for land use agreements.

8. A critical role of the Land Councils is to consult with traditional Aboriginal landowners and to obtain their consent on matters affecting their land before any action is taken. This informed decision making process requires the input of skilled people in the administrative arm of a Land Council including

anthropologists, lawyers, mining experts, accountants and administrators.

9. The Land Councils face a number of obstacles associated with indigenous service delivery. Their services need to be provided over large areas of land, which are sometimes inaccessible. Their constituents have a low level of literacy ('At the Year 3 level, only three to four per cent of Aboriginal students in remote areas of the NT achieved the national benchmark in reading in 1999'³). In addition, contacting traditional owners may involve finding Aboriginals who have been separated from their family or may not live on the land under claim.

Accountability

10. While the elected representatives of a Land Council consider issues and make recommendations based on traditional aboriginal law, the Chair and administrative arm are subject to the requirements of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Section 9 of the CAC Act requires the directors to prepare an annual report in accordance with Schedule 1 of the Act. This Schedule requires the annual report to include financial statements prepared in accordance with Finance Minister's Orders (FMO's) and a report of operations in accordance with Commonwealth Authorities and Companies (Report of Operations) Orders 2002 (the CAC Orders)⁴. The CAC Orders requirements include producing an annual report to stakeholders, which provides a review of how the Commonwealth authority (Land Council) has performed during the financial year in relation to: its statutory objective and functions, as the case requires; its corporate plan, where applicable; and its principal outputs and contribution to outcomes.

Aboriginals Benefit Account—funding of the Land Councils

11. To develop and diversify the NT economy the Commonwealth Government opened up the Aboriginal reserves to large-scale mining projects in the 1950s. Statutory royalties on minerals produced on Aboriginal reserves were paid into an Aborigines (Benefits from Mining) Trust Fund (ABTF) for the benefit of NT Aboriginal people⁵. In July 1999, the fund became the Aboriginals Benefit Account (ABA). The ABA is administered by the Aboriginal and Torres Strait Islander Commission's (ATSIC's) Native Title and Land Rights Centre.

³ Australian National Audit Office, Audit Report No. 43 2001-2002, *Indigenous Education Strategies in the Department of Education, Science and Training*.

⁴ These orders apply to Commonwealth authorities in relation to financial years ending on or after 30 June and replace the *Commonwealth Authorities and Companies Orders 1998*.

⁵ National Institute of Economics and Industry Research, *The National Competition Policy Review of part (IV) of the Aboriginal Land Rights (NT) Act 1976*, July 1999, p. 8.

12. The funding available to the Land Councils under ALRA is dependent upon the stream of royalty equivalents received by the ABA.

13. Over the period 1978–79 to 1989–90, the annual royalty equivalents revenue increased from \$1.1 million to \$34.3 million⁶. However, since that time, annual royalty equivalents have been relatively static. In the main, the royalty equivalent stream has remained between \$27 million and \$33 million a year throughout the past 10 years. However, royalty equivalents jumped to \$46 million in 2001–02, reflecting increased royalties from individual mines due to increased prices and production.

14. Payments out of the ABA are made under section 64 of the ALRA as follows:

- 40 per cent is for administration of the Land Councils;
- 30 per cent is distributed by the Land Councils to Aboriginal organisations in areas affected by mining; and
- the remainder is applied at the discretion of the Minister for Immigration and Multicultural and Indigenous Affairs and can be used for: payments for the benefit of Aboriginals in the NT; extra payments to NT Land Councils; administration of the ABA; or increasing the equity of the ABA.

15. Distribution of the 40 per cent for the administration of the Land Councils is on the basis of the population⁷ of Aboriginal people in each Land Council and is allocated as follows:

- Northern Land Council—22 per cent;
- Central Land Council—15 per cent;
- Tiwi Land Council—2 per cent; and
- Anindilyakwa—1 per cent.

Stakeholders

16. The Land Councils' major stakeholders are traditional owners and other Aboriginals living in the area of a Land Council. The Land Councils also have interactions on a regular basis with a variety of Commonwealth and NT departments and agencies as well as with private sector interests. Key stakeholders are the Minister for Immigration and Multicultural and Indigenous

⁶ Drawn from figures provided by the ABA.

⁷ On 11 June 1991, former Minister Tickner determined the allocation between Land Councils based on 1991 Census data. In December 1997, following the release of 1996 Census data, ATSIC's Strategic Planning and Policy Branch undertook a review of Indigenous population statistics, in conjunction with the Australian Bureau of Statistics. On 12 March 1998, former Minister Herron confirmed the retention of the determination of 11 June 1991. ATSIC will review the 2001 Census data when available.

Affairs, ATSIC, the NT Government, the mining industry and the pastoral, tourism and fishing industries. Other agencies that have an interest in land management on Aboriginal land and in the operations of the Land Councils include the Indigenous Land Corporation and the National Heritage Trust. The Land Councils should be able to identify their main stakeholders, their interests that need to be addressed, and how best to meet those interests. This is a basic management tool and one that is central to accountability for performance.

Reasons for the audit

17. This audit arose from a letter of 21 December 2001 from the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Philip Ruddock MP, to the Auditor-General in which he requested an audit of the efficiency and effectiveness of the four NT Land Councils. In a further letter of 26 January 2002, the Minister asked that the audit include the relevant parts of ATSIC's administration of the ABA. In referring to the Government's consideration of amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Minister emphasised:

...the importance of the conduct of the Performance Audits to the Government, insofar as it is concerned to consider amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*. Those amendments will in part go to the financing, operations and accountability of the Land Councils and, therefore, your audits will be very relevant.

18. In agreeing to undertake the audit, the Auditor-General recognised that an independent ANAO audit of the Land Councils would assist the Government, and subsequently the Parliament, in its deliberations.

Objectives and scope of the audit

19. The objectives of the audit were to assess whether the governance arrangements used by the ATSIC Native Title and Land Rights Centre and the NT Land Councils are appropriate. The audit addressed two sub-objectives and assessed whether:

- the ATSIC Native Title and Land Rights Centre meets its legislative requirements concerning the ABA in an effective and efficient manner; and
- the Land Councils are effective and efficient in managing their resources

to meet the objectives of the *Aboriginal Land Rights (NT) Act 1976*.

Audit methodology

20. In order to form an opinion on the audit objective, the audit team:
- conducted fieldwork at the head offices of the CLC in Alice Springs, the NLC in Darwin, the ALC at Angurugu on Groote Eylandt, the TLC in Darwin, and ATSIC's ABA office in Darwin. The work undertaken in these offices included examining key documents, databases and files and interviewing key personnel;
 - attended a Full Council meeting of the NLC;
 - undertook fieldwork in three NLC Regional Offices (Katherine, Nhulunbuy and Ngukurr) and in two of the CLC's Regional Offices (Kalkarindji and Lajamanu);
 - visited nine Aboriginal communities; and
 - held discussions with various Commonwealth and NT agencies and representatives from the mining, pastoral and fishing industries, to obtain their views on the Land Councils' operations and performance.

Conclusion

21. The Aboriginal and Torres Strait Islander Commission (ATSIC) Native Title and Land Rights Centre and the four Northern Territory Land Councils could strengthen elements of their governance arrangements for greater effectiveness. All five agencies have appropriate procedures in place to assist them to comply with relevant legislation. The two large Land Councils, the Central Land Council (CLC) and the Northern Land Council (NLC), have strategic plans setting out their corporate objectives. There is, however, significant scope for all five agencies to improve their performance monitoring and communication with stakeholders. In the case of the Land Councils, there is a particular need to place greater emphasis on outcomes, outputs and cost effectiveness, rather than simply reporting on the level of inputs. This would improve the transparency of their operations and allow stakeholders to better assess whether the Land Councils are achieving value for money which cannot be assessed simply on the basis of inputs used.

22. The ANAO concluded that, while ATSIC's Native Title and Land Rights Centre had appropriate procedures in place to ensure the efficient achievement of the functions of the Aboriginals Benefit Account (ABA), these could be improved for greater effectiveness. In particular, there is a need to develop an

explicit objective for the management of ABA equity and to develop and use performance indicators for the investment of available moneys. ATSIC has indicated that it proposes to amend the ABA financial plan to incorporate such an objective. There is also a need for more open communication between all parties. While there are ongoing discussions between the Land Councils and ATSIC, there does not appear to be a common understanding of the outcomes of these discussions which can obviously be counter productive to resolution of issues and achievement of required results.

23. The ANAO also concluded that the administration of payments from the ABA to the Land Councils has been in accordance with the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). However, there are matters that impact on some payments which were raised by ATSIC and the Land Councils during the audit, including that some discretionary payments are currently not being made, following legal advice that conditions could not be placed on grants. In addition, the CLC and NLC request funding in annual estimates which is greater than the amount of their allocation of the 40 per cent of royalty equivalents provided under the ALRA. Consequently, the Minister approves payments for additional administrative expenses more often than may have been intended when the ALRA was drafted. The ANAO notes that ATSIC considers these issues should be addressed as part of the current consideration of amendments to the ALRA.

24. Because of a lack of systematic performance assessment supported by suitable performance information, the ANAO was unable to assess whether the Land Councils were fulfilling their functions and delivering their services in an effective and efficient way. The development and use of performance information will require the Land Councils to establish indicators and set targets against which they can assess their contribution to protecting and advancing the rights and interests of Aboriginal people and determine how well their resources are being used. The ANAO considers that the adoption of a performance framework, such as the Commonwealth's outcome and output reporting model, would help the Land Councils to measure their efficiency and effectiveness. It would also improve Land Council reporting and provide a sound basis for stakeholders to assess Land Council performance over time.

25. While the Land Councils were focused on delivering services to traditional owners, the lack of performance information also meant that the ANAO was unable to assess, in any conclusive way, whether the current level of resources provided to the Land Councils was appropriate. Performance information would normally include outcome effectiveness indicators and output indicators. The use of effectiveness indicators would allow the Land Councils to assess the extent of their success against the outcomes they set out to achieve in their strategic

plans. Combined with data on program inputs, including financial and human resources, the use of output indicators such as the quantity (and quality) of services delivered would allow the Land Councils to demonstrate over time whether they had produced more services with the same or a lower level of resources, or increased the quantity of services they provided at a greater rate than any increase in resources. This would provide the Land Councils with a sound basis for future funding discussions, and provide more information to the Minister and ATSIC on which to base decisions about funding levels and ABA equity levels.

26. At the operational level, the ANAO concluded that the Land Councils had adequate procedures in place to assist in compliance with relevant legislation and had generally identified the needs of traditional owners. However, the Land Councils did not monitor and review the performance of their functions and service delivery through regular assessments that were documented and communicated internally or externally to stakeholders. Service delivery data were collected on an ad hoc basis, or in response to external reviews, and were, therefore, not available to be used systematically to inform management decisions. To assist Land Councils to monitor and review their performance in delivering services, suitable performance information should be collected and used. It does not have to be complex. It can be built up over time as the people concerned obtain more experience and obtain feedback from the various stakeholders. Performance monitoring would allow the Land Councils to review their activities on a regular basis and to systematically assess their progress towards targets, or against comparisons with past performance or future projections.

27. The Land Councils deliver a variety of services to a diverse number of stakeholders, including traditional owners, other Aboriginals living in their area, mining companies and tourists. However, the Land Councils do not have processes in place to determine whether stakeholders are satisfied with the quality of the services that they deliver. Land Councils, therefore, are unable to report on the level of stakeholder satisfaction.

28. The introduction of service charters by the Land Councils would demonstrate to their stakeholders that they are committed to providing them with information about the range and standard of services offered. The use of service charters and related performance information would also improve the transparency of Land Council processes and clarify stakeholder expectations about the standard of service they can expect. Land Councils would then be able to obtain stakeholder feedback on their performance and use this information to improve their service delivery.

29. The Land Councils do not have procedures in place to formally identify and manage their risks at all levels in the organisation. Some risks were identified at the project level. However, this was largely ad hoc and relied only on the knowledge of individual staff. While Land Councils should undertake their own risk assessment, the ANAO notes that the risks faced by the Land Councils are changing and include higher expectations of stakeholders regarding the delivery of responsive, high quality and cost-effective services. In particular, the increasing area of Aboriginal land that is administered by each Land Council on behalf of the traditional owners will require a new focus on the development and management of that land, including the need to monitor an increasing number of land use agreements.

30. To assist the two large Land Councils to focus on priorities and to allocate resources accordingly, it is important that risks are clearly identified, formally acknowledged, documented, treated and communicated throughout each organisation. The ANAO suggests that the CLC and the NLC consider including responsibility for the oversight of risk management and process improvement in the charter of their audit committees and seek to have the membership of their audit committees reflect this broader role. That is not to say that the audit committees would be actually responsible for implementation of risk management and process improvement but would at least need to have some oversight of, and report back on, any strategy, implementation and monitoring and review arrangements.

Agencies' responses

ATSIC

31. While the Aboriginal and Torres Strait Islander Commission (ATSIC) may hold differing views to those expressed by the ANAO on a number of specific issues arising in the course of the Performance Audit of the Aboriginals Benefit Account, ATSIC is prepared to accept the recommendations of the report relating to it without qualification.

32. The ANAO is aware of the significance of its report in the context of the Government's interest in making amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* in 2003 to promote better social and economic outcomes for traditional owners. ATSIC has advised, and the ANAO agrees, that the proposed report will be of importance to the Government and other stakeholders in considering the specific amendments.

Anindilyakwa Land Council

33. The Anindilyakwa Land Council supports the recommendations in the ANAO report and they are consistent with the reform process the ALC has been going through. Progress has been made and further reform and recommendations will be implemented in the next six months.

Central Land Council

34. The CLC welcomes the audit findings which state that the CLC is operating in accordance with the Land Rights Act, consults extensively with traditional landowners and performs well at a project management level. The CLC is disappointed that the audit failed to provide a more thorough assessment of the operations of the CLC, given the extremely detailed briefings provided to the audit team. Instead, the audit focuses almost exclusively on the need for enhanced performance management information and systems in order to make such an assessment. The CLC considers the detailed level of information provided should have allowed more insightful judgements to be made. The draft report is somewhat limited in scope, and therefore usefulness.

Northern Land Council

35. The NLC welcomes the audit's findings that the organisation is operating in accordance with the Land Rights Act, consults extensively with traditional landowners and performs well at a project management level. The NLC looks forward to implementing the relevant recommendations as resources allow. In relation to the overall report, the findings and recommendations in relation to the management and decision making over the ABA will be very valuable in terms of improving outcomes for Aboriginal people.

36. The report is, however, somewhat limited in scope. The lack of consideration of the unique cultural context and Aboriginal governance is a lost opportunity. The focus on performance reporting as the only means of assessing efficiency and effectiveness is also a limitation. While it is appropriate for the ANAO to express the view that there have been improvements in reporting and management practices which, subject to resources could be usefully adopted, it does not follow that a reasonable assessment cannot be made of organisations which have not yet adopted the new requirements.

Tiwi Land Council

37. The Tiwi Land Council supports those specific recommendations of the ANAO Performance Audit Report as they apply to those particular functions, strategies and development programmes unique to the circumstances and size

of the TLC. Our members particularly value the emphasis in the Report upon performance driven outcomes and the identification of risk management, and are currently implementing measures based upon those recommendations.

ANAO comment

38. The ANAO acknowledges that the Land Councils provided considerable amounts of information, much of it the product of reviews conducted externally. The ANAO also independently collected information during fieldwork in the Land Councils' offices. In addition, the ANAO interviewed Land Council managers to obtain their views of Land Council management systems and performance.

39. As stated in the report, the information obtained did not enable the ANAO to assess whether the Land Councils were fulfilling their functions and delivering their services in an effective and efficient way. Without a systematic approach to performance assessment, underpinned by robust performance information, it is not possible for any agency, nor the ANAO, to form an objective opinion as to the level of performance achieved.

40. While external reviews are useful tools for the Land Councils at a point in time, they do not provide timely performance information to be used for ongoing internal management and decision making purposes. Such performance information should be developed and used by any agency as part of sound management practice.

41. To augment the information provided by the Land Councils, a range of stakeholders were interviewed by the ANAO. Stakeholders supported the ANAO's findings regarding the lack of timely performance information available to them to aid in assessing transparency and accountability. Those stakeholders are increasingly looking for timely information on how Land Councils are performing.

42. The ANAO appreciates the cultural context and particular Aboriginal governance issues, and has acknowledged these in the report. Nevertheless, as with any government agency, the Land Councils are accountable to Parliament under the *Commonwealth Authorities and Companies Act 1997* for the efficient and effective use of their funding. In turn, the ANAO's role is to provide assurance to Parliament that Land Councils have managed appropriately and expended their funding to achieve required outcomes. The scope of the audit reflects this role. However, it also needs to be said that the ANAO does not engage in any management or consulting role, which could be an inevitable conflict with its audit role. The ANAO does endeavour to bring better practice to the attention

of agencies and other organisations, as part of that latter role, in order to add value to public administration.

43. As well as being accountable to Parliament, the Land Councils are accountable to other stakeholders, whether these are traditional owners or those accessing (and in some cases paying) for a service. Such stakeholders should expect, and receive, services to a high standard and have access to sufficient information to make judgements about that service.

Key Findings

The Aboriginals Benefit Account and Land Council Funding

Payments in

44. Royalty equivalent payments into the ABA were made in accordance with the ALRA and the FMA Act. ATSIC has adequate processes in place to appropriate the amount of royalty equivalents and for these funds to be paid into the ABA. There are controls in place at the administrative level and management of processes is satisfactory. However, the ANAO considers that ATSIC could improve the way it gathers information on likely future changes to the royalty streams for more effective results.

Payments out

45. The ANAO found that ATSIC made payments from the ABA in accordance with the legislation. However, there are matters that impact on some payments which were raised by ATSIC and the Land Councils during the audit, including that some payment types are currently not being made (for example, subsection 64(4) payments), while others are being used more often than may have been intended (for example, subsection 64(7) payments).

Land Councils administration funding (64(1))

46. To the extent that Land Councils rely on ABA funding under subsection 64(1), the Land Councils themselves do not have the ability to smooth revenues between years. This occurs because the application of subsection 35(1) requires that surplus funds provided under subsection 64(1) be paid to Aboriginal Councils or Associations⁸ in the area of the Land Council. More generally, the inability for Land Councils to build up a balance makes it difficult for them to deal with large expenditures such as those associated with unexpected capital costs.

Amounts for the benefit of Aboriginals in the Northern Territory (64(4))

47. ATSIC has acted in accordance with the legislation in providing funding under subsection 64(4), given its discretionary nature. However, the ANAO notes

⁸ Aboriginal Councils are established under the *Aboriginal Councils and Associations Act 1976* to perform the functions approved by the Registrar of Aboriginal Corporations. Aboriginal Associations can apply for incorporation under the same legislation.

that little funding is currently being provided through subsection 64(4), following legal advice to ATSIC that the ALRA does not provide for terms and conditions to be attached to grants.

Funding for additional Land Council administrative expenses (64(7))

48. ATSIC made payments from the ABA under subsection 64(7) in accordance with the legislation. The ANAO notes that the two larger Land Councils receive payments under subsection 64(7) to supplement the subsection 64(1) funds and to provide a more consistent level of annual funding. The use of subsection 64(7) reflects regular requests from Land Councils to the Minister for funds greater than those provided under subsection 64(1).

The development of financial strategies

49. ATSIC needs to develop an explicit objective for the management of the ABA fund in consultation with the Land Councils. In determining that objective, there would be a need to consider broader issues such as constraints on royalty equivalent revenue, and the level of net assets that the ABA should maintain in the longer term to cope with variations in the royalty equivalents from year to year. The financial plan for the ABA should also consider the resource needs required for the Land Councils to meet their statutory responsibilities.

Communication with stakeholders

50. There is a need for more open communication between all parties. In particular, the ANAO noted that, while the response to the problems of the equity of the ABA in the early 1990s was appropriate and was supported by the Land Councils at the time, this approach has continued while circumstances have changed markedly.

Investment of available ABA moneys

51. Related to the operation of the investment strategy for the ABA, the ANAO found that there are no performance indicators used in the management of the investment funds of the ABA. The use of performance indicators should be a key part of managing an investment portfolio such as the ABA.

Land Council planning, risk management and use of performance information

Risk assessment and risk management

52. There was no formal, documented risk assessment to support the strategic planning undertaken by the Land Councils. Where Land Councils have strategic plans⁹ in place, there were no apparent links to risk assessment and the actual management of risk. There are many potential risks that affect the Land Councils' ability to carry out their legislative requirements. These should be identified, assessed and, as appropriate, treated, monitored and reviewed regularly. In addition, the Land Councils have not conducted a fraud risk assessment. A majority of the procedures that are in place to detect, prevent and investigate fraud, focus only on financial, as opposed to non-financial, fraud.

53. There is an understanding amongst the Land Councils' operational staff of the potential risk for individual projects. Consequently, many of the actions staff undertake in their daily operations involve risk mitigation. However, this project level process is often reliant on the knowledge of individual staff. To assist the Land Councils to focus on priorities and to allocate resources accordingly, it is important that risks are identified, formally acknowledged, documented, treated as appropriate and communicated throughout the organisation. Lack of such assessments can exacerbate risk mitigation actions by staff where there are inconsistencies and lack of integration of approach. Each Land Council should tailor their risk assessment to reflect the size of the organisation and their operating environment.

Audit committees

54. The NLC has an audit committee that is focused on financial statement reporting and financial management matters. In the TLC, the Management Committee undertakes the role of the audit committee. The ANAO found that the CLC and ALC, did not have audit committees. However, during the course of the audit, the CLC advised that it has undertaken preliminary work in developing an audit committee charter.

Performance information

55. The Land Councils used some management information in selected areas of their operations, such as reporting on the number of Exploration Licence Applications (ELAs) that have been received, consented or refused. However, the ANAO found that there was no performance information, indicators or

⁹ The CLC and NLC have developed strategic plans.

measures that were used systematically in an organised way that would enhance efficiency and effectiveness. In addition, targets had not been developed to provide a basis for assessment of performance by the Land Councils or other stakeholders.

Outcomes and outputs framework

56. The ANAO found that the Land Councils' annual reports contain descriptive details of inputs and activities performed throughout the financial year as well as background information on the functions and legislative requirements of the Land Councils. The ANAO could not determine, from the Land Councils' annual reports, if the Land Councils performed above or below expectation as there was no use of specific outcomes, measures and targets. The ANAO considers that the development and use of an outcome and outputs framework would improve the transparency of Land Council annual reports and assist the Land Councils to comply with the requirements of the Commonwealth Authorities and Companies (Report of Operations) Orders 2002.

Output performance indicators

57. Where Land Councils reported on goods and services that could be reflected as outputs, such as Exploration Licence Applications, any related management information was based only on quantity. There was no specific use of quality or price indicators and there was also no use of targets or historical comparisons to indicate levels of performance achieved over time.

Land Councils' relationships with stakeholders

Stakeholders

58. The Land Councils consulted extensively with traditional owners to obtain their wishes and opinions, and to make informed decisions regarding use of their land. As well, traditional owners and other Aboriginals have a direct influence on the decision making process within the Land Councils via the Full, Executive and Regional Councils. However, there was no formal feedback process for the Land Councils to determine if traditional owners and other Aboriginals were satisfied with the delivery of specific Land Council services.

59. The Land Councils had no structured approach to managing stakeholder relationships or a process whereby stakeholders had an opportunity to provide formal feedback on the quality of Land Council services. For stakeholders, this could lead to concerns about the transparency of Land Council operations. In cases where the Land Councils provide a service to the NT Government, industry

groups or other stakeholders, it is important that these stakeholders are able to comment on the nature and quality of the service being provided. Moreover, developing sound working relationships with stakeholders is more difficult if they are unclear about the roles of the Land Councils and are unable to assess their performance.

Service charter

60. To gain a better understanding of stakeholder expectations, the Land Councils would benefit from developing a service charter in consultation with traditional owners and other stakeholders. Through the development of a service charter, a Land Council would be able to focus on identifying the needs of its stakeholders, the level of service it is committed to provide, and what it would do if it does not meet that goal. It is important to make a start and achieve improvements with experience gained by all parties.

Land Council operations

61. The key business functions assessed by the ANAO aligned with the legislative functions of the Land Councils. Overall, the ANAO found that key business areas had adequate procedures in place to assist staff to comply with legislation and identify traditional owners needs. However, the ANAO found that the Land Councils had not developed suitable performance indicators or targets for key business processes. Such targets would, for example, express quantifiable performance levels to be attained at a future date. The ANAO found there was a lack of data to determine whether the Land Councils' key business processes had been efficient and effective in delivering their services.

Recommendations

Recommendation No. 1
Para. 2.73 The ANAO recommends that, following consultation with the Land Councils, ATSIC amends its financial plan for the ABA to include a clear statement defining the objective of the plan and the purpose of the minimum level of equity.

ATSIC response: Agreed.

Recommendation No. 2
Para. 2.79 The ANAO recommends that ATSIC revise its investment strategy and investment operations to better identify opportunities for improved investment returns on available ABA moneys. Performance indicators should also be developed that would provide benchmarks to assess the performance of ABA investments for the benefit of all stakeholders.

ATSIC response: Agreed.

Recommendation No. 3
Para. 3.25 The ANAO recommends that the Central Land Council (CLC) and the Anindilyakwa Land Council (ALC) establish an Audit Committee as required by the *Commonwealth Authorities and Companies Act 1997*. The ANAO recognises that the ALC is a very small organisation and the Audit Committee function could be incorporated into an existing committee, as it is in the Tiwi Land Council (TLC).

Land Councils' responses: ALC and CLC both agreed.

Recommendation No. 4
Para. 3.29 The ANAO recommends that the Land Councils put in place a formal risk management process including procedures to identify, assess, treat and manage risks including those related to traditional owner identification. The oversight of risk management could be the responsibility of an audit committee. If this oversight function is considered appropriate, the Land Councils should seek to have the membership of their audit committees reflect this broader role.

Land Councils' responses: ALC, CLC, NLC, TLC all agreed.

**Recommendation
No. 5
Para. 3.62**

The ANAO recommends that the Land Councils finalise the development of an outcomes and outputs framework that reflects their overall strategic direction, in consultation with the Minister and ATSIC. The framework should provide the basis for preparing budget estimates and reporting on performance in their annual reports. As well, it should:

- assist proper monitoring of performance against established indicators and targets;
- assist management to ensure that resources are efficiently utilised; and
- reflect strategic, operational and individual project plans based on a comprehensive risk assessment.

Land Councils' responses: ALC, CLC, NLC, TLC all agreed.

**Recommendation
No. 6
Para. 4.18**

The ANAO recommends that as part of their accountability to stakeholders, the Land Councils develop an appropriate service charter, as well as a practical strategy to obtain the views of key stakeholders on their level of satisfaction with the Land Councils' service delivery. The charter should include service standards and be used in performance assessment and management decision processes to achieve greater efficiency and effectiveness.

Land Councils' responses: ALC and NLC both agreed.

CLC disagreed.

TLC agreed with qualification.

**Recommendation
No. 7
Para. 5.58**

The ANAO recommends that Land Councils regularly monitor and review the performance of their key business processes, and use the results to assist in decision making and for reporting to external stakeholders. This approach should ultimately be part of a wider performance information system, which provides for assessment to be made in a systematic way across the organisation, rather than just for isolated activities.

Land Councils' responses: ALC, CLC, NLC all agreed.

TLC agreed with qualification.

Audit Findings and Conclusions

1. The role of the Land Councils and background to the audit

This chapter provides background to Aboriginal land rights in the Northern Territory, the roles of the four Land Councils in the Northern Territory and the Aboriginals Benefit Account administered by the Aboriginal and Torres Strait Islander Commission. The chapter also outlines the audit objective, scope and methodology and the reasons for the audit including a request from the Minister for Immigration and Multicultural and Indigenous Affairs.

The Aboriginal Land Rights (Northern Territory) Act 1976

1.1 In February 1973, the Commonwealth Government set up a Royal Commission under Mr Justice Woodward to investigate how land rights for Aboriginal people might be achieved in the Northern Territory (NT). Justice Woodward's first report in July 1973 recommended that a Central Land Council (CLC) and a Northern Land Council (NLC) be established in order to present to him the views of Aboriginal people in the NT. Justice Woodward's second report was produced in April 1974. It was based on wide distribution of a first report, submissions from over 100 persons, companies and organisations (including the two Land Councils), visits to 26 Aboriginal communities and public hearings over eight days in Darwin and Alice Springs. The recommendations contained in the Royal Commission report provided the basis for the Aboriginal Land Rights Act. The first recommendation was that 'Aboriginal land rights legislation should be introduced into the Australian Parliament.'

1.2 The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) was passed in 1976 and became law on 26 January 1977. The long title of the ALRA provides for the granting of Traditional Aboriginal Land in the NT for the benefit of Aboriginals, and for other purposes. The granting of title to an Aboriginal Land Trust¹⁰ representing traditional owners is the final step in the land claim process.

1.3 The ALRA combines concepts of traditional Aboriginal law with property rights associated with land ownership. Under the ALRA, traditional owners who are granted land are able to exercise considerable control over mining and other activities on their land. For example, Part IV of the Act allows traditional owners to veto minerals exploration for ongoing five-year periods (section 48) or, alternatively, to negotiate the terms and conditions of exploration licences and mining interests (sections 44, 45 and 46). The Governor-General can overrule

¹⁰ Under the ALRA, Aboriginal Land Trusts are established by the Minister for Immigration and Multicultural and Indigenous Affairs to hold title to land in the NT for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned (Section 4(1)).

Aboriginal objections to exploration or mining in cases of national interest, after proclamation (section 40). To date, however, this has not occurred.

Functions of Land Councils

1.4 While both the CLC and the NLC were established to assist the Royal Commission, the passing of the ALRA gave them statutory powers and responsibilities. The Tiwi Land Council (TLC), representing people of the Bathurst and Melville Islands, was created in 1978 following a successful strategy to secure their own Land Council independent of the two mainland Land Councils. The Anindilyakwa Land Council (ALC), representing Aboriginals in the Groote Eylandt archipelago, was established under subsection 21(3) of the ALRA, with effect from 1 July 1991. The area of the ALC was previously covered by the NLC.

1.5 The functions of the Land Councils are set out in section 23 of the ALRA (refer to Appendix 1), and include:

- ascertaining and expressing the wishes and the opinion of Aboriginals living in the area of the Land Council as to the management of Aboriginal land in that area, and as to appropriate legislation concerning the land;
- protecting the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council;
- assisting Aboriginals claiming to have a traditional claim to an area of land within the area of the Land Council in pursuing the claim;
- consulting with traditional Aboriginal 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; and
- assisting Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities).

1.6 Consequently, Land Councils provide a key service for traditional Aboriginal landowners and other Aboriginals with an interest in land in the NT. A critical role of the Land Councils is to consult with traditional Aboriginal landowners and to obtain their consent on matters affecting their land before any action is taken. This informed decision making process requires the input of skilled people in the administrative arm of a Land Council including anthropologists, lawyers, mining experts, accountants and administrators.

1.7 The Land Councils face a number of obstacles associated with indigenous service delivery. Their services need to be provided over large areas of land, which are sometimes inaccessible. Their constituents have a low level of literacy

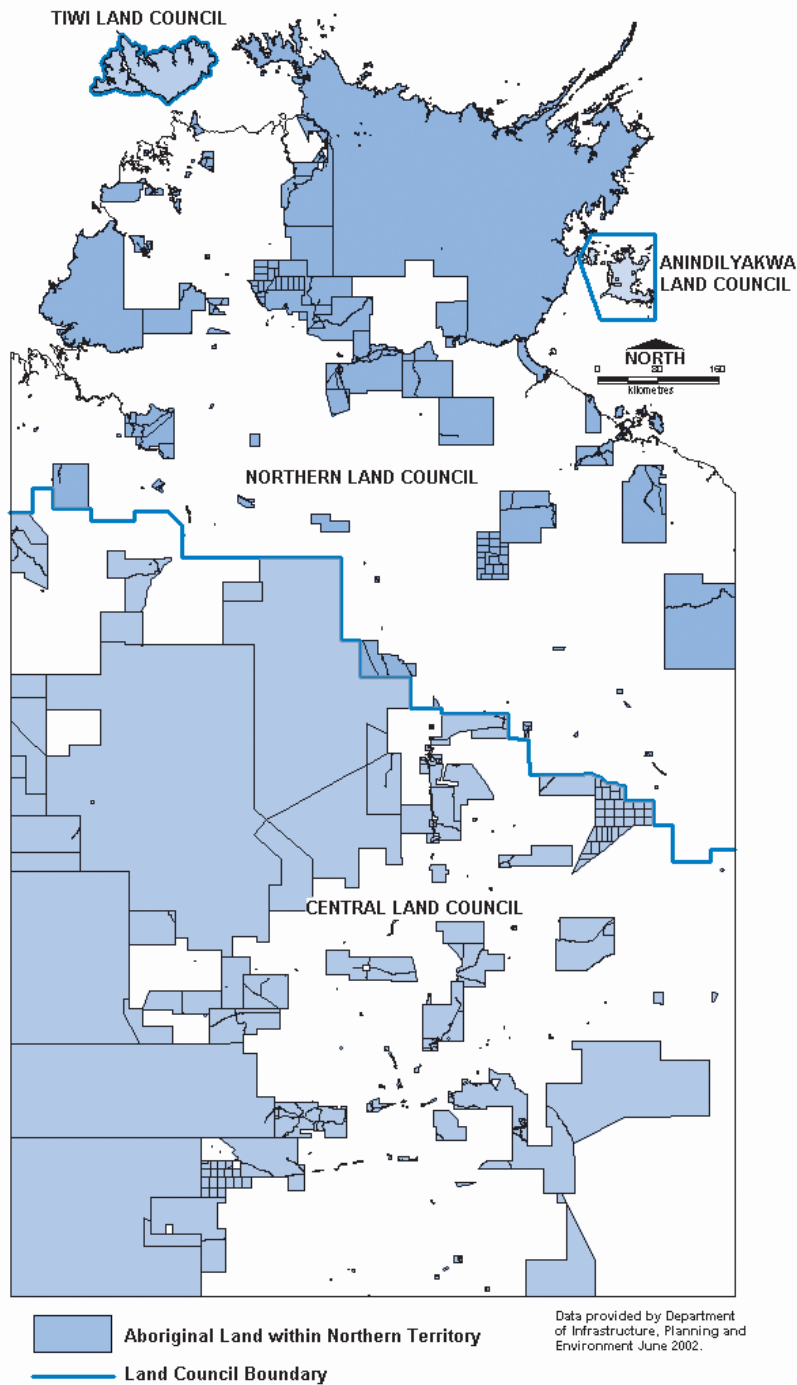
(‘At the Year 3 level, only three to four per cent of Aboriginal students in remote areas of the NT achieved the national benchmark in reading in 1999’¹¹). In addition, contacting traditional owners may involve finding Aboriginals who have been separated from their family or may not live on the land under claim.

1.8 The map below shows the areas of responsibility for each of the four Land Councils and the Aboriginal land in these areas. Of the four Land Councils the NLC represents the largest Aboriginal population of around 30 000 (covering an area of 559 569 square kilometres, of which 196 760 square kilometres is Aboriginal land). The CLC represents a population of 18 000 (covering 771 747 square kilometres of which 385 662 square kilometres is Aboriginal land). The TLC and ALC are considerably smaller in terms of both the population being represented and land mass. The TLC represents around 2500 Tiwi people (covering 5697 square kilometres on Melville Island and a further 207 square kilometres on Bathurst Island) and the ALC represents a population estimated to be 2600 (covering 2260 square kilometres on Groote Eylandt and a further 26 square kilometres on Bickerton Island).

¹¹ Australian National Audit Office, Audit Report No. 43 2001–2002, *Indigenous Education Strategies in the Department of Education, Science and Training*.

Figure 1.1

Areas of responsibility for each of the four Land Councils and the Aboriginal land in these areas



Land Councils' representative bodies

1.9 Section 29 of the ALRA requires each Land Council to have a representative body that is drawn from Aboriginals within the area of the Land Council. One of the primary functions of the Land Councils is to act as an interface between two systems of law: the Australian system and Aboriginal law. This was recognized when the ALRA was enacted. The Land Councils are part of a system which seeks to ensure that decisions made under Aboriginal law can be recognised and executed under Australian law. The Full Council is the manifestation and representation of Aboriginal law, although its functions are circumscribed and performed under Australian law. The members are not chosen through a democratic vote, but in accordance with customary law. The Full Council acts as a 'house of review' for agreements and decisions, and certifies that the non-Aboriginal processes and the Aboriginal processes have both been satisfied.

1.10 The Full Councils for the CLC and NLC each contain some 80 representatives. These Full Councils have, in turn, established Regional Councils, nine in the case of the CLC and seven in the case of the NLC. Both the CLC and the NLC have Executive Councils, which include one representative from each Region. Appendix 2 contains a map that illustrates Regional Council areas. The TLC has a Full Council of 32 members which has established a management committee to make decisions in relation to the administration of the TLC¹². The ALC has a Full Council of 19 members drawn from nine clans in the ALC region¹³.

1.11 Elections for Full Councils are held every three years, including the election of the Chairman, Deputy Chairman and Executive members. In the case of the CLC and NLC, Full Council meetings occur two to three times a year to allow members to determine the policy and the direction of their Land Council, as well as to formalise key decisions on land use. The CLC and NLC Executive Councils have powers delegated to them for managing business between Full Council meetings and meet regularly throughout the year. The Regional Councils established by the CLC and NLC are responsible for decisions over local issues to the extent of their delegations. The CLC's Full Council is supported by 126 staff and the NLC's by 121 staff. The TLC and ALC's administrative support comprises only one or two staff members.

Land Councils' regional services

1.12 The CLC and NLC have established Regional Offices to assist with delivery of services. The CLC has nine Regional Offices and the NLC has seven. This

¹² Tiwi Land Council Annual Report 2000-2001.

¹³ ALC membership and procedures.

structure reflects the area they cover, the remoteness of many communities and language and literacy barriers. The CLC and NLC have regional services sections in their central offices in Alice Springs and Darwin to provide administrative and logistical support to the regional offices. The Land Councils take advantage of economies of scale through centralised purchasing and corporate services, and also ensure consistent delivery of services through centralised legal, mining and anthropology sections. The regional office staff meet regularly to discuss issues, share ideas and to undertake training. This arrangement also contributes to consistent messages and approaches being taken in the regions.

1.13 Regional Offices are a focal point in communities and a good vehicle for disseminating information. Regional Offices play a valuable role in Land Council business, and provide a range of other assistance and information to communities. Land Councils are often called upon to assist individuals in remote communities where other service providers are not represented. This includes assistance with filling in government and other forms, assistance with travel and contacting organisations on behalf of community members.

Public accountability requirements of the *Commonwealth Authorities and Companies Act 1997*

1.14 While the elected representatives of a Land Council consider issues and make recommendations based on traditional aboriginal law, the Chair and administrative arm are subject to the requirements of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Section 22A(2) of the ALRA states that the Chair of a Land Council is the only director of the Council for the purposes of the application of the provisions of the CAC Act, except for the provisions relating to the conduct of officers which is the responsibility of the whole Council. Section 9 of the CAC Act requires the directors to prepare an annual report in accordance with Schedule 1 of the Act. This Schedule requires the annual report to include financial statements prepared in accordance with Finance Minister's Orders (FMO's) and a report of operations in accordance with Commonwealth Authorities and Companies (Report of Operations) Orders 2002 (the CAC Orders)¹⁴. The CAC Orders requirements include producing an annual report to stakeholders, which provides a review of how the Commonwealth authority (Land Council) has performed during the financial year in relation to: its statutory objective and functions, as the case requires; its corporate plan, where applicable; and its principal outputs and contribution to outcomes. Other responsibilities include, establishing an audit committee, producing audited financial statements and implementing fraud control plans.

¹⁴ These orders apply to Commonwealth authorities in relation to financial years ending on or after 30 June and replace the Commonwealth Authorities and Companies Orders 1998.

In addition, section 34(1) of the ALRA provides the Minister for Immigration and Multicultural and Indigenous Affairs with the power to direct the Land Councils to prepare their estimates in accordance with his direction.

The Minister for Immigration and Multicultural and Indigenous Affairs

1.15 The Minister has a significant and extensive role in the administration of ALRA, including:

- establishing Land Councils and approving numerous matters connected with the operations of Land Councils;
- consenting to various activities on Aboriginal land, and dealings with traditional owners;
- establishing and appointing the membership of Land Trusts;
- recommending grants of land under the ALRA;
- appointing an arbitrator or a mining commissioner;
- giving various consents or approvals, and attending to various matters, under the exploration and mining provisions contained in Part IV of the ALRA;
- responsibility for processing the appointment of an Aboriginal Land Commissioner by the Governor-General;
- appointing the Chairman of the Advisory Committee established under the ALRA in connection with the ABA, and approving various payments out of and into the ABA; and
- publishing the details of an agreement in respect of roads and tabling a proclamation of a mine proceeding in accordance with the national interest.

1.16 Full details of the Minister's role are provided at Appendix 3.

Funding to and by the Aboriginals Benefit Account (ABA)

Creation of the ABA

1.17 To develop and diversify the NT economy the Commonwealth Government opened up the Aboriginal reserves to large-scale mining projects in the 1950s. Statutory royalties on minerals produced on Aboriginal reserves were paid into an Aborigines (Benefits from Mining) Trust Fund (ABTF) for the

benefit of NT Aboriginal people¹⁵. The ABTF was established in 1960, within the NT Government Administration. It received its first inflow of royalties from the Groote Eylandt mine in 1966–67, and its first royalty inflow from the Nabalco mine located at Nhulunbuy in 1971.

1.18 In 1977, the ABTF was incorporated into the ALRA. The ABTF became the Aboriginals Benefit Trust Account (ABTA), and was interposed as a ‘buffer’ between the Commonwealth Treasury and Aboriginal interests, under the control of the Minister for Aboriginal Affairs.

1.19 In 1990, as part of the general reorganisation of Aboriginal affairs, the ABTA became a part of the newly formed Aboriginal and Torres Strait Islander Commission (ATSIC) still under the control of the Minister for Aboriginal Affairs. In January 1998, the ABTA became the Aboriginals Benefit Reserve and from July 1999 the Aboriginals Benefit Account (ABA). Responsibility for ATSIC was transferred to the Minister for Immigration and Multicultural and Indigenous Affairs after a change in the Administrative Arrangement Orders in October 2001. The ABA is administered by ATSIC’s Native Title and Land Rights Centre.

Funding

1.20 The funding available to the Land Councils under ALRA is dependent upon the stream of royalty equivalents received by the ABA.

1.21 Over the period 1978–79 to 1989–90, the annual royalty equivalents revenue increased from \$1.1 million to \$34.3 million¹⁶. However, since that time, annual royalty equivalents have been relatively static. In the main, the royalty equivalent stream has remained between \$27 million and \$33 million a year throughout the past 10 years. However, royalty equivalents jumped to \$46 million in 2001–02, reflecting increased royalties from individual mines due to increased prices and production. Figure 2.1, in Chapter 2, provides details of royalty equivalents since the ALRA commenced.

1.22 Payments out of the ABA are made under section 64 of the ALRA as follows:

- 40 per cent is for administration of the Land Councils;
- 30 per cent is distributed by the Land Councils to Aboriginal organisations in areas affected by mining; and
- the remainder is applied at the discretion of the Minister for Immigration and Multicultural and Indigenous Affairs and can be used for: payments for the benefit of Aboriginals in the NT; extra payments to NT Land Councils; administration of the ABA; or increasing the equity of the ABA.

¹⁵ National Institute of Economics and Industry Research, *The National Competition Policy Review of part (IV) of the Aboriginal Land Rights (NT) Act 1976*, July 1999, p. 8.

¹⁶ Drawn from figures provided by the ABA.

1.23 Distribution of the 40 per cent for the administration of the Land Councils is on the basis of the population of Aboriginal people in each Land Council and is allocated as follows:

- Northern Land Council—22 per cent;
- Central Land Council—15 per cent;
- Tiwi Land Council—2 per cent; and
- Anindilyakwa—1 per cent.

1.24 Three of the four Land Councils currently receive additional administrative funding approved by the Minister.

Native Title Act

1.25 As well as performing the functions under the ALRA, the CLC and NLC are representative bodies under the *Native Title Act 1993* (NTA). The NTA gives statutory recognition to Indigenous common law rights and addresses land management issues by establishing a land use agreement structure. Section 203B of the NTA outlines the functions of representative bodies which include: facilitation and assistance; certification; dispute resolution; notification; agreement making; and internal review functions.

1.26 The administration of these functions by the Land Councils often parallels their roles under the ALRA. For example, anthropological research is required to determine the traditional Aboriginal owners under both ALRA and NTA. Funding to undertake this role is provided by way of grant moneys from ATSIC.

1.27 The NLC is the Native Title Representative body for the areas of the TLC and the ALC.

Aboriginal land tenure in the Northern Territory

1.28 Since the ALRA was enacted in 1977, 44 per cent of the land in the NT has become Aboriginal land. Of this, title to 19 per cent was granted at the commencement of the Act and are listed in Schedule 1. Title to most of the other 25 per cent has been granted to traditional Aboriginal owners after successful land claims undertaken by two Land Councils, the CLC and NLC. The remainder of the 25 per cent has been acquired as a result of amendments to Schedule 1 of the ALRA. Under the ALRA, land claims are prepared by the Land Councils on behalf of the claimants and are heard by the Aboriginal Land Commissioner, a Judge of the Federal or Northern Territory Supreme Court. The ALRA specified a 20-year period for claims to be heard by the Land Commissioner, which closed

in 1997 (the 'sunset' clause)¹⁷. At the time of the audit there are some 92 land claims to be settled. As well as making claims over the land there have also been claims made over the beds and banks of rivers. A ruling on a claim over the seabed in bays and gulfs made by Justice Olney, in December 1999, held that Crown land located on the seabed below the low water mark may not be claimed.

Aboriginal Land Commissioner

1.29 Under the ALRA, the number of Land Commissioners is determined by the Minister. The Minister then chooses nominees to be appointed by the Governor-General. At the time of the audit there was one Commissioner. The principal functions of an Aboriginal Land Commissioner are set out in section 50(1)(a) of the ALRA as follows:

- to ascertain whether those Aboriginals or any other Aboriginals are the traditional Aboriginal owners of the land; and
- to report his/her findings to the Minister and to the Administrator of the NT, and where he/she finds that there are Aboriginals who are the traditional Aboriginal owners of the land, make recommendations to the Minister for the granting of the land or any part of the land in accordance with subsections 11 and 12.

Stakeholders

1.30 The Land Councils' major stakeholders are traditional owners and other Aboriginals living in the area of a Land Council. The Land Councils also have interactions on a regular basis with a variety of Commonwealth and NT departments and agencies as well as with private sector interests. Key stakeholders are the Minister for Immigration and Multicultural and Indigenous Affairs (whose role is discussed earlier), ATSIC, the NT Government, the mining industry and the pastoral, tourism and fishing industries. Other agencies that have an interest in land management on Aboriginal land and in the operations of the Land Councils include the Indigenous Land Corporation (ILC) and the National Heritage Trust (NHT). The Land Councils should be able to identify their main stakeholders, their interests that need to be addressed, and how best to meet those interests. This is a basic management tool and one that is central to accountability for performance.

¹⁷ Land Councils estimate that there is another five per cent of claimable land under the ALRA registered prior to the sunset clause in 1997 and potentially 10 per cent if current test cases are successful.

Aboriginal and Torres Strait Island Commission (ATSIC)

1.31 While ATSIC's administration of the ABA was examined during the audit, ATSIC is also a stakeholder through its broader role in Indigenous affairs. The Land Councils and ATSIC both have representative bodies and advocate Aboriginal interests and issues. ATSIC has a national as well as regional and local focus, while the Land Councils are predominantly concerned with their geographical areas within the NT.

The Northern Territory Government

1.32 Sections 71, 73 and 74 of the ALRA refer to the application of NT legislation in relation to the Commonwealth legislation. Section 74, of the ALRA provides that NT laws apply to Aboriginal land as long as they are 'capable of operating concurrently' with the ALRA. In considering whether an NT law is able to operate concurrently with the ALRA account must be taken of the traditional rights to use or occupy Aboriginal land, as per section 71 and section 73. Under section 73, the NT Legislative Assembly is able to make reciprocal laws that are concurrent with the ALRA and Commonwealth laws, in relation to:

- protection of sacred sites (reciprocal legislation—Northern Territory Aboriginal Sacred Sites Act);
- regulation or authorisation of entry to Aboriginal land (reciprocal legislation—*Aboriginal Land Act 1978* (NT));
- protection or conservation of wildlife; and
- regulation and prohibition of entry, fishing and other activities in waters of the seas.

Mining industry

1.33 Mining contributes nearly 20 per cent of the NT's Gross State Product and employs over 4000 people¹⁸. The mining industry also provides infrastructure such as towns (for example Nhulunbuy, Alyangula and Jabiru), roads, airfields and water supply to remote areas. The major mineral resources include:

- manganese on Groote Eylandt;
- bauxite at Gove;
- uranium at Ranger (Jabiru);
- lead and zinc at McArthur River;

¹⁸ HORSCATSIA, *Unlocking the Future: The Report of the Inquiry into the Reeves Review of the Aboriginals Land Rights (Northern Territory) Act 1976*, August 1999.

- oil and gas at Mareenie Field and Palm Valley; and
- gold at various locations such as the Tanami desert.

1.34 Until 1987, if traditional owners agreed to an initial exploration of a site by a mining company they could still refuse, at a later date, consent for a company to mine that site. Amendments to the ALRA, made in 1987, mean that once traditional owners consent to the granting of an exploration licence, full scale mining can proceed upon agreement between the Land Council and the intending miner, without further reference to the traditional owners unless an agreement says otherwise.

1.35 The mining exploration consent process involves many participants, including: the NT Department of Business, Industry and Resource Development (DBIRD); Land Councils; traditional land owners; the Minister for Immigration and Multicultural and Indigenous Affairs; and the NT Mining Minister. A detailed flow chart of the mining consent process is included at Appendix 4.

Pastoral, tourism and fishing industries

1.36 Under the ALRA, the Land Councils have the statutory responsibility to consult with traditional owners over any proposal concerning the use of Land Trust land. The proposed use of Aboriginal land for any activity including pastoralism, tourism and mining requires traditional owners to provide their consent. Once consent is granted a licence agreement or lease is prepared and entered into by the proponent and the Land Trust. The licence agreement details the terms, the area involved and payments to be made to the traditional owners.

Reviews

1.37 A general review of the ALRA has been conducted twice since its enactment. Firstly, in 1984 by Justice Toohey and secondly, in 1997–98, by Mr John Reeves QC.

1.38 In July 1997, the then Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon. John Herron announced a review of the ALRA. Mr John Reeves QC was appointed to conduct the review on 8 October 1997 and, in August 1998, his report *Building on land rights for the next generation*, was published.

1.39 Although the Government is yet to respond, a Parliamentary inquiry by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) into the report rejected the majority of its recommendations¹⁹. Refer to Appendix 5 for details.

¹⁹ The Office of Aboriginal and Torres Strait Islander Affairs developed a paper providing options for amendments to the ALRA. The options paper has been provided to the Northern Territory Government and the Northern Territory Land Councils.

Other recent reviews

1.40 Other reviews have been conducted and include:

- the Centre for Aboriginal Economic Policy Research (CAEPR) conducted an evaluation²⁰ in 1999 focussing on the Reeves Report;
- in 1999, the National Institute of Economic and Industry Research undertook a Competition Policy Review of Part IV (mining provisions) of the ALRA;
- in 1994, the ANAO conducted an efficiency audit on aspects of the financial operations of the NLC. The audit made 52 recommendations relating to improvements to be made to NLC's financial operations. A follow up audit in 1995 found that the NLC had made significant progress in addressing the concerns raised by the ANAO in 1994, however further action was required to rectify some outstanding concerns. The ANAO made some additional recommendations aimed at further improving the operations of the NLC; and
- recently the ALC has been the subject of a review initiated by the former Minister of Aboriginal and Torres Strait Islander Affairs, Senator the Hon. John Herron. Owing to some discontent among residents of Groote Eylandt and Bickerton Island the Minister engaged a firm of accountants, Walter and Turnbull, to investigate a number of allegations against the Land Council. For details of this review refer to Appendix 7.

Reason for the audit

1.41 This audit arose from a letter of 21 December 2001 from the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon. Philip Ruddock MP, to the Auditor-General in which he requested an audit of the efficiency and effectiveness of the four NT Land Councils. In a further letter of 26 January 2002, the Minister asked that the audit include the relevant parts of ATSIC's administration of the ABA. In referring to the Government's consideration of amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Minister emphasised:

...the importance of the conduct of the Performance Audits to the Government, insofar as it is concerned to consider amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*. Those amendments will in part go to the financing, operations and accountability of the Land Councils and, therefore, your audits will be very relevant.

²⁰ J C Altman, F Morphy and T Rowse (eds), *Land Rights at Risk? Evaluation of the Reeves Report*, CAEPR research monograph No. 14, 1999. This monograph is closely based on a two day conference jointly convened by the Department of Archaeology and Anthropology (ANU) and CAEPR at The Australian National University on 26 and 27 March 1999.

1.42 In agreeing to undertake the audit, the Auditor-General recognised that an independent ANAO audit of the Land Councils would assist the Government, and subsequently the Parliament, in its deliberations.

Objectives and scope of the audit

1.43 The objectives of the audit were to assess whether the governance arrangements used by the ATSIC Native Title and Land Rights Centre and the NT Land Councils are appropriate. The audit addressed two sub-objectives and assessed whether:

- the ATSIC Native Title and Land Rights Centre meets its legislative requirements concerning the ABA in an effective and efficient manner; and
- the Land Councils are effective and efficient in managing their resources to meet the objectives of the *Aboriginal Land Rights (NT) Act 1976*.

1.44 While the CLC and the NLC are also representative bodies for the *Native Title Act 1993* (NTA), funding for this purpose is provided by way of a separate ATSIC grant. No funding for this role is provided to Land Councils under the ALRA from the ABA and as such does not originate from mining royalty equivalents. While the ANAO did undertake some fieldwork in relation to functions undertaken by Land Councils under the Native Title Act, the ANAO did not carry out any detailed analysis in this area. Consequently, the report does not include an examination of the CLC and NLC's performance as representative bodies for the NTA.

Audit criteria

1.45 Following discussions with ATSIC and the Land Councils, the ANAO developed specific audit criteria. These criteria are highlighted at the beginning of each Chapter.

Audit methodology

1.46 In order to form an opinion on the audit objective, the audit team:

- conducted fieldwork at the head offices of the CLC in Alice Springs, the NLC in Darwin, the ALC at Angurugu on Groote Eylandt, the TLC in Darwin, and ATSIC's ABA office in Darwin. The work undertaken in these offices included examining key documents, databases and files and interviewing key personnel;
- attended a Full Council meeting of the NLC;

- undertook fieldwork in three NLC Regional Offices (Katherine, Nhulunbuy and Ngukurr) and in two of the CLC's Regional Offices (Kalkarindji and Lajamanu);
- visited nine Aboriginal communities; and
- held discussions with various Commonwealth and NT agencies and representatives from the mining, pastoral and fishing industries.

1.47 The ANAO also held discussions with other stakeholders to obtain their views on the Land Councils operations and performance. A complete list of aboriginal communities visited and a list of Commonwealth, State and other bodies consulted is at Appendix 6.

1.48 Two consultants were used during the course of the audit. Mr Pat Farrelly assisted with all elements of the audit, and Arthur Andersen (now Ernst & Young) undertook some of the financial aspects of the audit because of their experience in conducting financial statement audits of the Land Councils.

1.49 The audit was conducted in conformance with ANAO auditing standards at a cost of approximately \$631 000.

Structure of report

1.50 Particular Chapters focus on the following issues:

- The Aboriginals Benefit Account and Land Council funding;
- Land Councils planning, risk management and the use of performance information;
- Land Councils' relationships with stakeholders; and
- Land Council Operations.

2. The Aboriginals Benefit Account and Land Council Funding

This chapter examines ATSIC's administration of the Aboriginals Benefit Account and Land Council funding and whether payments are made in accordance with the legislation. The chapter also identifies a number of matters in relation to the performance and the operation of the Aboriginals Benefit Account.

Background

2.1 The ANAO examined Land Council funding, in particular the mechanisms whereby ATSIC arranges for royalty equivalent funds to be paid into the Aboriginals Benefit Account (ABA) and distributes these to Land Councils under the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).

2.2 The ANAO notes that the funding mechanisms for the Land Councils are in the main directed by legislative provisions of the ALRA. Compliance with enabling legislation is a key principle of effective governance.

2.3 In examining the funding mechanisms the ANAO considered:

- whether ATSIC's administration of the funding mechanisms accorded with the provisions of the ALRA; and
- whether the ABA is administered in an effective and efficient manner.

2.4 The ANAO recognises that a number of external factors have influenced the funding environment of the Land Councils. Until 1997–98, the Land Councils operated as Commonwealth statutory authorities, but without a public sector auditor.²¹ This history, and the relatively small size of the Land Councils and their location, has limited their exposure to reforms in public sector administration and accounting, in particular, the increased emphasis on accountability and service delivery since the introduction of the CAC Act in 1997.

Sources of Land Council Funding

2.5 The Land Councils' main source of funds is payments from the ABA, which is administered by the Aboriginal and Torres Strait Islander Commission (ATSIC).

²¹ Until 1997–98, the Land Councils had not had their financial statements audited by the Auditor-General. In 1997, the provisions of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) required that Land Council reporting fall under the arrangements set out in the CAC Act, and that the Auditor-General audit their financial statements.

As indicated in Paragraph 1.22, 40 per cent of ABA payments are for administration of the Land Councils. These payments are determined under the ALRA. Three of the Land Councils also receive significant funding from sources other than the ABA.

2.6 The table below sets out the sources of funds for the four Land Councils for the 2001–02 financial year.

Table 2.1

Sources of funds for the four NT Land Councils 2001–02

Funding source	NLC		CLC		TLC		ALC	
	\$	per cent	\$	per cent	\$	per cent	\$	per cent
ABA 64 (1)	7 517 298	46	4 979 210	37	887 640	69	284 951	50
ABA 64 (7)	1 747 937	11	3 305 290	25	0		250 454	44
ATSIC Native Title grants	3 065 335	19	2 989 278	22	0		0	
Other grants	1 618 076	10	combined above		366 074	29	0	
Other revenue	2 222 234	14	2 086 558	16	28 392	2	34 474	6
Total	16 170 880	100	13 360 336	100	1 282 106	100	569 879	100

Source: Annual reports of the Land Councils 2001–02.

ABA funding of Land Councils

2.7 Table 2.1 shows that payments from the ABA constitute more than 50 per cent of the funding of all Land Councils. Part VI of the ALRA provides the legislative basis for the operation of the Aboriginals Benefit Reserve (now known as the ABA²²) with section 63 containing the provisions for payments into the ABA and section 64 containing the provisions for payments out of the ABA.

2.8 Subsection 62(2) of the ALRA provides that the ABA is a special account under section 21 of the *Financial Management and Accountability Act 1997* (FMA Act). The ABA's banking and investment arrangements, financial administration and financial statement reporting come under the provisions of the FMA Act.

²² The *Financial Management Legislation Amendment Act 1999* converted the Aboriginals Benefit Reserve (ABR) to a Special Account under section 21(1) of the FMA Act on 1 July 1999. As a consequence of the amendment, the ABR became known as the Aboriginals Benefit Account (ABA).

Payments to the ABA

2.9 Payments to the ABA are made under section 63 of ALRA. The main provision is contained in subsection 63(2) which states:

...there shall be paid into the Reserve, from time to time, out of the Consolidated Revenue Fund, amounts equal to the amounts of any royalties received by the Commonwealth or the NT in respect of a mining interest in Aboriginal land.

2.10 The Commonwealth Government provides the funding for the Land Councils. The amount appropriated and paid into the ABA is equal to the royalties received by the Commonwealth and those received and retained by the NT Government.

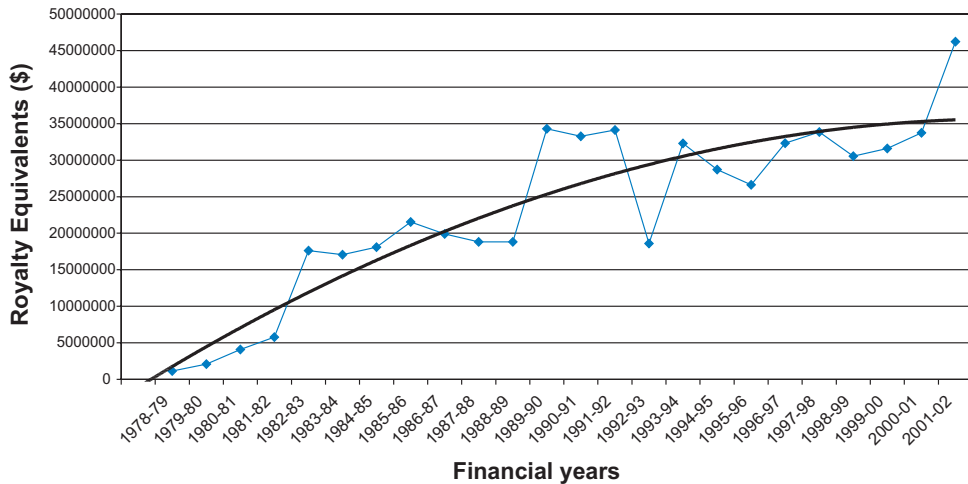
2.11 Currently, the majority of the royalty equivalents can be traced to six major mining operations in the NT. The establishment of new mining operations on Aboriginal land, or the closure of existing mines, would affect future royalty income. The overall outlook for natural resource development in the NT is neither certain, nor strong, leading to uncertainty with regard to royalty equivalents.

2.12 One source that documented thinking in the late 1970s indicated that at the time the legislation was passed, it was expected that royalties from mining would be about four times what they actually were in 1999–2000²³.

2.13 In practice, the amount of royalty equivalents to be paid to the ABA is calculated by the Northern Territory Treasury (NTT). This body is responsible for the collection of royalties on mining in the NT, and also acts as the Assessing Officer for the Commonwealth in respect of uranium produced at the Ranger uranium mine. The NTT and the Commonwealth Department of Industry, Tourism and Resources (DITR) advise the amount of these royalties to ATSIC. ATSIC then organises for this amount to be appropriated and paid to the ABA.

2.14 The graph below shows that royalty equivalents have grown and peaked since the ALRA commenced. The payments to the ABA grew relatively rapidly up until 1989–90. In 1992–93, royalty equivalent payments to the ABA reduced to \$18.6 million as a result of a significant reduction in uranium royalties in that year. Payments were effectively static between 1993–94 and 2000–01. Royalty equivalents jumped to \$46 million in 2001–02, reflecting increased royalties from individual mines due to changes in prices and production, and reinforcing the uncertainty relating to royalty equivalent streams.

²³ Ian Manning: ABA management, investments, performance and history (see reference to expectations current in the late 1970s as documented by Turnbull).

Figure 2.1**Royalty Equivalent Payments to the ABA**

Source: Data provided by ATSIC.

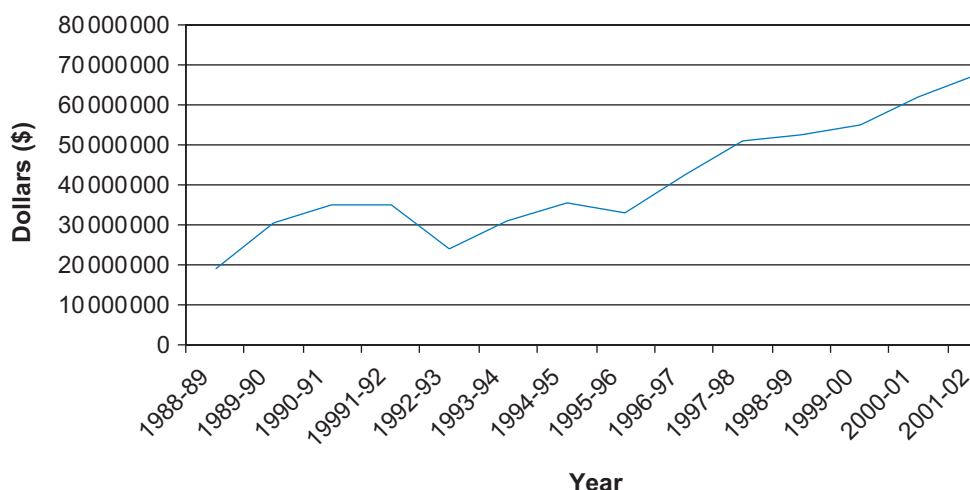
Payments from the ABA

2.15 Once royalty equivalents have been paid into the ABA, section 64 of the ALRA provides for six different areas for funding, as follows:

- 40 per cent of royalty equivalents for administration of Land Councils (64(1));
- 30 per cent of royalty equivalents for areas affected by mining (64(3));
- amounts for the benefit of Aboriginals in the NT (64(4));
- loans (64(4A));
- ABA administration (64(5)); and
- additional funding for Land Council administrative expenses (64(7)).

2.16 The amounts for Land Council administrative expenses (64(1)) and areas affected by mining (64(3)) are determined under the legislation and account for 70 per cent of the royalty equivalent receipts received in any one year by the ABA. The Minister for Immigration and Multicultural and Indigenous Affairs has access to the remaining 30 per cent of the royalty equivalents for discretionary funding under the ALRA. Discretionary funds not spent increase the equity of the ABA. Figure 2.2 shows the growth in the ABA equity for the period 1989–2002.

Figure 2.2
ABA equity 1989–2002



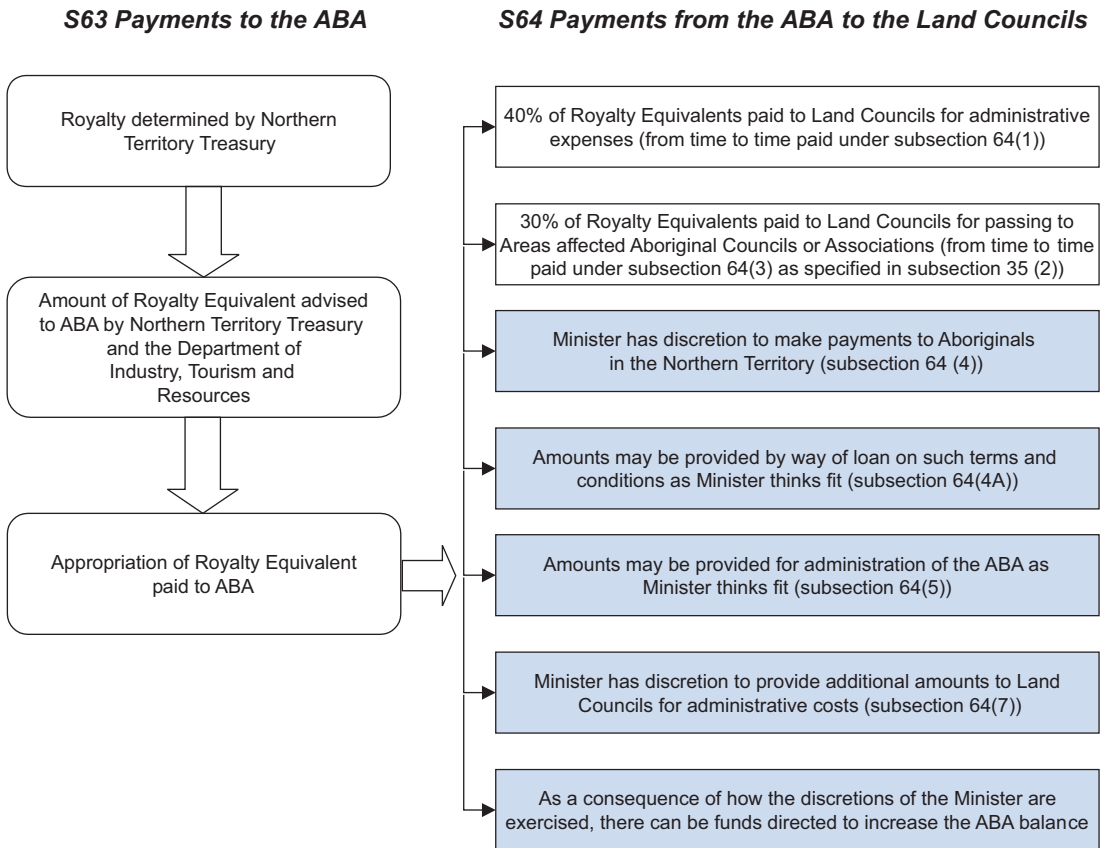
Source: Data provided by ATSIC.

2.17 The ANAO notes that currently there is a Mining Withholding Tax levied on all expenditure from the ABA on amounts paid out from royalty equivalents received. Any amounts that are paid from interest on balances of the ABA are not taxed in this fashion. The tax that is paid on the amounts expended from the ABA is a flat four per cent. The tax is paid on a pay-as-you-go basis and serves to reduce the funds available for distribution to the Land Councils and other beneficiaries of the ABA.

2.18 The following figure illustrates the current ABA funding arrangements, showing the sources of funds under section 63 of the ALRA and the streams of payments under section 64. The shaded boxes on the right hand side show the streams over which the ALRA provides for the Minister to exercise discretion.

Figure 2.3

Current ABA funding arrangements



Source: ANAO analysis.

Accordance with the legislation

2.19 The ANAO examined the administration of the ABA by ATSIC, and whether it was receiving royalty equivalents and making payments in accordance with the provisions of the ALRA and the FMA Act.

Payments in

2.20 The ANAO found that royalty equivalent payments into the ABA were made in accordance with the ALRA and the FMA Act. ATSIC has adequate processes in place to appropriate the amount of royalty equivalents and for these funds to be paid into the ABA. There are controls in place at the administrative level and management of processes is satisfactory. However, the ANAO considers that ATSIC could improve the way it gathers information on likely future changes to the royalty streams for more effective results.

2.21 The ANAO considers that there would be considerable benefit in ATSIC having regular contact with the mining staff of the Land Councils to obtain information from those staff about changes to mining operations that are likely to affect the level of royalties to be paid by individual companies. Land Council mining staff have information about the life of particular deposits, the development of new deposits, whether particular deposits are likely to be highly profitable or marginal and changes that companies may be proposing to their production arrangements. ATSIC could then use this information to better understand future royalty equivalents streams. The ANAO notes that ATSIC has had informal meetings with staff of one of the Land Councils from time to time.

2.22 The ANAO found that ATSIC has arranged for the NTT and DITR to provide advice of the level of royalties they have received. There is however, no provision in the ALRA for obtaining assurance that the royalty amounts advised to ATSIC by the NTT and DITR are correct, and that those two organisations have undertaken proper checks to ensure that all the royalties that should have been collected were collected. Under other legislation, such as, the *Petroleum (Submerged Lands) (Royalty) Act 1967*, the *Petroleum (Submerged Lands) Act 1967* and the *Automotive Competitiveness and Investment Scheme Administration Act 1999*, DITR has unlimited access to a company's premises and their documentation. The ALRA does not provide DITR with the power to assess uranium royalties. Without a clear ability to obtain independent third party verification in these matters, ATSIC is unable to confirm that the royalty equivalent amounts advised to it are correct. ATSIC should also receive assurance that the bodies concerned have taken steps to confirm that royalties were fully paid. ATSIC should consider whether it includes these matters in the current consideration of amendments to the ALRA.

2.23 In the interim, the ANAO suggests that ATSIC discuss with the NTT and the DITR the extent of validation of those royalties undertaken by those bodies, with a view to assessing the requirement for independent third party confirmation of the levels of royalties received.

Payments out

2.24 The ANAO found that ATSIC made payments from the ABA in accordance with the legislation. However, there are matters that impact on some payments which were raised by ATSIC and the Land Councils during the audit. Each payment area is discussed in more detail in the following sections.

Land Councils administration funding subsection (64(1))

2.25 Subsection 64(1) provides:

There shall be paid out of the Reserve from time to time, for distribution between or among the Land Councils in such proportions as the Minister determines having regard to the number of Aboriginals living in the area of each Council, an amount equal to 40% of the amounts paid into the Reserve in accordance with subsection 63(2) or (4).

2.26 The ANAO found that payments under subsection 64(1) were made in accordance with the legislation. The amounts distributed were equal to 40 per cent of royalty equivalents, and payments to each Land Council were made on the basis of population (using 1996 census data), as per the ALRA.

2.27 Payments under subsection 64(1) are the main source of funding for all Land Councils (see Table 2.1). However, over the past 10 years both the CLC and the NLC have received payments under subsection 64(7) to supplement the subsection 64(1) funds and provide a more consistent level of annual funding. This is discussed further in the section addressing funding for additional Land Council administrative expenses (64(7)).

2.28 The TLC only receives royalty equivalents under subsection 64(1). This arrangement has resulted in it receiving varying levels of payments. The ALC had also been in this situation, although in more recent years it has received funding under subsection 64(7) as well.

2.29 The ANAO notes that it is unclear whether the provisions of the ALRA were drafted with an expectation that payments under subsection 64(1) would be sufficient for the Land Councils to undertake their statutory responsibilities. As discussed in the section on 'Payments to the ABA', there is some evidence that, in the 1970s, the belief was that royalty equivalents growth would be much greater than has actually been the case (refer to footnote 23).

2.30 The ANAO found that to the extent that Land Councils rely on ABA funding under subsection 64(1), the Land Councils themselves do not have the ability to smooth revenues between years. This occurs because the application of subsection 35(1) requires that surplus funds provided under subsection 64(1) be paid to Aboriginal Councils or Associations²⁴ in the area of the Land Council. The ANAO noted that the TLC is the only Land Council that has had surplus funds at the end of a financial year. More generally, the inability for Land Councils to build up a balance makes it difficult for them to deal with large expenditures such as those associated with unexpected capital costs.

²⁴ Aboriginal Councils are established under the *Aboriginal Councils and Associations Act 1976* to perform the functions approved by the Registrar of Aboriginal Corporations. Aboriginal Associations can apply for incorporation under the same legislation.

2.31 ATSIC has indicated to the ANAO that the repeal or appropriate amendment of subsection 35(1) would represent a useful ‘workability amendment’ to the Act.

Areas affected by mining—subsection 64(3)

2.32 Thirty per cent of the royalty equivalents is paid to the CLC, NLC and ALC from the ABA and relates to mining interests on Aboriginal land (there are no mines on TLC land). Under subsection 35(2), the Land Councils are required to pay, within six months of receipt, all these amounts to Aboriginal Councils and Associations in the areas affected by particular mining operations. This function requires considerable administrative effort by the Land Councils concerned in distributing payments and providing administrative, accounting, consultation and secretarial services to Associations. Royalty distribution is discussed further in Chapter 5.

2.33 The ANAO found that ATSIC distributes the 30 per cent of royalty equivalents to Land Councils with mining operations on Aboriginal land, in accordance with the ALRA and the FMA Act.

Amounts for the benefit of Aboriginals in the Northern Territory—subsection 64(4)

2.34 Subsection 64(4) of the ALRA provides:

There shall be paid out of the Reserve such other amounts as the Minister directs to be paid or applied to or for the benefit of Aboriginals living in the Northern Territory.

2.35 The ALRA also provides, under section 65, that:

There shall be a Reserve Advisory Committee to advise the Minister in connexion with the making of payments out of the Reserve under subsection 64(4).

2.36 The ANAO found that ATSIC has acted in accordance with the legislation in providing funding under subsection 64(4), given its discretionary nature. However, the ANAO notes that little funding is currently being provided through subsection 64(4), following legal advice to ATSIC that the ALRA does not provide for terms and conditions to be attached to grants. This is discussed further below.

Past arrangements for subsection 64(4) funding

2.37 The Minister has discretion over the amount and type of payments made under subsection 64(4). The past practice has been to use a grants program administered by ATSIC to provide funds for the benefit of Aboriginals living in the NT. With the amount of funds available for distribution, there would usually be a recommendation for approval of about 150 grants (from 800 to 900 grant

applications). In these circumstances the majority of those seeking small grants would be unsuccessful. A separate arrangement was devised to allow Land Councils to administer the distribution of assistance for funeral and ceremony purposes.

2.38 There have been efforts to move away from small grants. A category of grants for major economic enterprises was established. Four million dollars was earmarked for this purpose. In the final event, there were three grant requests approved under this arrangement, with total funding of approximately \$1.2 million.

Interim arrangements

2.39 In January 2001, ATSIC received legal advice that it is not lawful to impose terms and conditions on payments for grants made under subsection 64(4) of the ALRA. Terms and conditions are an important requirement for accountability, facilitating the monitoring and reporting against agreed deliverables. Based on this legal advice, ATSIC put a halt to grant funding rounds until alternative arrangements were developed. However, grants to the Land Councils for funeral and ceremony purposes continued.

2.40 As part of the ABA plan for the three years to 30 June 2004, a new arrangement was proposed (ATSIC has since described this as an interim arrangement pending amendments to the ALRA). Under the plan the ABA (Reserve) Advisory Committee was to convene meetings to advise the Minister on payments to, or for the benefit of, Aboriginal people in the NT. The amounts nominated for this purpose were \$8.5 million in 2001–02, and \$5 million in both 2002–03 and 2003–04. These payments were to give priority to projects which promote social and economic development, assist traditional owners to develop land, and assist with ceremonial and funeral expenses. The payments were to be subject to the approval of the Minister and on the advice of the ABA Advisory Committee. The formal agreements relating to the grants were to be entered into by the Land Councils (with terms and conditions) and there was a need to report back to ATSIC on progress. The ABA plan also indicated that payments must be properly administered, and guided by fair and transparent policies that are outcomes focused and include best practice accountability mechanisms.

2.41 The ANAO noted that \$0.8 million of the \$8.5 million grant allocation for 2001–02 had been paid, \$0.7 million to the NLC and \$0.1 million to the TLC. The CLC and ALC did not submit proposals for funding. Overall, only limited progress had been made in implementing the new arrangements.

2.42 The ANAO supports the broad criteria that were set out in the ABA plan to direct payments to priority areas such as land management and economic

development. Nevertheless, the ANAO considers that there is a significant risk of duplication and inefficiency between ATSIC and the Land Councils as the interim arrangements have the Land Councils entering into agreements on behalf of ATSIC.

2.43 ATSIC has indicated to the ANAO that it acknowledges the arrangements are unwieldy and emphasises that they are only interim/transitional arrangements. ATSIC considers that the provisions of the ALRA relating to these payments need to be revised to allow for a proper framework to be put in place which may include allowing terms and conditions to be attached to grants. This would require recipients to report on their achievements and would increase accountability.

2.44 The ANAO concluded that, under the current arrangements, ATSIC has had difficulty in ensuring the timely consideration and distribution of grant payments from the ABA. ATSIC advised that in its view these matters should be addressed as part of the current consideration of amendments to the ALRA.

Loans—subsection 64(4A)

2.45 Subsection 64(4A) states:

A payment of an amount out of the Reserve under subsection (4) may be by way of a loan (whether secured or unsecured) by the Commonwealth on such conditions as the Minister thinks fit.

2.46 This provision is an adjunct to subsection 64(4) and provides another source of funds for all Aboriginals living in the NT. This funding option has not been used for many years.

ABA administration funding—subsection 64(5)

2.47 Under this provision, the Minister has approved funding for certain non-staffing costs associated with the administration of the ABA. ATSIC meets the costs associated with providing staff to assist in the administration of the ABA. The ANAO found that payments under subsection 64(5) were made in accordance with the ALRA legislation.

Funding for additional Land Council administrative expenses—subsection 64(7)

2.48 Subsection 64(7) provides:

Where, at any time, the Minister is satisfied that a Land Council is, or may be, unable to meet its administrative costs, in accordance with section 34, from moneys that are, or may become available to it for that purpose, the Minister may direct that such amounts as the Minister specifies in the direction shall be paid to the Land Council for the purpose of meeting those costs.

2.49 The ANAO found that ATSIC made payments from the ABA under subsection 64(7) in accordance with the legislation. The ANAO notes that the two larger Land Councils receive payments under subsection 64(7) to supplement the subsection 64(1) funds and to provide a greater level of annual funding. The use of subsection 64(7) reflects regular requests from Land Councils to the Minister for funds greater than those provided under subsection 64(1). Land Councils prepare requests for greater funds based on their view that their responsibility and workload is increasing. Going forward, the ANAO notes that a challenge for the Land Councils will be to manage the transition from acquiring land to managing land and to allocate their resources accordingly.

2.50 The ANAO was unable to determine whether it was anticipated when subsection 64(7) was drafted that there would be regular requirements for amounts to be provided under that subsection. One reading of the provision suggests that subsection 64(7) allows for payments to be made in circumstances where reductions in royalty equivalents during a financial year would result in the anticipated estimates (as approved) not being able to be funded from the ABA.

2.51 Available data indicate that only in 1978–79 and 1990–91 were payments not made under subsection 64(7) to any Land Council. Following the fall in royalty equivalents paid into the ABA in 1992–93 to \$18.6 million, there was a broad policy of successive Ministers keeping the payments to the two large Land Councils to the same money terms (however, there have been some increases in payments over this period). This approach changed in 2001–02, when there was a \$1 million increase in payments under subsection 64(7) made to both the CLC and NLC.

2.52 In 1976, under the original ALRA legislation, about 19 per cent of land in the NT became Aboriginal land, including all claimable land in the areas of the TLC and ALC. Since that time the CLC and NLC have been relatively successful in pursuing the rights of traditional Aboriginal owners in claiming further land under the ALRA. The percentage of the NT that is Aboriginal land as of February 2002 was approximately 44 per cent or around 591 000 sq km. Taking into account land claims which are in progress or awaiting hearing, potentially 54 per cent of the NT could become Aboriginal land²⁵.

2.53 The success of the land claim program has brought with it a significant growth in Land Council responsibilities related to the use and management of that land, as legislated in section 23 of ALRA. These responsibilities include issuing permits, pest and disease control, and assisting with arrangements for commercial activities. Part IV of the ALRA also brings with it complex

²⁵ *Aboriginals Benefit Account, Aboriginal Land Rights (NT) Act 1976—Update, February 2002.*

arrangements for mining consent and mining operations on Aboriginal land. Many of these activities are linked to the responsibilities of the NT Government and require long-term coordination and day-to-day administration.

2.54 The Land Councils have recognised the need to change their focus from land acquisition to land management. Given the 1997 'sunset' clause on hearing new land claims, land claims work will decrease over time as outstanding claims are settled. However, the ANAO notes that there are 92 land claims awaiting hearing and 29 in progress. Managing these competing priorities to ensure resources are directed at areas of greatest need will require discussion with stakeholders, an assessment of the risks, and a clear focus on the outputs to be delivered. The land claim process is further discussed in Chapter 5.

Annual budget bid process

2.55 The Land Councils provide budget bids to the Minister for the amount of funding that they require to undertake their statutory responsibilities. As indicated above, the two large Land Councils have received funding under subsection 64(7) in all but two years of their existence to cover the gap between Land Council funding requests and that provided under subsection 64(1).

2.56 ATSIC's scrutiny of budget bids was in the past generally on the basis of inputs. Usually, ATSIC employed a consultant to assist it in examining the budget bids of the Land Councils. ATSIC then advised the Minister on the results of its examination, and recommended what should be approved for a particular year.

2.57 Since the early 1980s reforms have been progressively introduced into the public sector with the specific aim of making it more responsive to stakeholder needs and more efficient, effective and accountable. This has involved less emphasis on central agency control and moving to a framework of devolved authority with increased accountability being demanded of public sector agencies and statutory bodies. A key element of the reform process has been to provide individual agencies with increased responsibility for managing their financial and budgetary affairs. Part of the trade-off in providing this increased autonomy has been the introduction of outcome/output budgeting and reporting. This is discussed further in Chapter 3.

2.58 The process that Commonwealth agencies are generally subject to for ongoing operations now involves increased emphasis on outcomes/outputs and less emphasis on a detailed scrutiny of inputs.

2.59 ATSIC asked for Land Council budget estimates, for 2002–03, to be provided on an outcomes/outputs basis to reflect the changes occurring as a result of public sector wide reforms. ATSIC was advised by Finance that a move to the outcome and output framework by the Land Councils would harmonise

with the reporting requirements of ATSIC, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the Commonwealth in general. As part of the June 2001–June 2004 ABA Financial Plan the Minister advised the Land Councils, in accordance with section 34(1) of the ALRA, that:

An outcomes based framework for the estimates process over the three year cycles will be formulated in 2001–2002, recognising the Commonwealth Government's Accrual Budgeting Framework, to be implemented with effect from the 2002–2003 estimates year.

2.60 A detailed discussion of how an outcomes framework could be implemented for the Land Councils is included in Chapter 3.

2.61 ATSIC indicates that, in principle, it supports an approach to funding for Land Councils that envisages the Land Councils having a higher level of responsibility for their achievements in exchange for less emphasis on a detailed scrutiny of inputs. This would include funding being provided on the basis of outcomes and outputs which would provide an increased level of accountability. This process has begun, with the cooperation of the Land Councils.

2.62 The following table summarises the ANAO's findings in relation to whether payments from the ABA are made in accordance with the legislation.

Table 2.2

Section 64 Payments

Section 64 Payment	Paid in accordance with legislation	Comment
64(1) 40% of royalty equivalents for Land Council administration.	✓*	Processes in place to distribute 40% of royalty equivalents but regular use of 64(7) to 'top up' annual funding and no ability to build up funds (35(1)).
64(3) 30% of royalty equivalents for areas affected by mining.	✓	Processes in place to provide 30% of royalty equivalents to Land Councils for distribution.
64(4) Amounts for the benefit of Aboriginals in the Northern Territory.	✓*	Few payments currently made as terms and conditions cannot be imposed. Interim arrangements may lead to duplication.
64(4A) Loans	✓	Rarely used.
64(5) ABA administration.	✓	ATSIC meet staff costs.
64(7) Funding for additional Land Council administrative expenses.	✓*	Processes in place to make payments but 'top up' payments are regularly made to CLC and NLC. Estimates historically on an inputs basis.

✓ In accordance with legislation

✓* In accordance with legislation but there are matters that impact on payment

Source: Compiled by the ANAO.

Efficiency and effectiveness of ATSIC's administration of the ABA

2.63 The ABA, administered by ATSIC, has the specific functions of receiving royalty equivalents and distributing funds to Land Councils and to other recipients. In examining the effectiveness and efficiency of ATSIC's administration of the ABA, the ANAO focused on those key processes and mechanisms that ATSIC undertakes to ensure the achievement of those functions. These include:

- the development of financial strategies;
- communication with stakeholders; and
- the investment of available ABA moneys.

The development of financial strategies

2.64 ATSIC has submitted to the Minister for approval what have been termed financial plans for the ABA. The latest such plan was termed the 'Aboriginals Benefit Account plan for the three year period 1 July 2001 to 30 June 2004'.

2.65 This plan sets down:

- a minimum level for the equity of the ABA (\$46 million);
- that the maximum draw on the ABA by the Land Councils will be approved up to the level of the draw approved for 2001–02;
- performance audits are to be conducted of the four Land Councils;
- an outcomes based framework for the estimates process is to be implemented;
- the ABA Advisory Committee will allocate payments under subsection 64(4), subject to the approval of the Minister and in accordance with certain priorities;
- the identification of non-government sources of funding to enable Land Councils to be able to perform their functions under ALRA, including providing a legal basis to Land Councils to charge for performance of their functions in respect to economic development on Aboriginal land; and
- provision for an annual review of the plan.

2.66 ATSIC indicated to the ANAO that the ALRA is silent on a ceiling that should be reached in respect of the equity of the ABA. In the absence of a legislative requirement, the Minister has required that the ABA be 'well targeted

and viable'. In an environment of uncertain royalty income, ATSIC considers that through increasing the equity of the ABA, where possible, it is ensuring the capacity of the ABA to meet annual fixed payments to the Land Councils over the long term.

2.67 ATSIC advised the ANAO that the purpose of maintaining a minimum equity since 1994–95 has been to provide a buffer against revenue downturns. ATSIC also advised that the current minimum level of equity in the ABA was discussed with the ABA Advisory Council and the Land Councils over several meetings in 2001. Subsequently, ATSIC recommended to the Minister that he approve \$46 million as the minimum equity for the ABA.

2.68 The ANAO noted that the minimum level of equity of \$46 million set in the financial plan for the ABA had already been surpassed when approved by the Minister on 13 August 2001. At 30 June 2001, equity stood at \$57.7 million. During 2001–02, the level of equity continued to grow and was \$68 million at 30 June 2002.

2.69 ATSIC's current approach to managing the ABA equity attempts to recognise the relationship between the ABA equity and the amounts provided for Land Councils' administrative expenditures and for other legislated purposes. The growing level of equity of the ABA is, however, of concern to the Land Councils as they consider the reserve could be better used to address what they consider to be an increasing workload. While the Land Councils have no role in administering the ABA, the ANAO considers that ATSIC needs to develop an explicit objective for the management of the ABA fund, following consultation with the Land Councils. In determining this objective, there would be a need to consider broader issues such as the constraints on royalty equivalent revenue, and the level of net assets that the ABA should maintain in the longer term to cope with variations in the royalty equivalents from year to year. The financial plan for the ABA should also consider the resource needs required for the Land Councils to meet their statutory responsibilities.

2.70 The financial plan for the ABA currently makes no mention of what ATSIC should be doing to monitor revenue, ensure that royalty equivalent revenue is maximised, and that investment targets of the ABA are met. ATSIC has advised that it acknowledges concerns that the plan does not include a clear statement defining the objective of the plan or the purpose of minimum equity. ATSIC advises that it has set in motion a process to review the Plan for the ABA in consultation with the Land Councils. An annual review is required under the terms of the Plan. ATSIC will ensure that an outcome of the review of the Plan will be a clear statement defining the objective of the plan and the purpose of the minimum level of equity.

Communication with stakeholders

2.71 During the course of the audit, the ANAO became aware that communication between ATSIC and the Land Councils could be improved to ensure a common understanding of issues. In particular, the ANAO noted that, while the response to the problems of the equity of the ABA in the early 1990s was appropriate and was supported by the Land Councils at the time, this approach has continued while circumstances have changed markedly. While there are ongoing discussions between the Land Councils and ATSIC there does not appear to be a common understanding of the outcomes of these discussions.

2.72 The ANAO considers that the historical focus on inputs has influenced the behaviour of Land Councils and ATSIC in regard to their approach to budget issues. While there has been considerable discussion on controlling the level of inputs, limited attention has been devoted to desired outcomes. This in turn has meant communication on the management and use of the ABA equity has been limited. This has occurred despite considerable goodwill being shown on all sides at certain stages.

Recommendation No. 1

2.73 The ANAO recommends that, following consultation with the Land Councils, ATSIC amends its financial plan for the ABA to include a clear statement defining the objective of the plan and the purpose of the minimum level of equity.

ATSIC response

2.74 Agreed.

Investment of available ABA moneys

2.75 A formal investment strategy for the ABA was approved by the Minister in 1995. A number of supplements were made to that strategy, with a revised strategy being approved in May 1999. In April 2002, another revised strategy was approved. The ANAO considers that this strategy covers many of the matters that are important to ensuring that the investment process occurs properly including relevant legislative provisions, cash flow requirements, and the management of risk and asset allocation.

2.76 The ANAO found, however, that the strategy did not contain a rationale for any longer term investments made by ATSIC. Longer term investment could be increasingly important given the way in which the equity in the ABA has grown in the past five years. The ANAO acknowledges that ATSIC must adhere to section 39 of the *Financial Management and Accountability Act 1977* regarding investments of moneys which are surplus to immediate requirements.

Accordingly, funds are mainly invested in the 'Official Money Market'²⁶. However, to the extent that ATSIC includes selected longer-term investments, it may be able to increase its return on assets.

2.77 Related to the operation of the investment strategy for the ABA, the ANAO found that there are no performance indicators used in the management of the investment funds of the ABA. The use of performance indicators should be a key part of managing an investment portfolio such as the ABA. For example, a performance objective for each investment could be to use as a benchmark an annual rate of return based on the performance of an observable product (such as 90 day Bank bills). In developing such benchmarks ATSIC needs to consider the overall objective of the investment strategy, and to assess the risks associated with different strategies.

2.78 An ANAO overview examination of the records related to these investment processes indicated that there was evidence of a satisfactory control process for the actual investment of ABA moneys.

Recommendation No. 2

2.79 The ANAO recommends that ATSIC revise its investment strategy and investment operations to better identify opportunities for improved investment returns on available ABA moneys. Performance indicators should also be developed that would provide benchmarks to assess the performance of ABA investments for the benefit of all stakeholders.

ATSIC response

2.80 Agreed.

Conclusion

2.81 The ANAO concluded that the administration of payments from the ABA to the Land Councils has been in accordance with the provisions of the ALRA. However, there are matters that impact on some payments which were raised by ATSIC and the Land Councils during the audit, including that some discretionary payments are currently not being made, following legal advice that conditions could not be placed on grants. In addition, the CLC and NLC request funding in annual estimates which is greater than the amount of their allocation of the 40 per cent of royalty equivalents provided under the ALRA. Consequently, the Minister approves payments for additional administrative

²⁶ Investments are mainly in Bank Accepted Bills of Exchange, Interest Bearing Deposits, Floating Rate Notes and the 11 am Call Market.

expenses more often than may have been intended when the ALRA was drafted. The ANAO notes that the ALRA has not been substantially amended since 1987.

2.82 ATSIC has indicated to the ANAO that:

- the repeal or appropriate amendment of subsection 35(1) would represent a useful ‘workability amendment’ to the Act;
- in principle, it supports an approach to funding for Land Councils that envisages the Land Councils having a higher level of responsibility, particularly in relation to funding being provided on the basis of outcomes and outputs (this process has begun with the cooperation of the Land Councils); and
- the provisions of the ALRA relating to 64(4) payments should be addressed as part of the current consideration of amendments to the ALRA.

2.83 The ANAO also concluded that, while ATSIC’s Native Title and Land Rights Centre had appropriate procedures in place to ensure the efficient achievement of the functions of the ABA, these could be improved for greater effectiveness. In particular, there is a need to develop an explicit objective for the management of ABA equity and to develop and use performance indicators for the investment of available moneys. ATSIC has indicated that it proposes to amend the ABA financial plan to incorporate such an objective. There is also a need to encourage open communication between all parties. While there are ongoing discussions between the Land Councils and ATSIC, there does not appear to be a common understanding of the outcomes of these discussions which can obviously be counter productive to resolution of issues and achievement of required results.

3. Land Council Planning, Risk Management and Use of Performance Information

This chapter examines whether the Land Councils have a system that allows them to monitor, assess and report their performance including whether they have identified appropriate performance indicators and monitor and report their performance against these indicators for greater efficiency and effectiveness.

Background

3.1 Land Councils are accountable through legislation to the Government, Australian Parliament and traditional owners.

3.2 In performing their functions, Land Councils provide services for traditional owners and other Aboriginals in the administration and management of Aboriginal land. However, the broad nature of functions as set out in section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) (refer to Appendix 1) means that Land Councils are required to interact with, and provide services to, a wide range of other stakeholders including: Northern Territory (NT) Government departments; Commonwealth Government departments; mining companies; tourists and tourist companies; pastoralists; and commercial and amateur fishermen.

3.3 Land Council services provided to these stakeholders can include: ascertaining wishes and opinions of aboriginal people; negotiating land use agreements; gaining decisions on Exploration Licence Applications (ELA); and providing permits for access to Aboriginal Land. In the past three years the CLC and NLC have introduced cost recovery for activities such as consultations on ELAs. This has meant that Land Councils now have an obligation to not only represent the interests of traditional owners but also to liaise with and inform stakeholders who purchase services from the Land Councils.

3.4 The Land Councils are performing their functions in an environment where the risks to effective service delivery are increasing. The success of the land claim program has brought with it a significant change in Land Council responsibilities related to the use and management of 44 per cent of the NT land. Part IV of the ALRA also brings with it complex arrangements for mining consent and mining operations on Aboriginal land. Many of these activities are linked to the responsibilities of the NT Government. While the Land Councils have changing responsibilities, at the same time funding available from the

mining royalty equivalents is uncertain and can fluctuate from year to year, as discussed in Chapter 2.

3.5 The Land Councils will need to manage these risks and use suitable performance information to help achieve the required results. For these reasons the ANAO examined two key areas of governance for each Land Council:

- risk assessment and ongoing risk management processes including the use of an Audit committee to oversight the risk management function; and
- planning processes to ascertain whether they included the establishment and use of appropriate performance information to assist the Land Councils and their stakeholders to assess whether the Land Councils were delivering outputs and outcomes in an economical, efficient and effective way.

3.6 In assessing these aspects of governance, the ANAO took into consideration the size of the Land Councils and the need, in the first instance, for each Land Council to focus on areas identified as high risk. In addition, the ANAO would expect that the CLC and NLC to have more sophisticated frameworks than either the TLC or ALC. Similarly, the two smaller Land Councils would be expected to adopt only aspects that are appropriate to their size.

Risk Assessment and Risk Management

3.7 Identifying, monitoring and managing risks is an important element of effective governance, as uncontrolled risks could lead to adverse exposure or loss and prevent the Land Councils from meeting their goals and objectives efficiently and effectively.

3.8 Assessing risk involves the identification, analysis, assessment and prioritisation of risks that need to be treated by control activities. Managing risk involves the design and implementation of procedures that treat unacceptable risks. It is an ongoing process of deciding where to apply resources that will reduce risks to a tolerable level. Managers need to identify the significant risks which may impact upon the achievement of their goals and objectives, and have in place a risk management strategy to mitigate their effect and/or treat them positively.

3.9 While Land Councils will need to undertake their own risk assessments that reflect organisational size and operating environment, the ANAO notes that the risks faced by the Land Councils are diverse and include:

- the increasing area of Aboriginal land that is administered by each Land Council on behalf of the traditional owners will require a new focus on

the development and management of that land, including the need to manage environmental problems and to monitor an increasing number of land use agreements;

- increasing expectations from stakeholders regarding the delivery of responsive, high quality and cost-effective services;
- the legal implications of not correctly identifying traditional owners; and
- the ability to attract and retain good staff with appropriate skills.

3.10 The ANAO assessed whether the Land Councils had documented control activities in place to manage their risks and whether these covered financial and non-financial risk, including fraud, and provided a basis for strategic and operational planning. Table 3.1 summarises the ANAO findings for each of the Land Councils.

Table 3.1

Review of the Land Councils risk assessment processes

Land Council	Criteria			ANAO Comments
	Risk	Links to plans	Fraud	
CLC	✗	✗	✓*	The CLC does not have procedures in place to formally identify and document its risks at the strategic level. The CLC has internal practices and procedures to ensure appropriate authorisations and financial delegations are in place for detection, prevention and investigation of financial fraud.
NLC	✗*	✗	✓*	The NLC does not have procedures in place to formally identify and document its risks at the strategic level. However, the ANAO found that the NLC informally addressed risk on a daily basis. Fraud is broadly addressed by the Audit committee and the NLC has processes in place for the detection, prevention and investigation of financial fraud.
TLC	✗*	✗	✓	The TLC does assess risk informally but does not have an explicit and properly documented risk assessment and management plan. The TLC has a fraud control plan that was implemented in 1999.
ALC	✗	✗	✗	See Appendix 7 in relation to findings and recommendations from the Walter and Turnbull Review.

✓ Satisfactory

✓* Criterion was largely, but not entirely, satisfied

✗* Criterion was partly satisfied but largely it was unsatisfactory

✗ Unsatisfactory

Source: Table based on ANAO analysis.

3.11 The ANAO found that there was no formal, documented risk assessment to support the strategic planning undertaken by the Land Councils. Where Land Councils have strategic plans²⁷ in place, there were no apparent links to risk assessment and the actual management of risk. There are many potential risks that affect the Land Councils' ability to carry out their legislative requirements. These should be identified, assessed and, as appropriate, treated, monitored and reviewed regularly. In addition, the Land Councils have not conducted a fraud risk assessment. A majority of the procedures that are in place to detect, prevent and investigate fraud, focus only on financial, as opposed to non-financial, fraud.

3.12 The ANAO found that there is an understanding amongst the Land Councils' operational staff of the potential risks for individual projects. Consequently, many of the actions staff undertake in their daily operations involve risk mitigation. For example, the ANAO observed a proofing hearing²⁸ on the Roper River. On a daily basis, NLC staff would discuss upcoming activities involving the hearing and develop a variety of alternative plans to cover possible risks which could impact or prevent planned activities. Similar processes were observed in the CLC. While a valuable tool for day-to-day planning this project level process is often reliant on the knowledge of individual staff. To assist Land Councils to focus on priorities and to allocate resources accordingly, it is important that risks are identified, formally acknowledged, documented, treated as appropriate and communicated throughout the organisation. Lack of such assessments can exacerbate risk mitigation actions by staff where there are inconsistencies and lack of integration of approach. Each Land Council should tailor their risk assessment to reflect the size of the organisation and their operating environment.

3.13 Table 3.2 provides an ANAO example of a basic risk assessment that could be used by the Land Councils.

²⁷ The CLC and NLC have developed strategic plans.

²⁸ A proofing meeting is a practice run of the Land Claim hearing, conducted by the Land Council to finalise evidence and prepare the claimants for the hearing before the Land Commissioner.

Table 3.2**An ANAO example of a Risk Assessment for a Land Council**

Business Process	Risk	Rating	Mitigation Strategy or Treatment	Monitoring and performance information
Royalty Distribution	Identification of correct traditional owners	High	Use of Anthropologists to identify traditional owners	<ul style="list-style-type: none"> • Number of complaints • Quality of Anthropologists' reports
Protection of Sacred Sites	Unauthorised access and damage to sacred sites	Medium	Regular ranger patrols	<ul style="list-style-type: none"> • Records of inspections • Number of breaches and prosecutions
All	Loss of Corporate knowledge	Low	Documented processes and procedures	<ul style="list-style-type: none"> • Regular updates to documentation

Source: Table compiled by the ANAO.

Anthropology

3.14 A particular risk to the operations of all Land Councils is the lack of quality and completeness of anthropological data. Incorrect identification of traditional owners has the potential to lead to litigation. Section 24 of the ALRA indicates that Land Councils may maintain a register of traditional owners. The ANAO suggests that all Land Councils develop records of traditional owners of the land in their area, and that these records be properly maintained.

3.15 The ANAO found that the CLC and NLC maintained records of traditional owners that assist them to undertake their key business operations and mitigates the risk of incorrectly identifying the rightful owners. As the identity of traditional owners of land can change over time for a range of reasons including births, deaths and succession under traditional law and custom, the maintenance of records relies on requests for traditional owner information to be continually updated, for example for a land claim or an ELA decision. The NLC maintains a Land Interest Reference database that has detailed data on the traditional owners for specific areas. The CLC is in the process of placing anthropological data on their Sites database.

3.16 While CLC records are maintained in a separate office to which only the Section Manager and one other person have access, the ANAO noted that the information is not stored in suitable containers (fireproof) and no copies are stored off site. The ANAO considers that, as a matter of urgency, this situation should be addressed, as loss of information would seriously impede the work of the CLC as much information would be irreplaceable.

3.17 In relation to the ALC, the ANAO noted that the ALC did not have records of traditional owners and that at the time of the audit the only anthropological work undertaken had been carried out during the 1970s. The ANAO considers that, unless traditional owners are identified, the ALC risks making a decision that may later be successfully challenged. The ANAO noted that the ALC's 2002–03 budget includes a provision to contract in the services of an anthropologist to undertake this task.

3.18 Similarly, in relation to the TLC, the ANAO noted that a professional anthropologist had carried out the identification of the traditional owners many years ago. This anthropologist is now no longer active in the field. The Land Council has engaged a local Tiwi resident to update the records of traditional owners without the oversight of a professional anthropologist.

3.19 The ANAO considers that there is a risk that decisions could be challenged due to incorrect identification in this process. It is important that the Land Council has full confidence in the records that it has of traditional owners. This is particularly so as it is expected that the revenues flowing to traditional owners from economic developments on the Tiwi Islands will grow considerably in future years. The ANAO considers that it would be of benefit to the TLC to engage an anthropologist who is readily contactable and who is familiar with the records of traditional owners. In the case of any dispute arising, the Land Council would be able to draw on this professional assistance.

Audit committees

3.20 An agency's audit committee is a valuable means of assisting its governing body to meet accountability responsibilities. Moreover, all organisations covered by the CAC Act, including Land Councils, are required to have an audit committee. The ANAO's Audit Report No.14 2000–01 Benchmarking the Internal Audit Function and its Better Practice Guide, *New Directions for Internal Audit*²⁹, referred to the changing role of internal audit. Increasingly, the function of internal audit is seen as shifting from a narrow role of control appraisal to encompass a broader role that includes process improvement, framed against achievement of organisational objectives.

3.21 In the case of a statutory authority, the audit committee would normally be a sub-committee of the authority's board and, therefore, be independent of management. It is also important that audit committees include appropriately qualified members who are rotated on a regular, ongoing basis³⁰. The ANAO

²⁹ Published in July 1998.

³⁰ Hunt J & Carey A, *Audit Committees: Effective against Risk or Just overloaded?*, Balance Sheet, Vol. 9, No. 9, 2001, pp. 37-39.

notes that it is not a simple matter to select an audit committee from the Full Council of a Land Council that would have the range of skills and experiences normally expected on an independent audit committee. The nature of a Full Council is somewhat different to a normal board. Therefore, each Land Council will need to consider how best it could enhance its membership of the audit committee, to provide appropriate independence and the necessary range of skills.

3.22 The ANAO found that the NLC has an audit committee that is focused on financial statement reporting and financial management matters. The ANAO suggests that the NLC considers including responsibility for overseeing risk management and process improvement in the charter of its audit committee and seek to have the membership of the Committee reflect this broader role. The ANAO found that the CLC did not have an audit committee. However, during the course of the audit, the CLC advised that it has undertaken preliminary work in developing an audit committee charter.

3.23 The ANAO considers that the CLC and NLC should establish charters for their audit committees that set out the role and responsibilities of the committees, (which should be wider than just financial management), the range of skills that members should possess, the independent representation on the committees and the frequency of meetings. These committees should have responsibility for the oversight of risk management functions, including fraud control and the development of an internal audit program.

3.24 The ANAO noted that the TLC Management Committee undertakes the role of the audit committee and reviews expenditure against budget and provides a monitoring role over the Land Council's financial affairs. The committee also prepares the annual budget prior to consideration by the Land Council. The ANAO considers that the role undertaken by the TLC audit committee is appropriate given the size of the organisation. A similar committee could exist at the ALC if it considered it appropriate to their needs.

Recommendation No. 3

3.25 The ANAO recommends that the Central Land Council (CLC) and the Anindilyakwa Land Council (ALC) establish an Audit Committee as required by the *Commonwealth Authorities and Companies Act 1997*. The ANAO recognises that the ALC is a very small organisation and the Audit Committee function could be incorporated into an existing committee, as it is in the Tiwi Land Council (TLC).

Land Councils' responses

3.26 ALC and CLC both agreed.

ALC comment

3.27 Discussions will be held with the TLC to ascertain how the TLC Management Committee undertakes the Audit Committee role. The ALC has recently established sub-committees and an Audit Committee will be incorporated within one of these committees.

CLC comment

3.28 The CLC passed a resolution at the November 2002 Council meeting authorising the formation of an Audit Committee. An Executive meeting in December 2002 endorsed an Audit Committee Charter, and proposed membership of the Committee. It is expected that the first meeting will take place in March 2003.

Recommendation No. 4

3.29 The ANAO recommends that the Land Councils put in place a formal risk management process including procedures to identify, assess, treat and manage risks including those related to traditional owner identification. The oversight of risk management could be the responsibility of an audit committee. If this oversight function is considered appropriate, the Land Councils should seek to have the membership of their audit committees reflect this broader role.

Land Councils' responses

3.30 ALC, CLC, TLC, NLC all agreed.

ALC comment

3.31 Formal risk management will be put in place after full discussions with all interested parties, including traditional owners. The Audit Committee when formed will include this role.

CLC comment

3.32 The CLC recognises the need to develop and implement a risk management plan for the organisation. However, to do this requires the capacity to access information and professional advice to assist in defining and identifying areas of financial and non-financial risk within the organisation, assessing those risks and developing appropriate strategies for mitigating them.

NLC comment

3.33 The NLC accepts that the formalisation of risk management is an important element of organisational management and will be addressing the need for a risk management strategy, within available resources, during the next year.

TLC comment

3.34 The TLC has already discussed and is planning how to manage some of these. The TLC believes it is particularly the non-financial risks that have not been considered in the past and that these are significant. Aging and the shift from traditional leadership and succession planning are of particular concern. There are others that require advice and responses.

Planning processes

3.35 One of the key elements of sound governance is to have appropriate planning processes in place. This ensures that staff and resources at all organisational levels are best deployed to achieve the organisation's overall goals and action can be taken in a timely fashion to address ongoing needs.

3.36 The ANAO examined whether Land Councils had a planning process that established and used performance information that would assist the Land Councils and stakeholders to assess whether the Land Councils were delivering outcomes in an economical, efficient and effective way. Specifically, the ANAO assessed whether the Land Council planning framework included:

- objectives and priorities of the organisation, with identified budgets, timeframes, responsible areas, resource allocation and risk management;
- outcome effectiveness indicators;
- output indicators and the relevant quality, quantity and price indicators; and
- targets that provide the basis for performance assessment.

3.37 Table 3.3 summarises the ANAO's findings against the above criteria.

Table 3.3**Review of Land Councils Planning Processes**

Land Council	Objectives and priorities	Effectiveness indicators	Output Indicators			Use of Targets	ANAO Comments
			Quality	Quantity	Price		
CLC	✓*	✗	✗	✗	✗	✗	The CLC has only recently completed a strategic plan. The plan is for the five years 2002–07 and outlines the CLC's priorities, strategies, actions, responsibilities and planned outcomes. However, the CLC has not undertaken an analysis of risks, developed performance information, or set specific targets for achievements to be measured against.
NLC	✓*	✗	✗	✗	✗	✗	The NLC has a strategic plan that was developed and implemented in 1995. ³¹ The NLC strategic plan provides clear objectives, planned actions, priorities and broad goals. However, the NLC has not undertaken an analysis of risks, developed performance information, or set timeframes and explicit targets for achievements to be measured against.
TLC	✓*	✗	✗	✗	✗	✗	The TLC does not have a strategic plan. However, there is an overall goal of sustainable economic development for the Tiwi people. For some large projects the TLC employ experts to conduct feasibility studies, environmental assessments and risk assessments. However, this tends to occur for isolated projects and it is difficult to assess achievement as there is no performance information or targets.
ALC	✗	✗	✗	✗	✗	✗	As a result of the Walter and Turnbull review the ALC is currently undergoing changes to its operations including the implementation of newly developed operational guidelines and planning procedures. Appendix 7 has details of the findings and recommendations of the Walter and Turnbull review.

✓* Criterion was largely, but not entirely, satisfied

✗ Unsatisfactory

Source: ANAO analysis.

³¹ Northern Land Council Strategic Plan, 1995.

3.38 Because of a lack of performance information, the ANAO was unable to assess whether the Land Councils were delivering outcomes in an economical, efficient and effective way. The ANAO concluded that Land Council stakeholders would also find it difficult to track the performance of the Land Councils over time.

3.39 While the Land Councils were focused on delivering services to traditional owners, the lack of performance information also meant that the ANAO was also unable to assess, in any conclusive way, whether the current level of resources provided to the Land Councils was appropriate. Performance information would normally include outcome effectiveness indicators and output indicators. The use of effectiveness indicators would allow the Land Councils to assess the extent of their success against the outcomes they set out to achieve in their strategic plans. Combined with data on program inputs, including financial and human resources, the use of output indicators such as the quantity of services delivered would allow the Land Councils to demonstrate over time whether they had produced more services with the same or a lower level of resources, or increased the quantity (and quality) of services they provided at a greater rate than any increase in resources. This would provide the Land Councils with a sound basis for future funding discussions, and provide more information to the Minister and ATSIC on which to base decisions about funding levels and ABA equity levels.

3.40 The ANAO considers that the Land Councils need to improve their planning processes. This requires the development and use of a performance information that facilitates monitoring and the assessment of service delivery against pre-determined targets.

Performance Information

3.41 Performance information is a tool for management and performance improvement. It identifies where an organisation is heading, whether it is heading in the right direction and whether the organisation is using resources in the most cost effective manner. As well as providing a basis for informed decision making, it is also an early warning system enabling managers to undertake preventative action.

3.42 Performance information provides evidence about an agency's achievements and is collected and used systematically. Well-considered performance information will include performance indicators and/or measures and targets to assist monitoring arrangements, including reporting. A range of performance information is required for both internal management purposes and external reporting and accountability.

3.43 However, it is important that an organisation ensures that the internal reporting systems and external reporting systems are linked. The data that is collected and used to inform management decisions should be the same data that is used to report performance externally, such as in the annual report. A well set up performance information system will include information that is in line with agreed performance measures, and which is readily accessible by managers for use in their day to day project management.

3.44 The ANAO assessed the Land Councils' performance information to determine if it effectively facilitated the monitoring of performance for internal and external accountability, including the development and use of performance measures and targets.

3.45 The ANAO found that the Land Councils used some management information in selected areas of their operations, such as reporting on the number of Exploration Licence Applications (ELAs) that have been received, consented or refused. However, the ANAO found that there was no performance information, indicators or measures that were used systematically in an organised way that would enhance efficiency and effectiveness. In addition, targets had not been developed to provide an adequate basis for assessment of performance by the Land Councils or other stakeholders.

Financial performance information

3.46 The ANAO found that the Land Councils do not formally document or analyse the difference between budget and actual results. Reports showed some projects being over budget by up to 133 per cent and others significantly under budget without any explanation. The Land Councils should implement a process that identifies significant variation between actual results and budget and ensures they are resolved and reported to management.

3.47 Chapter 2 highlights the budgeting and estimates process undertaken by the Land Councils, which has historically focused on input reporting. This has influenced the way the Land Councils use performance information as well as report and monitor their performance. The ANAO found that as a result of this focus on the level of inputs to be controlled, the Land Councils had not developed a structured performance information framework that included performance indicators and targets for the outputs to be produced.

Outcomes and outputs framework

3.48 Commonwealth Authorities and Companies (Report of Operations) Orders 2002 (the CAC Orders)³² require the Land Councils to include a review in their annual reports of how they have performed during the financial year in relation to principal outputs and contribution to outcomes. The Department of Finance and Administration (Finance) has advised ATSIC that a move to an outcome and output framework by the Land Councils would harmonise with the reporting requirements of ATSIC, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the Commonwealth in general. As part of the June 2001–June 2004 ABA Financial Plan, the Minister requested that the Land Councils develop an outcomes based framework for the estimates process. This process has begun, with the cooperation of the Land Councils.

3.49 The ANAO found that the Land Councils' annual reports contain descriptive details of inputs and activities performed throughout the financial year as well as background information on the functions and legislative requirements of the Land Councils. The ANAO could not determine, from the Land Councils' annual reports, if the Land Councils performed above or below expectation as there was no use of specific outcomes, measures and targets. The ANAO considers that the development and use of an outcome and outputs framework would improve the transparency of Land Council annual reports and assist the Land Councils to comply with the requirements of the Commonwealth Authorities and Companies (Report of Operations) Orders 2002.

3.50 The ANAO has produced an example of outcomes, outputs and related performance information to assist the Land Councils in developing a framework for reporting to their stakeholders (Figure 3.1). The ANAO appreciates that each Land Council has different priorities and approaches as to how they undertake their business and will need to adopt a structure to reflect their own priorities. For example, the two larger Land Councils may require a more detailed and sophisticated reporting structure while the two smaller Land Councils may only need a simple one. However, each Land Council would need to focus on areas identified as high risk. As a first step towards developing their own framework Land Councils should refer to the ANAO's *Better practice Guide on Performance Information in Portfolio Budget Statements*³³ and the Department of Finance and Administration's *Outcomes and outputs framework guidance document*³⁴.

³² These orders apply to Commonwealth authorities in relation to financial years ending on or after 30 June 2002 and replace the Commonwealth Authorities and Companies Orders 1998.

³³ Australian National Audit Office 2002, *Performance Information in Portfolio Budget Statements: Better Practice Guide*, ANAO, Canberra May.

³⁴ Department of Finance and Administration 2000, *The Outcomes and Outputs Framework*, [Online], Available: <http://www.finance.gov.au/budgetgroup/commonwealth%5Fbudget%5F%2D%5Foverview/the%5Foutcomes%5F%5F%5Foutputs%5Fframewo.html> [30 January 2003].

Outcomes

3.51 Outcome statements define the impact government expects from the work an agency or organisation undertakes. They provide the Parliament and other stakeholders with a clear statement of the broad goals of the organisation and provide the basis for the development of outputs and/or output groups.

3.52 The ANAO found that only one of the Land Councils had developed a specific outcome statement (at the time of completing the fieldwork for this audit). All of the Land Councils had statements in either annual reports or strategic plans about the intended long-term impact of their functions on their constituents. These statements could provide the basis for the development of the outcome statement.

3.53 The Land Councils should develop an outcome statement in consultation with ATSIC, with the Minister providing final approval. Consideration will also need to be given to whether each of the Land Councils will have individual outcomes or one shared outcome.

Figure 3.1**ANAO example of Land Councils' Outcome and Output Framework**

Outcome				
<p>Example Protection and advancement of the rights and interests of Aboriginal people in the Land Council Region in matters of land rights and native title, land use, economic, social, political and cultural interests.</p> <p>Examples of Effectiveness indicators</p> <ul style="list-style-type: none"> • Percentage of Aboriginal freehold land where resources are being utilised to benefit traditional owners and surrounding communities—Show historical growth/decline and achievement against target. • Positive findings from Land Commissioner in land claim hearings. 				
Output Groups				
Representation and Advocacy	Land and Sea Acquisition	Land and Sea Economic development	Land and Sea	
Outputs				
Representational support <ul style="list-style-type: none"> • Information and education for Council members • Full, executive and regional council meetings 	ALRA claims <ul style="list-style-type: none"> • Research, consultation and processing of land claims under ALRA legislation 	Land Use Agreements <ul style="list-style-type: none"> • Research and consultation • Negotiation and development of agreements 	Access <ul style="list-style-type: none"> • Permits—consultation • Unauthorised use and activities on Aboriginal freehold Land • Sacred site protection 	
Advocacy <ul style="list-style-type: none"> • Communications such as newspapers • Responding to enquiries, reviews and government policy 	Native Title Claims <ul style="list-style-type: none"> • Research, consultation and processing of land claims under Native Title legislation 	ILUA <ul style="list-style-type: none"> • Negotiation and development of agreements 	Contract Management <ul style="list-style-type: none"> • Land use agreements and management of clauses such as employment • Enforcement of contract conditions • Leases and licence management 	
Policy <ul style="list-style-type: none"> • Implementation of actions arising from council meetings 	Community Living Areas	ELA's <ul style="list-style-type: none"> • Research, consultation and meetings • Negotiating agreements 	Royalty distribution <ul style="list-style-type: none"> • Agreement and instruction from TOs • Dispute resolution • Timing of distribution in accordance legislation and instruction 	
Natural resource management <ul style="list-style-type: none"> • Weed and pest control • Fire management • Pastoral, aquaculture and plantations 				

Outcome effectiveness indicators

3.54 Outcome statements will need to be measurable for Land Councils to be able to show how effective they have been in achieving their outcomes. These measures, or effectiveness indicators, reflect how outputs have contributed to the outcomes. For Land Councils, an example of an effectiveness indicator could be the percentage of Aboriginal land where the Land Council has facilitated a land use agreement or obtained a decision on an ELA.

Output groups and outputs

3.55 Outputs are the actual goods and services that an organisation produces to generate a desired outcome. Output groups represent an aggregation of outputs that contribute to an aspect of the desired outcome and assist with reporting. Additionally, the use of sub-outputs further assists with reporting and reflects the diversity of activities undertaken to meet all legislative requirements. The level of aggregation of reporting on outputs will depend on the size and complexity of the organisation. A small organisation may not need to report outputs to the level of output groups.

3.56 The ANAO found that none of the Land Councils was reporting based on identified outputs and the related performance information of quality, quantity and price. However, the Land Councils' annual reports did contain descriptions of various goods and services that could represent outputs or output groups.

3.57 Output groups and/or outputs should cover all of a Land Council's expenses and reflect the goods and services provided to external parties. The corporate support areas within a Land Council provide inputs that contribute towards the delivery of its outputs. Therefore, for the purposes of reporting and budgeting, corporate support services such as human resources, information technology, accounting and financial management should be allocated across all outputs and reflected in the output delivery cost.

3.58 Outputs reflect actual deliverables, not a strategy or an aspiration and should be within the direct control of a Land Council. Strategic and operational plans should contain the strategies and actions for achieving these outputs. The ANAO has developed an example (Table 3.4) of an output and its related performance information, which is linked to strategic and operational directions found in Land Council plans. This example expresses the output in terms of a specific deliverable, an Aboriginal newspaper, with the related performance information that measures the actions taken to meet strategic objectives. As each Land Council is a separate entity with different strategic objectives they will each need to develop their own outputs based on those objectives.

Table 3.4
An ANAO example of linking strategies, actions and performance information

Strategy (Strategic plan)	Action (Operational plan)	Performance Information	
To advance Aboriginal rights and interests under Territory and Commonwealth legislation.	Produce monthly newspapers in consultation with, and contribution from, the Land Council's constituents.	Output Group	Advocacy and Representation
		Output	Advocacy
		Sub Output	Newspapers
		Quality	Newspaper contains contributions from Land Council constituents.
		Quantity	12 produced per year
		Price	\$2 000 per production

Source: Table compiled by the ANAO.

Output performance indicators

3.59 Performance indicators for outputs should preferably be expressed in terms of quality, quantity and price. Quality relates to the specific characteristic of an output and reflects how it relates to an outcome. The quantity is the number of units produced and the price is based on the cost per unit. The quality, quantity and price indicators should present a balanced picture of how efficient and effective an agency is in producing its goods and services.

3.60 The ANAO found that, where Land Councils reported on goods and services that could be reflected as outputs, such as Exploration Licence Applications, any related management information was based only on quantity. There was no specific use of quality or price indicators and there was also no use of targets or historical comparisons to indicate levels of performance achieved over time.

3.61 Table 3.5 provides an ANAO example of how quality, quantity and price indicators could be used for a significant Land Council output: Representation and Advocacy.

Table 3.5**An ANAO example of Performance Indicators for Outputs**

Output group Representation and Advocacy	
Output Representational Support	
Sub Output Council Meetings	
<i>Performance indicators</i>	Quality 95 per cent of Full Council members are satisfied with quality of information provided in meeting agendas (a quick survey at the end of each meeting could provide this information)
	Quantity 2 Full Council meetings per year
	Price \$200 000 per meeting

Source: Table compiled by the ANAO.

Recommendation No. 5

3.62 The ANAO recommends that the Land Councils finalise the development of an outcomes and outputs framework that reflects their overall strategic direction, in consultation with the Minister and ATSIC. The framework should provide the basis for preparing budget estimates and reporting on performance in their annual reports. As well, it should:

- assist proper monitoring of performance against established indicators and targets;
- assist management to ensure that resources are efficiently utilised; and
- reflect strategic, operational and individual project plans based on a comprehensive risk assessment.

Land Councils' responses

3.63 ALC, CLC and NLC, TLC all agreed.

ALC comment

3.64 Outcomes and outputs partly developed when preparing 2002–03 Budget. The ALC indicated at the time that they would require further development and this would be done after further consultation with the Minister and ATSIC to achieve results as recommended in the ANAO report.

CLC comment

3.65 CLC agrees, however there are serious issues relating to implementation, resourcing and access to expertise. This is a significant exercise for the CLC, and will require expert assistance.

NLC comment

3.66 The NLC has made progress during the past two years towards the implementation of an output/outcomes framework and will continue to do so within operational and financial constraints.

TLC comment

3.67 The TLC believes that the outcomes and outputs need to be constructive and able to be interpreted easily by members.

Conclusion

3.68 The Land Councils do not have procedures in place to formally identify and manage their risks. Some operational risks were identified, at the project level. However, this was largely ad hoc and relied only on the knowledge of individual staff. While Land Councils should undertake their own risk assessment, the ANAO notes that the risks faced by the Land Councils are changing and include higher expectations of stakeholders regarding the delivery of responsive, high quality and cost-effective services. In particular, the increasing area of Aboriginal land that is administered by each Land Council on behalf of the traditional owners will require a new focus on the management of that land, including the need to monitor an increasing number of land use agreements.

3.69 To assist the two large Land Councils to focus on priorities and to allocate resources accordingly, it is important that risks are clearly identified, formally acknowledged, documented, treated and communicated throughout the organisation. The ANAO suggests that the Northern Land Council (NLC) and the Central Land Council (CLC) consider including responsibility for the oversight of risk management and process improvement in the charter of their audit committees and seek to have the membership of their audit committees reflect this broader role. That is not to say that the audit committee would be actually responsible for implementation of risk management and process improvement but would at least need to have some oversight of, and report back on, any strategy, implementation and monitoring and review arrangements.

3.70 Because of a lack of systematic performance assessment supported by suitable performance information, the ANAO was unable to assess whether the Land Councils were fulfilling their functions and delivering their services in an

effective and efficient way. The development and use of performance information will require the Land Councils to establish indicators and set targets against which they can assess their contribution to protecting and advancing the rights and interests of Aboriginal people and determine how well their resources are being used. The ANAO considers that the adoption of a performance framework, such as the Commonwealth's outcome and output reporting model, would help the Land Councils to measure their efficiency and effectiveness. It would also improve Land Council reporting and provide a sound basis for stakeholders to assess Land Council performance over time.

4. Land Councils' Relationships with Stakeholders

The purpose of this chapter is to discuss the processes the Land Councils, as service delivery organisations, have in place to gauge and report on the satisfaction of their stakeholders.

4.1 One of the key principles of effective governance frameworks is to specify reporting obligations to stakeholders and to develop a process for gathering and gauging stakeholder views on the quality of the services delivered³⁵. This requires clear identification and articulation of roles and responsibilities and a good understanding of the needs of stakeholder groups. In the case of Land Councils, feedback from stakeholders could be used to measure how effective the Land Councils have been in delivering services and achieving outcomes.

4.2 In order to form an opinion on the effectiveness of the Land Councils' relationships with stakeholders the ANAO assessed whether the Land Councils:

- provided stakeholders with information about their role and the range and quality of the services provided;
- used mechanisms to obtain formal feedback on the quality of services delivered; and
- chose performance information in consultation with stakeholders. In addition, all government bodies which provide services directly to the public are required to develop a service charter³⁶. The Land Councils deliver services directly to traditional owners and other Aboriginals living in the area. These include: advocating on behalf of traditional owners and other Aboriginals; representational support and information; consultation; development and management of land use agreements; and management of access to land. The Land Councils also deliver services to mining companies, tourists and other members of the general public.

Stakeholders

4.3 The functions outlined in section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) (refer to Appendix 1) require the Land Councils to deliver a variety of services to a range of stakeholders, including traditional owners, other Aboriginals, mining companies and tourists. These services include

³⁵ Australian National Audit Office, *Principles and Better Practices—Corporate Governance in Commonwealth Authorities and Companies*, May 1999.

³⁶ Department of Finance and Administration, *Client Service Principles*, June 2000.

managing access to Aboriginal land, consultation with traditional owners regarding the management of their land and negotiating agreements between traditional owners and external parties for land use agreements.

Traditional owners and other Aboriginals

4.4 The ALRA established the Land Councils to perform functions on behalf of traditional owners and other Aboriginals living in a Land Council region. The Full, Executive and Regional Councils are the decision making bodies of the Land Councils and they represent the key stakeholders, traditional owners and other Aboriginals. Fulfilling the main roles and responsibilities of the Land Councils requires considerable dealings with traditional owners and other Aboriginals living in the area of each Land Council. The Land Councils exist to service these Aboriginal groups and, therefore, these groups should be able to easily assess the quality of service delivery.

4.5 The ANAO found that the Land Councils consulted extensively with traditional owners to obtain their wishes and opinions, and to make informed decisions regarding use of their land. As well, traditional owners and other Aboriginals have a direct influence on the decision making process within the Land Councils via the Full, Executive and Regional Councils. However, there was no formal feedback process for the Land Councils to determine if traditional owners and other Aboriginals were satisfied with the delivery of specific Land Council services.

4.6 The ANAO considers that the Land Councils should obtain explicit feedback from traditional owners to assist them to assess the quality and cost-effectiveness of the service they provide to traditional owners. This would be in addition to the current consultation and decision making processes. The ANAO notes that the Land Councils are able to obtain a sense of traditional owner satisfaction through various informal exchanges, but there are no formal processes in place to track and report on the level of traditional owner satisfaction with Land Council performance. The development of a formal feedback process would also provide traditional owners with a greater sense of ownership and responsibility for Land Council operations. Through the Land Councils asking for specific feedback, traditional owners and other Aboriginals would have the opportunity to identify problems and help find solutions to those problems.

Other stakeholders

4.7 During the audit the ANAO spoke to a range of Land Council stakeholders and found that most did not have a clear understanding of Land Council roles and responsibilities. The ANAO found that long standing stakeholders had an

appreciation of the roles and responsibilities of the Land Councils. However, they had only a limited understanding of the breadth of services provided and the priorities of the Land Councils.

4.8 The ANAO found that the Land Councils had no structured approach to managing stakeholder relationships or a process whereby stakeholders had an opportunity to provide formal feedback on the quality of Land Council services. For stakeholders, this could lead to concerns about the transparency of Land Council operations. In cases where the Land Councils provide a service to the NT Government, industry groups or other stakeholders, it is important that these stakeholders are able to comment on the nature and quality of the service being provided. Moreover, developing sound working relationships with stakeholders is more difficult if they are unclear about the roles of the Land Councils and are unable to assess their performance.

Service Charters

4.9 All government bodies which provide services directly to the public are required to develop a service charter. The introduction and use of service charters by the Land Councils would demonstrate to their stakeholders that they are committed to providing them with information about the range and standard of services offered. The use of service charters and related performance information would also improve the transparency of Land Council processes and clarify stakeholders' expectations about the standard of service they can expect. Land Councils would then be able to obtain stakeholder feedback on their performance and use this information to improve their service delivery. Service charters should also outline any avenues for taking up complaints, the means of commenting on the charter and form a component of existing corporate planning and reporting requirements.

4.10 As previously mentioned, the ANAO found that the Land Councils did not have formal processes in place to determine the satisfaction of either traditional owners, other Aboriginals living in the area or other stakeholders. To gain a better understanding of stakeholder expectations, the Land Councils would benefit from developing a service charter in consultation with traditional owners and other stakeholders. Through the development of a service charter, a Land Council would be able to focus on identifying the needs of its stakeholders, the level of service it is committed to provide, and what it would do if it does not meet that goal. It is important to make a start and achieve improvements with experience gained by all parties.

4.11 A service charter does not need to be a complex document. For example the Aboriginal Hostels Limited (AHL) service charter outlines the services

provided by AHL and what clients can expect from these services. As well, the AHL service charter provides details for raising complaints, gaining more information about the organisation and reporting requirements.

4.12 Consultation involving a Land Council and its key stakeholders in developing a charter would clarify stakeholder expectations about the quality of service they can expect, which in turn will provide the Land Council with a means of improving its service delivery performance. The ANAO considers that the development of a service charter, especially by the NLC and CLC, would also facilitate improved relations between these Land Councils and their stakeholders.

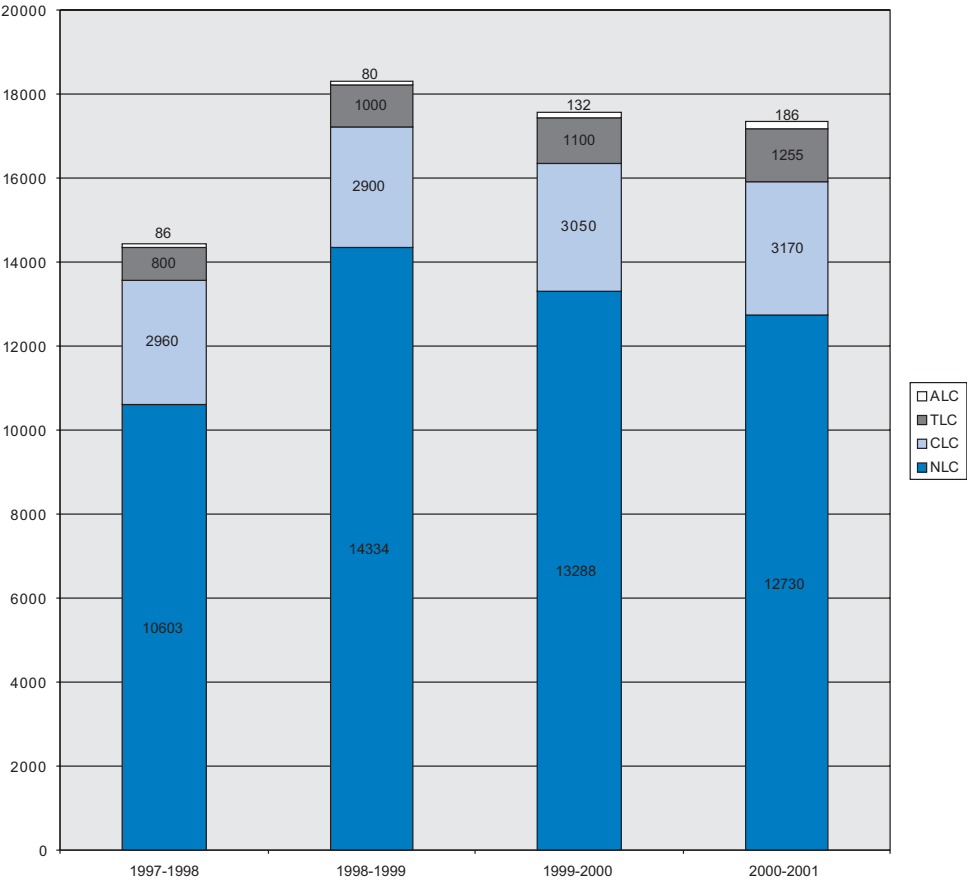
Performance Information

4.13 As indicated in Chapter 3, the ANAO found that the Land Councils have not developed suitable performance indicators or measures. In order to demonstrate how the Land Councils could integrate delivery of a service into their performance information framework the ANAO examined the Land Councils' processes in relation to issuing permits. The ANAO considers that permits provide a good example of a Land Council service that includes the management of external stakeholder relationships.

Permits

4.14 The ALRA requires that all people who visit or work on Aboriginal land in the NT apply for a permit. The Land Councils administer the permit system on behalf of the traditional owners and contact them for each area of land listed on the application. The traditional owners approve the application, reject it, or request that specific conditions be applied. Figure 4.1 shows the number of permits the Land Councils have issued from 1997–98 to 2000–01.

Figure 4.1
Permits Issued by Land Councils 1997–2001



Source: Compiled from data provided by Land Councils.

4.15 An application for a permit can be declined by traditional owners for various reasons, such as a death in the community or other ceremonial reasons, not all of which will be appreciated by applicants who may only need to travel through Aboriginal land to reach their destination. While these situations are often beyond the control of the Land Councils, they can have a negative impact on the expectations of stakeholders and have resource and planning implications for the Land Councils.

4.16 The ANAO found that applicants for permits and permit holders had no avenue that allowed them to provide Land Councils with feedback in relation to the permit process. The ANAO considers that the Land Councils should consult with permit user groups about the quality of service to be provided, This could be as simple as providing a contact for feedback on application forms and corresponding response process such as a having a complaint handling

system within the Land Councils. They should also obtain formal feedback from a sample of permit applicants and holders on the quality of service actually delivered. This would assist in building more positive relationships with stakeholders.

4.17 The ANAO has developed Table 4.1 as an example of how using stakeholder satisfaction/complaint handling can provide stakeholders with a quality measure for the delivery of permits.

Table 4.1

ANAO example of integrating stakeholder satisfaction into the Outcomes and Outputs Framework

Output group Land and Sea Management	
Output <i>Access to Aboriginal Land</i>	
Sub Output Permits	
<i>Performance indicators</i>	Quality 85% of all complaints responded to within 10 working days. 85% of customers who receive permits are satisfied with Land Council processes.
	Quantity 85% of Recreational and visitor permits processed within 10 working days. 100% of Recreational and visitor permits processed within 25 working days.
	Price \$78 per permit (this is the cost to the Land Council to issue the permit and should exclude any revenue generated from permits).

Source: Table compiled by the ANAO.

Recommendation No. 6

4.18 The ANAO recommends that as part of their accountability to stakeholders, the Land Councils develop an appropriate service charter, as well as a practical strategy to obtain the views of key stakeholders on their level of satisfaction with the Land Councils' service delivery. The charter should include service standards and be used in performance assessment and management decision processes to achieve greater efficiency and effectiveness.

Land Councils' responses

4.19 ALC and NLC both agreed. CLC disagreed. TLC agreed with qualification.

ALC comment

4.20 A service charter will be fully developed enabling the ALC to achieve greater efficiency and effectiveness. This will be completed after full discussions with all stakeholders.

CLC comment

4.21 The CLC disagrees with the recommendation. The ANAO has been extremely unclear about the definition of a 'stakeholder'. Who is this service charter for and what exactly will it achieve? The CLC agrees to develop a service charter for traditional owners and other Aboriginal people.

ANAO comment

4.22 The ANAO did not include a definition of 'stakeholder' as it is a common term used in current public parlance and literature. It is usually the responsibility of public sector organisations to identify their stakeholders. However, the ANAO has listed at paragraph 1.30 the various stakeholders, that is, those who interact with, or who have an interest in, the Land Councils. Chapter Four explains that a service charter is for those stakeholders who receive, and in some instances pay for, Land Council services. Through the development of a service charter, a Land Council would be able to focus on identifying the needs of its stakeholders, the level of service it is committed to provide, and what it would do if it does not meet that goal.

NLC comment

4.23 A service charter can provide a focus for staff's delivery of high level service and the NLC will develop such a service charter in consultation with our key clients, the traditional Aboriginal owners. However, because of the specific nature of the NLC's clients, this will be an expensive and resource intensive task.

TLC comment

4.24 The TLC accepts the recommendation with the qualification that the TLC only offers and provides a small number of services. The managers of the TLC, being traditional owners, are actively involved in day to day decision making.

Conclusion

4.25 The Land Councils deliver a variety of services to a diverse number of stakeholders, including traditional owners, other Aboriginals living in their area, mining companies and tourists. However, the Land Councils do not have processes in place to determine whether stakeholders are satisfied with the quality of the services that they deliver. Land Councils, therefore, are unable to report on the level of stakeholder satisfaction.

4.26 The introduction of service charters by the Land Councils would demonstrate to their stakeholders that they are committed to providing them

with information about the range and quality of services offered. The use of service charters and related performance information would also improve the transparency of Land Council processes and clarify customer expectations about the quality of service they can expect. Land Councils would then be able to obtain stakeholder feedback on their performance and use this information to improve their service delivery.

4.27 Using performance information on stakeholder satisfaction, and reporting these results in the annual report, would provide further transparency of Land Councils' accountability and performance.

5. Land Council Operations

This chapter focuses on the key business processes of the Central and Northern Land Councils and examines compliance against their legislative functions and their monitoring of service delivery.

Background

5.1 Chapter 3 examined the Land Councils' planning processes and use of performance information at an organisational level and found that there was little planning and no performance information, indicators or measures that were used systematically or in an organised way. This chapter focuses on the operational level of the Land Councils, and examines compliance with legislation, how projects were managed and whether there was any information collected to assist in making management decisions.

5.2 In examining the operations of the Land Councils the ANAO assessed their key business processes (based on outputs as defined in Chapter 3). Given the significant differences in the size and diversity of operations of the four Land Councils, the ANAO focused primarily on the two larger Land Councils, the CLC and NLC. Comments in relation to the operations of the ALC and TLC have been made where appropriate.

5.3 The ANAO examined whether the Land Councils' key business processes:

- complied with relevant legislation including the identification of regulations that are reflected in policies, procedures and/or guidelines;
- identified the needs of traditional owners and other stakeholders;
- provided for projects to be managed in a way that would ensure the process took into account, priorities, the skills required, timeframes and milestones; and
- delivered services that were monitored for timeliness, cost effectiveness and quality of service.

Key Business Processes

5.4 Key business processes were identified by the ANAO after an examination of the Land Councils' legislative functions outlined in section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) (refer to Appendix 1) and the CLC and NLC's management structures. Each of the following key business processes was examined individually:

- Advocacy/Representation—this includes the development of internal policy to support the requirements of section 23 of the ALRA, as well as support to the Full and Executive Councils;
- Land claims—focussing on claims that can be made for certain areas of the Northern Territory (NT) under the ALRA;
- Mining—based on compliance with Part IV of the ALRA and the interaction with the various stakeholders, including the NT Government and mining companies;
- Economic development and management of Aboriginal land—this key business process covers established contracts, as well as any use of, or activity on, Aboriginal land including access and management of environmental issues; and
- Royalty distribution—this includes royalties received under the ALRA and any royalties from other agreements and contracts.

5.5 Table 5.1 provides a summary of the ANAO findings for all Land Councils. The differences in the size and diversity of operations of the four Land Councils should be kept in mind.

Table 5.1**Summary of ANAO findings**

Land Council	Key Business Process	Criteria				ANAO Comments
		Compliance	Identification of needs	Project management	Service delivery is monitored	
CLC	Advocacy and Representation	✓	✓*	✓*	✗	For the business processes examined by the ANAO, the ANAO found that the CLC had processes in place to assist with compliance with the CAC Act and ALRA, identified the needs of stakeholders and had good project management skills, however, priorities and key milestones were not communicated, monitored or reported on a regular basis. The CLC had not developed performance indicators and did not undertake formal, regular assessments of its performance in delivering services including timeliness, cost-effectiveness or the quality of the service. Therefore, the ANAO found it difficult to determine if the CLC's key business processes had been efficient and effective in the delivery of services.
	Land Claims	✓	✓*	✓*	✗	
	Economic development and management of Aboriginal land	✓	✓*	✓*	✗	
	Mining	✓	✓*	✓*	✗	
	Royalty distribution	✓	✓*	✓*	✗	
NLC	Advocacy and Representation	✓	✓*	✓*	✗	For the business processes examined by the ANAO, the ANAO found that the NLC had processes in place to assist with compliance with the CAC Act and ALRA, identified the needs of stakeholders and had good project management skills, however, priorities and key milestones were not communicated, monitored or reported on a regular basis. The NLC had not developed performance indicators and did not undertake formal, regular assessments of its performance in delivering services including timeliness, cost-effectiveness or the quality of the service. Therefore, the ANAO found it difficult to determine if the NLC's key business processes had been efficient and effective in the delivery of services.
	Land Claims	✓	✓*	✓*	✗	
	Economic development and management of Aboriginal land	✓	✓*	✓*	✗	
	Mining	✓	✓*	✓*	✗	
	Royalty distribution	✓	✓*	✓*	✗	

Land Council	Key Business Process	Criteria				ANAO Comments
		Compliance	Identification of needs	Project management	Service delivery is monitored	
TLC	Advocacy and Representation	✓	✓*	✓	✗*	The ANAO found that the TLC had been successful in implementing a variety of large-scale projects to support the delivery of its services. Although the TLC had collected and reported selected management information in its annual report, it had not developed performance measures and targets which would allow TLC stakeholders to assess the TLC achievements against planned outcomes.
	Economic development and management of Aboriginal land	✓	✓*	✓	✗*	
	Mining	✓	✓*	✓*	✗*	
	Royalty distribution	✓	✓*	✓	✗*	
ALC	Advocacy and Representation	✓	✓*	✓*	✗	The ALC had collected and reported selected management information in its annual report, but had not developed performance measures and targets which could be used to assess this information. The ALC advised the ANAO that consensus has been reached in the latest distribution of royalties and that there are indications that agreement to formulae for future distributions will be settled in the near future.
	Economic development and management of Aboriginal land	✓	✓*	✓*	✗	
	Mining	✓	✓*	✓	✗	
	Royalty distribution	✓	✓*	✗*	✗	

✓ Satisfactory

✓* Criterion was largely, but not entirely, satisfied

✗* Criterion was partly satisfied but largely it was unsatisfactory

✗ Unsatisfactory

Source: Table based on ANAO analysis.

5.6 The key business processes assessed by the ANAO aligned with the legislative functions of the Land Councils. Overall, the ANAO found that key business areas had adequate procedures in place to assist staff to comply with legislation, identify traditional owners' needs and manage individual projects, although, priorities and key milestones were not communicated, monitored or reported on a regular basis.

5.7 As discussed in Chapter 3, the ANAO found that the Land Councils had not developed suitable performance indicators or targets for their key business processes. Such targets would, for example, express quantifiable performance levels to be attained at a future date. The ANAO found there was a lack of data

to determine whether the Land Councils' key business processes had been efficient and effective in delivering their services.

5.8 If Land Councils monitored and reported against targets it would allow stakeholders to track the Land Councils' performance over time. The lack of performance information and targets was particularly evident when the ANAO examined the delivery of services by key business areas. Moreover, as indicated in Table 5.1, there was little or no monitoring of service delivery for timeliness, cost-effectiveness or quality.

Advocacy and representation

5.9 Under section 23 of the ALRA, Land Councils have a broad responsibility to ascertain and express the wishes of traditional owners and Aboriginals living in the area of the Land Council, regarding the management of Aboriginal land. As a result Land Councils have a significant advocacy role at regional, national and international levels. To undertake this role each of the Land Councils has an elected representative body that determines overall policy, supported by Land Council staff who provide organisational support for the implementation of that policy. In addition, Land Council staff support the representational process.

5.10 The ANAO found that the advocacy and representation function of the Land Councils included the following activities:

- arranging and holding elections in accordance with section 29 of the ALRA;
- providing secretariat support to Full Council, Executive Council and Regional Council meetings, including agendas, minutes, location logistics, travel and payment to members;
- providing briefings and options to the Full, Executive and Regional Councils;
- representing Land Council views to various Commonwealth and NT Government agencies, and to the Minister for Immigration and Multicultural and Indigenous Affairs;
- attendance and participation in relevant conferences and making submissions to inquiries; and
- general research to assist Land Council management.

5.11 The ANAO noted that the Land Councils had processes and procedures in place to promote compliance with the ALRA and to identify the needs of traditional owners and Aboriginals living in the area of the Land Council. In the NLC, the ANAO found that to support the oral tradition of Aboriginal culture

and to address literacy and language concerns³⁷, Land Council staff made sure that as well as distributing agendas in a written format, agendas were discussed in regional groups in one day workshops before Full Council meetings. This assisted Land Council members to be better informed when determining policy and making decisions. Minutes of Full Council meetings and decisions were well documented and provide a valuable resource for future reference. In addition, the NLC staff consulted with Regional Councils before setting the Full Council agenda in order to reflect their interests and issues.

5.12 In the CLC, the Directorate (advocacy and representation function) keeps minutes and other documentation relating to Council meetings. However, the ANAO found that agenda papers are not provided to Council members prior to Full Council meetings because of literacy and language barriers. The CLC is testing a system whereby each Regional Coordinator holds a regional meeting of members just prior to the Full Council meeting, to discuss the Full Council agenda and any issues that might arise. This should facilitate Full Council making informed decisions.

5.13 The ANAO noted that there are many submissions and inquiries that require detailed and considered responses from the Land Councils. For example, proposed amendments and reviews of the ALRA, and the Commonwealth Grants Commission's Indigenous Funding Inquiry.

5.14 In undertaking the advocacy and representation function, the Land Councils are providing a service to traditional owners and other Aboriginals. The ANAO considers that the Land Councils are performing their advocacy and representation function as required by the ALRA.

5.15 As previously identified, the CLC, NLC, ALC and TLC had not developed performance indicators that included targets or standards against which their performance in providing advocacy and representation services could be measured or assessed. In addition, the ANAO did not find any formal regular assessment of performance that was documented and communicated to facilitate transparency of these services including timeliness and cost. Therefore, the Land Councils were unable to demonstrate if resources allocated to their advocacy and representation function had been efficiently utilised and directed to the areas of most need.

5.16 The ANAO considers that the development of performance information based on time, cost and quality, would assist the Land Councils in determining and reporting on the efficiency and effectiveness of services delivered under the advocacy and representation function. In addition, the Land Councils need to conduct regular assessments of the performance of their advocacy and

³⁷ Many of the Councils members do not speak or read English as a first language.

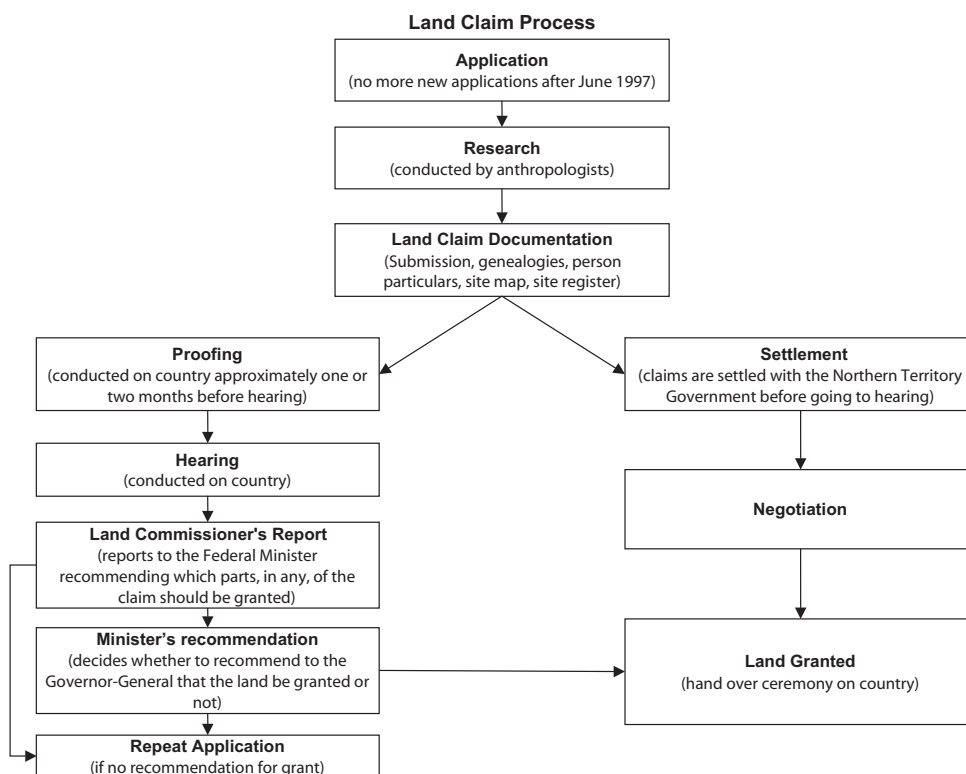
representation function to ensure that they are meeting the expectations of stakeholders and are able to provide reports on performance for accountability purposes.

Land Claims

5.17 As mentioned in Chapter 1, under the ALRA a Land Commissioner is appointed by the Governor-General on the advice of the Minister for Immigration and Multicultural and Indigenous Affairs to undertake functions in relation to Land Claims. The Land Commissioner has developed a set of practice directions to be used by Land Councils for Land Claims. Figure 5.1 provides a flow chart of the Land Claim process.

Figure 5.1

Land Claim Process Flowchart



Source: Flow chart developed using data from NLC's annual reports. The terminology 'on country' refers to the meeting being conducted with the traditional owners on the site that is covered by the ELA. Due to the weather conditions of the Northern Territory this is limited, particularly in the areas within the NLC, to the dry winter months between April and October.

5.18 Section 23(1)(f) of the ALRA requires that Land Councils arrange for legal assistance for Aboriginals wishing to pursue a land claim. The ANAO found that assisting Aboriginals to acquire land had been a major function of the CLC and the NLC. With the introduction of the ALRA in 1977, approximately 19 per cent of the NT became Aboriginal land (previously reserves). Since that time, the CLC and NLC have been instrumental in acquiring more land for traditional owners. The percentage of land in the NT that is Aboriginal land, as of February 2002, was approximately 44 per cent or 591 000 sq km³⁸.

5.19 The ANAO found that the NLC has developed comprehensive procedures and guidelines for conducting land claims. These guidelines promote compliance with the legislation and the Land Commissioner's practice directions. The land claim process developed by the NLC has four specific phases. Each phase is clearly articulated with roles, responsibilities and tasks required for each aspect of the phase.

5.20 The ANAO found that the CLC had not developed policies and procedures for conducting a land claim. The CLC advised that it applies the requirements of the ALRA and Land Commissioner's practice directions in preparing and conducting the land claim. The ANAO considers that the CLC should formalise its procedures for conducting a land claim. This will assist with management of risks, training, and succession planning.

5.21 The two small Land Councils have not had to pursue a process of obtaining land, as all claimable land was legislated as Aboriginal land under the ALRA in 1977.

5.22 The ANAO found annual reports and internal reporting documents contained a brief description of the stage reached for each active land claim. However, Land Councils had not developed pre-determined performance indicators or collected data against those indicators that would demonstrate if they were meeting expectations in a timely and cost effective way. The ANAO found that while Land Councils had a good understanding of the requirements of each stage in the land claim process, they did not undertake an assessment of their performance and report the results of those assessments.

5.23 The ALRA established a 'sunset clause' whereby no new claims would be processed after 4 June 1997 (section 50(2a)). In their strategic plans and annual reports, the CLC and NLC have acknowledged that their long-term direction is to move from a focus on land acquisition to a focus on the management and development of Aboriginal land. Notwithstanding the efforts of Land Councils in assisting Aboriginals in land claims, the ANAO noted that there are 92 land claims awaiting hearing and 29 in progress. While the Land Councils' focus is

³⁸ Aboriginals Benefit Account, *Aboriginal Land Rights (NT) Act 1976—Update—February 2002*.

changing from processing land claims to managing land, resources will still need to be allocated to finalise these claims.

5.24 The ANAO concluded that the development of pre-determined performance indicators and specific project deliverables to be reported at each stage of the land claim process would assist Land Councils to track their performance in conducting land claims.

Mining

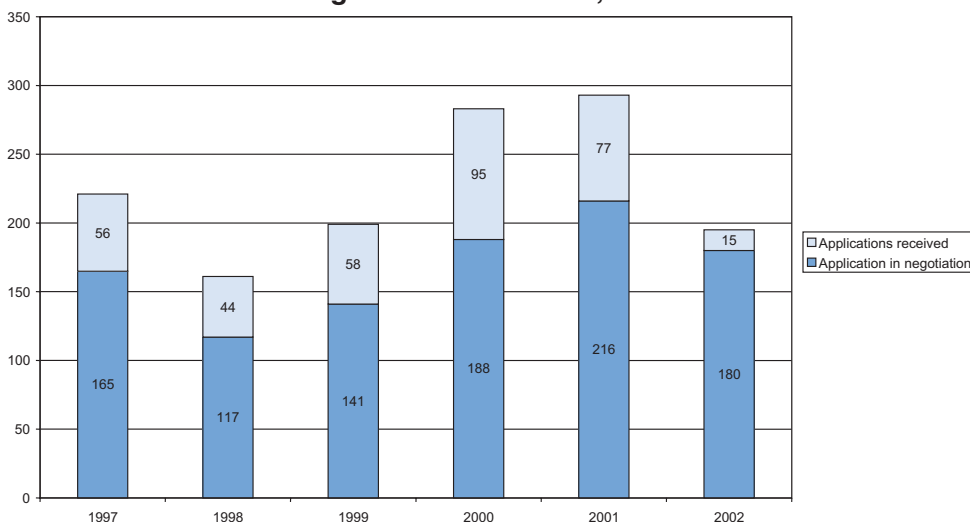
5.25 Part IV of the ALRA provides the detail of the process for the granting or refusal of exploration licences and mining on Aboriginal land. Appendix 4 outlines the steps and timing of the Exploration Licence Application (ELA) process. The process, in short, is as follows: an application is made to the NT Department of Business, Industry and Resource Development (DBIRD) for an ELA; the NT DBIRD Minister approves the applicant to enter into negotiations with a Land Council; the Land Council has 12 months to complete its responsibilities under the ALRA, (which involves identification of traditional owners leading to negotiation); and ultimately, if traditional owners agree, a negotiated agreement for an ELA.

5.26 Under section 42(7(b)) of the ALRA, Land Councils are required to process all ELAs approved by DBIRD within a 12-month timeframe, otherwise the ELA will be deemed as a consent to the grant of the licence. Approval of ELAs by DBIRD is on a first come, first served basis and therefore applications can be associated with sites scattered across the NT. Because the release of ELAs is at the discretion of DBIRD, Land Councils are not always able to plan, with any degree of certainty, for the workloads that result from approvals made by the NT Government.

5.27 Figure 5.2 shows the number of ELAs the CLC received each year from 1997–2002, as well as the number that were already in negotiation.

Figure 5.2

ELAs received and in negotiation in the CLC, 1997–2002



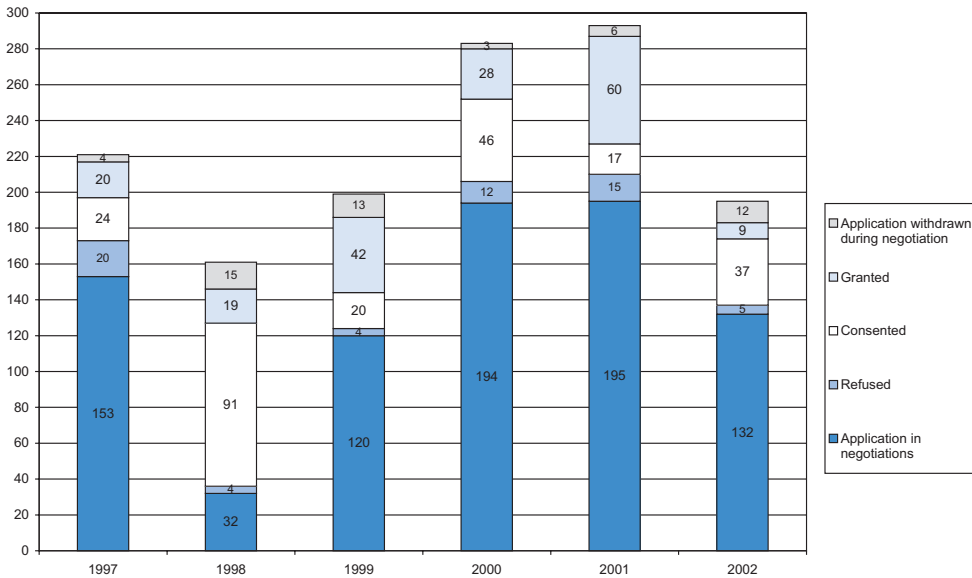
Source: Figure based on data provided by the CLC.

5.28 Figure 5.2 indicates the peaks and troughs reflecting the lag effect that the release of ELAs has on Land Council workload and the variation in the number of ELAs that can be released each year.

5.29 Under the ALRA, when an ELA has been lodged with a Land Council it is required to enter into a process of research, consultation and education with the relevant traditional owners. As a rule, consultation with traditional owners is conducted 'on country'. Traditional owners can either consent or refuse the ELA. In addition, mining companies may withdraw from negotiations prior to traditional owners making a final decision³⁹. Figure 5.3 shows the status of ELAs in the CLC from 1997–2002.

³⁹ A review, conducted in July 1999, of Part IV (the mining provisions) of the ALRA, by the National Institute of Economic and Industry Research made the following observation in relation to Land Councils' ELA processes:

One of the results of the surveys commissioned by the review was to show that 'there is no such thing as a typical ELA'. For some ELAs the traditional owners are well known to the Land Council and easily contacted; they are familiar with mining agreements and may already have agreements with the applicant. Where these favourable factors apply, there are a number of instances where ELAs have proceeded to grant within a year of the proposal being received, sometimes with the first meeting with traditional owners in the morning and the final meeting that same afternoon. In other cases the potential for delay is far greater.

Figure 5.3**The status of ELAs in the CLC 1997–2002**

Source: Figure based on data provided by the CLC.

5.30 As the Land Councils do not control the release of the ELAs, this presents a risk to the Land Councils being able to plan and deliver services efficiently and effectively. This risk is compounded by a number of other external factors that impact on the ability of a Land Council to achieve a satisfactory conclusion within the required timeframes outlined in part IV of the ALRA. These include:

- there may already be viable economic activities, such as forestry, being undertaken on the land;
- weather, such as seasonal heavy rains, may make it difficult for the Land Councils to conduct initial consultations with traditional owners, and to arrange meetings between mining companies and traditional owners;
- mining companies may sell the ELA or withdraw from an ELA halfway through the process, requiring repeat or additional work;
- ceremony and/or death of a traditional owner may cause a meeting to be cancelled;
- mining companies could require access through Aboriginal land adjoining the ELA, increasing the number of traditional owners affected and the associated research and consultation; and
- mining companies may hold on to ELA and not respond to meeting requests with the traditional owners (known as ‘warehousing’).

5.31 These pressures can lead to the Land Councils requesting the Minister for Immigration and Multicultural and Indigenous Affairs to approve, under section 42(14) of the ALRA, extensions to the 12-month negotiating period in order to avoid having the ELAs deemed.

5.32 The ANAO found that the Land Councils do not undertake a regular assessment of their performance in conducting ELAs and were unable to provide detailed analysis, for example Land Councils could not provide details during fieldwork of the average cost of processing an ELA⁴⁰. The ANAO also found that the current budgeting and reporting framework used by the Land Councils makes it difficult to determine the level of resources devoted to the processing of ELAs. The ANAO considers that a move to output based budgeting and reporting should enhance the ability of Land Councils to show resources devoted to ELAs.

5.33 The TLC is aware of potential mineral resources that exist on Tiwi land. However, mining is not the preferred use of land on the Tiwi Islands, as the TLC believes it conflicts with other areas of economic development such as forestry. All mining proposals are considered according to the requirements of Part IV of the ALRA, and to date all have been refused.

5.34 There is currently limited exploration activity being carried out in the ALC region. Mining activity had been established on Groote Eylandt prior to the enactment of the ALRA, and a strong relationship exists between the ALC and the Groote Eylandt Mining Company (GEMCO).

Economic development and management of Aboriginal land

5.35 One of the major responsibilities of the Land Councils as outlined in section 23(1) and (2) of the ALRA is to assist Aboriginal people in the management and development of their land. Land Councils are also required to ensure protection of sacred sites as well as manage access to Aboriginal land on behalf of, and in consultation with, traditional owners (controlled through issuing of permits). As indicated previously in the audit, the growth in Aboriginal land from 19 per cent of the NT in 1977 to around 44 per cent in February 2002 will see a significant growth in Land Council responsibilities related to the development and management of that land.

5.36 The ANAO noted that while the TLC does not have a strategic plan, it has always had a focus on land management and development. This is largely because the TLC has not had to go through the process of claiming land, as the

⁴⁰ Just prior to publication of this report, the NLC provided further analysis including the average cost of an ELA. However, the ANAO could not determine how this was used to inform the allocation of resources and level of performance.

Tiwi islands (Bathurst and Melville Islands) were legislated Aboriginal lands under the ALRA in 1977.

5.37 The ANAO noted that Land Councils were assisting Aboriginals in many different aspects of land management including:

- land uses involving commercial leases and licence agreements, such as crabbing, fish farming, camel farming and forestry;
- invasion control of weeds and pests such as mimosa and cane toads;
- bushfire prevention and control;
- sacred site protection;
- capacity building for community rangers; and
- joint management of national parks in conjunction with the NT Government.

5.38 In order to meet the growing demands of managing an increasing expanse of Aboriginal Land, the Land Councils have increasingly sourced funds from a variety of areas to supplement funding from the Aboriginals Benefit Account (ABA). Funding sources include:

- Aboriginal and Torres Strait Islander Commission;
- World Wildlife Fund (WWF);
- Environment Australia (Natural Heritage Trust (NHT));
- Department of Employment and Workplace Relations (DEWR);
- Indigenous Land Corporation (ILC); and
- fee for service.

5.39 Both ATSIC and the Land Councils recognise that the Land Councils will need to continue to obtain funding from sources other than the ABA. This could be grant funding that is provided generally by agencies for land management or other government programs, or a fee for service where individuals or companies wish to carry out economic activities on Aboriginal land.

5.40 The ANAO considers, to the extent that Land Councils utilise sources of funds other than the ABA, Land Councils need to have in place explicit policies relating to their approach to generating such funds. Such policies should be publicly reported. This would help improve transparency of key business processes and allow all parties to understand better the Land Councils' approach to funding their legislative functions.

5.41 The ANAO notes that the CLC and NLC operate in an environment where Aboriginal landowners are dispersed over remote regions of the NT. This places

pressure on the resources available to identify the needs of Aboriginal stakeholders, and places substantial demands upon the Land Councils in terms of service delivery. The response of the Land Councils to meet these demands has been the introduction of a policy of regionalisation of staff and resources, and a strong commitment to comprehensive consultation, including a process that involves bringing together landowners from diverse locations. The ANAO noted that the NLC has introduced a system whereby Aboriginal landowners are participating with NLC staff in determining the potential uses of their land. This is called participatory planning and is being rolled out to each of the regions within the NLC.

5.42 At the individual project level the ANAO found that the staff of the Land Councils had good project management skills and had developed policies and procedures to guide land management projects. Most of these projects had accountability clauses as part of the funding agreement. The ANAO found that Land Councils complied with these requirements and used management information to produce a variety of project specific performance reports.

5.43 However, due to the lack of relevant data the ANAO was unable to evaluate the overall efficiency and effectiveness of land management services provided by the Land Councils. The ANAO found that the Land Councils had not developed specific performance indicators and targets that tied individual land management projects together, and allowed Land Councils to report against their strategic objective of assisting Aboriginal landowners. The ANAO considers that this information would allow the Land Councils and external stakeholders to determine whether Land Councils' outcomes for land management have been achieved.

5.44 The ANAO was able to determine that some areas, such as the Caring For Country Unit (CFCU) in the NLC, delivered a program which contributed to a planned outcome. The CFCU had comprehensive strategies and action plans to implement programs.

5.45 The ANAO considers the processes of the CFCU provide an example of better practice for other areas within the NLC and other Land Councils. The development of an Outputs and Outcomes reporting and budgeting framework will further enhance the ability of CFCU to reflect achievement against outcome and effective resource allocation. However, the CFCU will need to consider development of specific quality, quantity and price indicators that tie land management projects together, to show effective contribution towards the NLC's agreed outcome.

Better Practice Example—Caring for Country Unit in the NLC

The NLC strategic plan states that a priority is to ‘assist in the management and development of Aboriginal land and sea based resources’. The Caring for Country Unit (CFCU) was established to provide this support. The aim of the CFCU is to establish a formal land management structure on Aboriginal Lands across the whole of the Top End⁴¹. The role of the CFCU is to broker delivery of appropriate advice, education and training and resources for Aboriginal land managers. The CFCU provides detailed needs analysis and identifies areas of priority and determines future projects. To date projects have included community-based land management projects in areas including the control of weeds such as mimosa and fire management. To address resource concerns the CFCU identified areas of potential funding and then applied for funding, resulting in partnership agreements for land management and development activities. This has included funding from the ILC, DEWR, and NHT. The CFCU produces monthly and six monthly reports that include:

- overall assessment of the project;
- goals for the next reporting period;
- reviews of training and identification of requirements for future training; and
- budget reviews and review of liaisons with technical support agencies.

The results are contained in the NLC’s annual report and the CFCU produces easy to read reports for Aboriginal landowners and other interested stakeholders.

Monitoring of land use and exploration licence agreements

5.46 Under the ALRA, Land Councils have the statutory responsibility to consult with traditional owners over any proposal concerning the use of Land Trust⁴² land. If the traditional owners consent to the proposal, a licence agreement or lease is prepared and entered into by the proponent and the Land Trust. The licence agreement will detail the terms and conditions upon which the business will be conducted and includes such things as the area involved and payments to be made to the traditional owners. Land Councils assist Aboriginal landowners to reach agreement with the commercial operators and negotiate contracts that reflect this agreement. The ANAO considers that having negotiated agreements

⁴¹ Michael Storrs, *Towards a formalised land management regime on Aboriginal Lands of the top end: A land management and employment strategy*, 3 April 2000.

⁴² Under the ALRA, Aboriginal Land Trusts are established by the Minister for Immigration and Multicultural and Indigenous Affairs to hold title to land in the NT for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned (Section 4(1)).

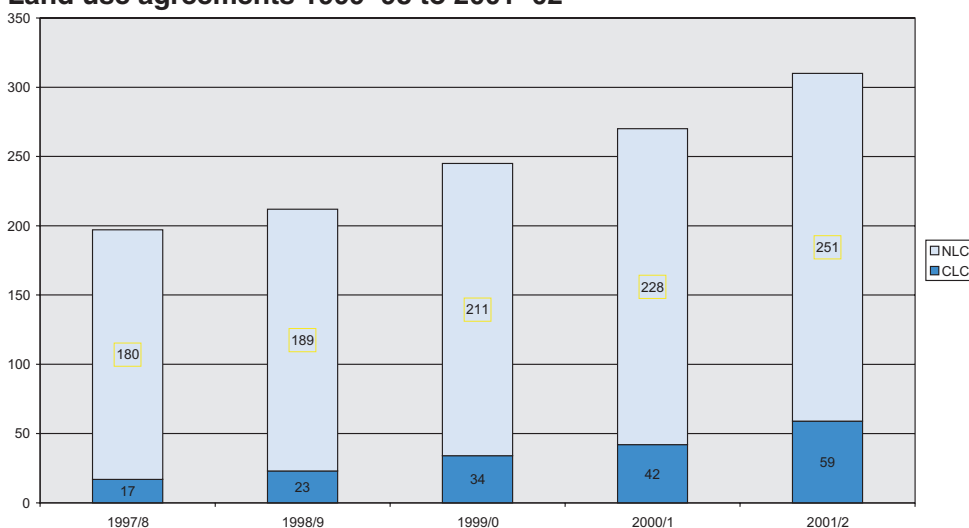
that reflect the wishes of the Aboriginal land owners, it is the Land Councils' responsibility to ensure the conditions of the agreements are met. This should be done by adopting a regime of monitoring and overseeing the agreements.

5.47 The ANAO found that the way in which issues arise in relation to individual agreements is that either local Aboriginals have brought breaches of agreements to the attention of the CLC or NLC, or individual Land Council officers have assessed particular risks and followed through to ensure that the specific requirements of the agreement are being met.

5.48 The ANAO notes that there are many agreements that cover a large number of operations that take place on Aboriginal land. The ANAO considers that as part of a broader risk management strategy, the CLC and NLC should examine their existing agreements and ensure that appropriate monitoring and oversight arrangements are put in place. Figure 5.4 shows the substantial growth in land use agreements from 1997–98 to 2001–02.

Figure 5.4

Land use agreements 1999–98 to 2001–02



Source: Figure based on data provided by the CLC and the NLC.

5.49 As indicated in the figure, there has been a substantial growth in the number of land use agreements and these will further impact on Land Councils' resources that are currently used to monitor land use and exploration licence agreements.

Royalty distribution

5.50 Section 35 of the ALRA requires that funds paid to a Land Council under subsection 64(3) be paid to either Aboriginal Councils that contain areas affected by mining or an incorporated Aboriginal Association⁴³ with members who are affected by mining operations. In addition, section 35 requires that any moneys paid to the Land Councils in relation to a commercial agreement, lease, licence or in relation to exploration be distributed to an Aboriginal Council or Association.

5.51 Royalty payments can originate from a variety of sources such as royalties from the ABA (64(3)), national park entrance fees, licences (such as for commercial fishing), leases, commercial agreements and exploration licences.

5.52 The CLC and NLC have established administrative arrangements within their corporate services function to assist with compliance with the ALRA and to distribute royalties according to the directions of the traditional owners. Before royalties can be distributed, the entire group of individuals who make up the beneficiary group needs to be identified. The Land Council planning process is designed to ensure that appropriate legal and anthropology resources are devoted to resolving outstanding royalty matters. The ANAO considers that the CLC's Aboriginal Associations Management Centre (AAMC) as outlined below is an example of better practice.

Better Practice example—Aboriginal Associations Management Centre in the CLC

The Aboriginal Associations Management Centre (AAMC) set up by the CLC provides administration, accounting, consultation and secretarial services to associations who receive income from the CLC under section 35 of the ALRA. In 2000–01, there were 50 recipient associations with a total membership in excess of 6000 people. The AAMC is responsible for distribution of royalties to traditional owners and assists the Aboriginal Associations with annual general meetings and with the preparation of annual reports including financial statements. Under the agreements with the Associations, the AAMC is paid a five per cent administration fee which effectively covers salaries and travel costs, any capital expenditure is borne by the CLC. The ANAO found that this arrangement was an effective use of CLC resources and discussions with CLC staff indicate that the relationship with Royalty recipients was strong.

⁴³ Aboriginal Councils are established under the *Aboriginal Councils and Associations Act 1976* to perform the functions approved by the Registrar of Aboriginal Corporations. Aboriginal Associations can apply for incorporation under the same legislation.

5.53 The administration of the distribution of mining royalties in the ALC formed a part of the ANAO audit to the extent that the ALC plays a role in assisting relevant Aboriginal Corporations decide on what basis funds should be allocated. The use of the funds after allocation is the responsibility of the Corporations and did not form a part of the audit.

5.54 Prior to the creation of the Amangarra and Amawurra Aboriginal Corporations, mining royalties were paid to the Groote Eylandt Aboriginal Trust (GEAT). While the operations of GEAT did not form a part of the audit, the ANAO noted during the audit that there were considerable concerns in relation to royalty distribution. A review of the ALC's operations by Walter and Turnbull raised a number of concerns.

5.55 The ANAO noted that the ALC has sought to address the issues raised in the Walter and Turnbull review and has consulted widely with the Aboriginal communities and Corporations. The ALC has advised the ANAO that consensus has been reached in the latest distribution of Royalties and that there are indications that agreement to a formulae for future distributions will be reached in the near future.

Conclusion

5.56 Overall, the ANAO concluded that the Land Councils had adequate procedures in place to assist with compliance with relevant legislation and had generally identified the needs of traditional owners. However, the Land Councils did not monitor and review the performance of their functions and service delivery through regular assessments that were documented and communicated internally or to stakeholders. Service delivery data were collected on an ad hoc basis, or in response to external reviews, and were, therefore, not available to be used systematically to inform management decisions. To assist Land Councils to monitor and review their performance in delivering services, suitable performance information should be collected and used. It does not have to be complex. It can be built up over time as the people concerned obtain more experience and get feedback from the various stakeholders. Performance monitoring would allow the Land Councils to review their activities on a regular basis and to systematically assess their progress towards targets, or against comparisons with past performance or future projections.

5.57 Regular and relevant performance information needs to be collected and communicated to assist Land Council performance to be monitored and reviewed. Management needs to monitor and review performance to ensure that objectives are being achieved efficiently and effectively. Monitoring and assessing performance will assist Land Councils to gauge progress against

objectives and respond more effectively. The ANAO considers that the Land Councils need to introduce a comprehensive outcomes and outputs performance reporting framework as discussed in Chapter 3.

Recommendation No. 7

5.58 The ANAO recommends that Land Councils regularly monitor and review the performance of their key business processes, and use the results to assist in decision making and for reporting to external stakeholders. This approach should ultimately be part of a wider performance information system, which provides for assessment to be made in a systematic way across the organisation, rather than just for isolated activities.

Land Councils' responses

5.59 ALC, CLC, NLC all agreed. TLC agreed with qualification.

ALC comment

5.60 Performance indicators prepared for 2002–03 Budget. A process will be put in place so that all achievements can be reviewed and assessment made of wider results.

CLC comment

5.61 The CLC agrees, however views this as an accountability mechanism for reporting to CLC staff, Council, funding bodies or to fulfil statutory requirements. The CLC disputes the need to report for its own sake to “external stakeholders” – who exactly are these ‘external stakeholders’ and what purpose is served by providing them with an additional form of reporting? The annual report is a public document and can easily be accessed by ‘external stakeholders’. Again, the proposed report is very loose in its terminology in this area—is an ‘external stakeholder’ the same as a ‘stakeholder’? (Refer to ANAO comment in paragraph 4.22).

NLC comment

5.62 The NLC will continue to use the Annual Report as the key reporting tool to all stakeholders, with appropriate changes in its format.

TLC comment

5.63 The TLC agrees with this recommendation with the qualification that it need be relevant and cost effective in terms of existing resources. The TLC’s annual reporting does monitor and report in a descriptive way that is part of the ‘story telling’ relevance for members. The TLC accepts that such reporting

can be improved, however, the TLC would not like to lose the ability to follow such review in the interests of some national standard that may compromise existing comprehension.

A handwritten signature in black ink, appearing to read 'P. J. Barrett'.

Canberra ACT
7 February 2003

P. J. Barrett
Auditor-General

Appendices

Appendix 1

Section 23—Functions of a Land Council

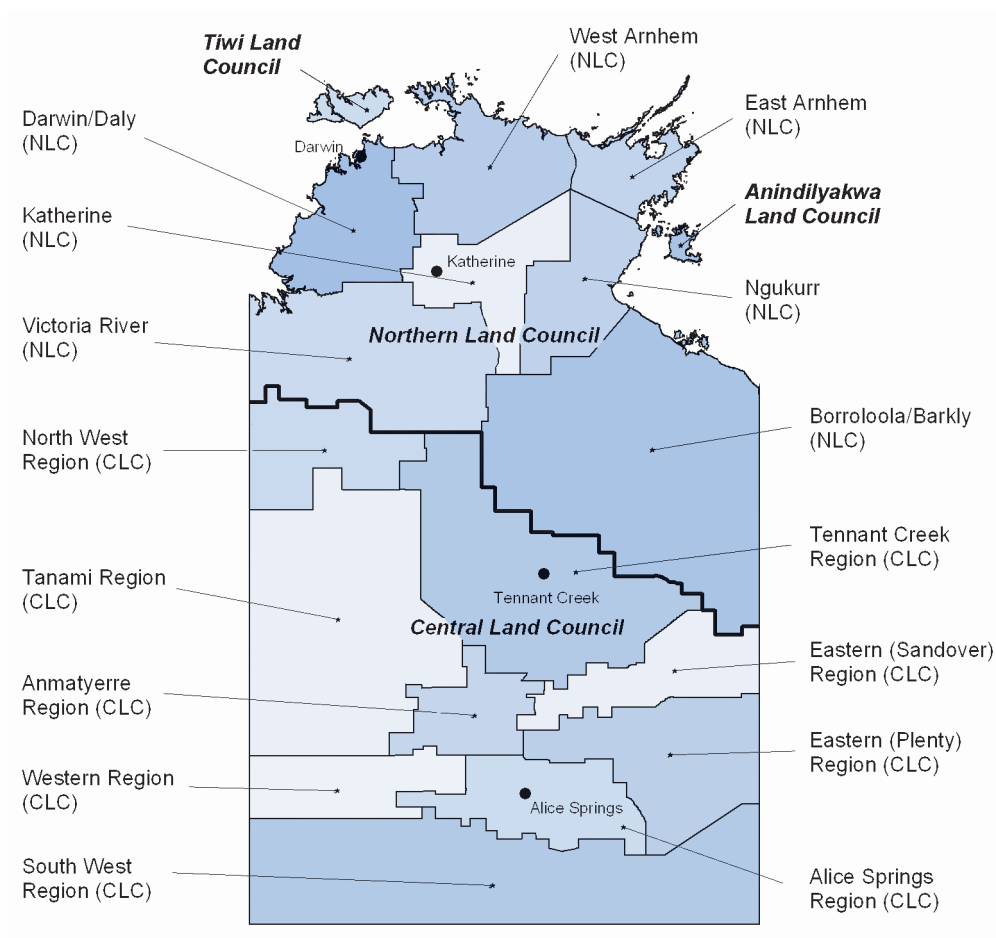
- 1) The functions of a Land Council are:
 - (a) to ascertain and express the wishes and the opinion of Aboriginals living in the area of the Land Council as to the management of Aboriginal land in that area and as to appropriate legislation concerning that land;
 - (b) to protect the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council;
 - (ba) to assist Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land) in the area of the Land Council;
 - (c) to consult with traditional Aboriginal 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;
 - (d) where the Land Council holds in escrow a deed of grant of land made to a Land Trust under section 12:
 - (i) to negotiate with persons having estates or interests in that land with a view to the acquisition of those estates or interests by the Land Trust; and
 - ii) until those estates or interests have been so acquired, to negotiate with those persons with a view to the use by Aboriginals of the land in such manner as may be agreed between the Land Council and those persons;
 - (e) to negotiate with persons desiring to obtain an estate or interest in land in the area of the Land Council:
 - (i) where the land is held by a Land Trust—on behalf of traditional Aboriginal owners (if any) of that land and of any other Aboriginals interested in the land; and
 - (ii) where the land is the subject of an application referred to in paragraph 50(1)(a)—on behalf of the traditional Aboriginal owners of that land or on behalf of any other Aboriginals interested in the land;
 - (ea) to assist Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the

- provision of tourist facilities and agricultural activities), in any manner that will not cause the Land Council to incur financial liability or assist it to receive financial benefit;
- (f) to assist Aboriginals claiming to have a traditional land claim to an area of land 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;
 - (fa) to negotiate, and enter into agreements, as necessary, for the purposes of subsection 70(4);
 - (g) to compile and keep:
 - (i) a register recording the names of the members of the Land Council; and
 - (ii) a register recording the names of the members of the Land Trusts holding, or established to hold, Aboriginal land in its area and descriptions of each area of such Aboriginal land; and
 - (h) to supervise, and provide administrative or other assistance for, Land Trusts holding, or established to hold, Aboriginal land in its area.
- (2) A Land Council may, with the approval of the Minister, perform any functions that may be conferred on it by a law of the Northern Territory, including, without limiting the foregoing, functions in relation to:
- (a) the protection of sacred sites;
 - (b) access to Aboriginal land; and
 - (c) schemes for the management of wildlife on Aboriginal land.
- (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 (if any) of the land and any other Aboriginals interested in the land and, in particular, shall not take any action, including, but not limited to, the giving of consent or the withholding of consent, in any matter in connexion with land held by a Land Trust, unless the Land Council is satisfied that:
- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and
 - (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.

- (4) The reference in paragraph (1)(e) to an estate or interest in land includes a reference to a licence in respect of that land.

Appendix 2

Map of Land Council Regions



Appendix 3

The Minister for Immigration and Multicultural and Indigenous Affairs' responsibilities under the ALRA

The Minister's role includes⁴⁴:

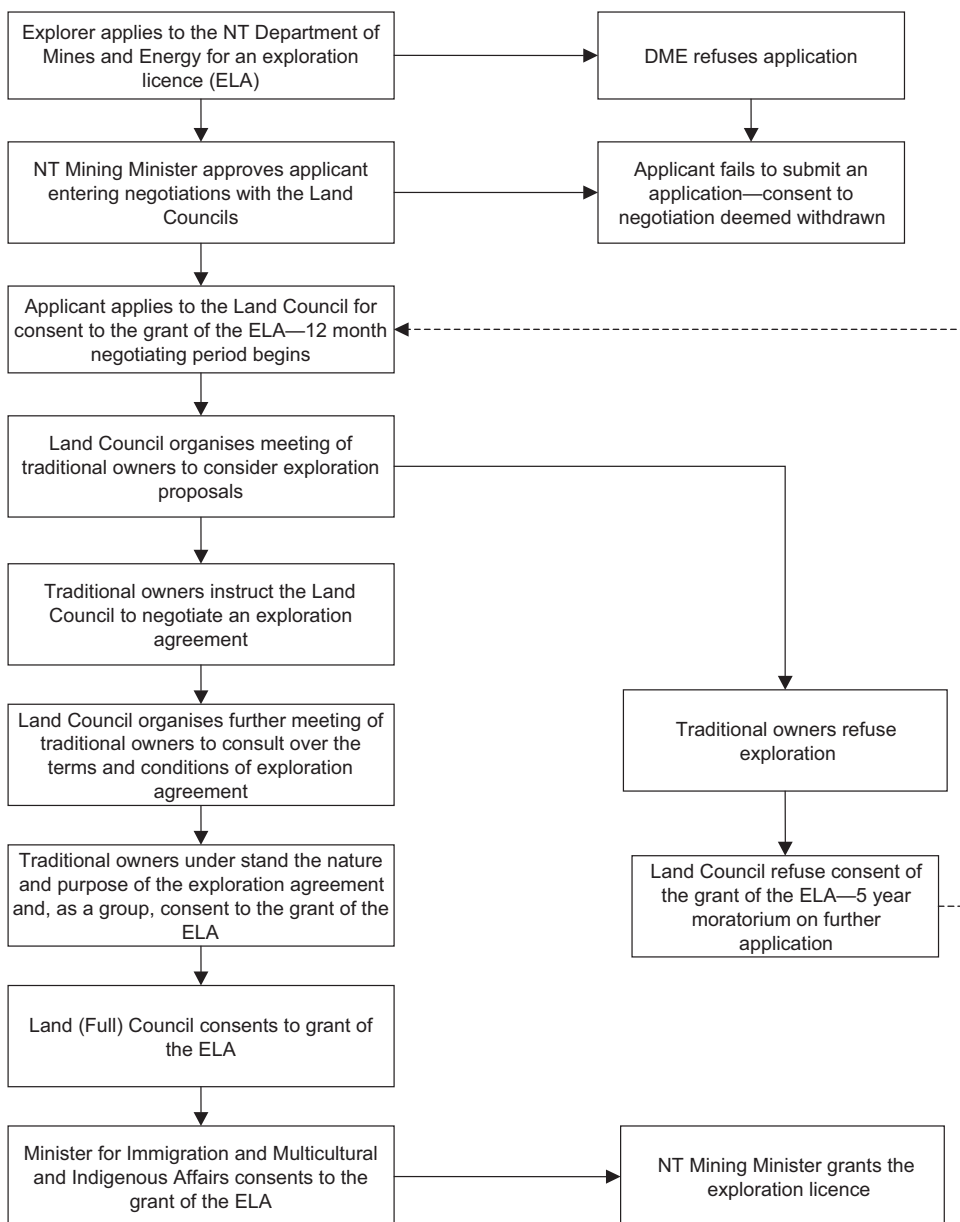
- consenting to various activities on, and dealings with, Aboriginal land, including:
 - o determining the value of fixtures and improvements;
 - o determining the amount of rent payable for buildings and improvements;
 - o granting an estate or interest in Aboriginal land pursuant to an agreement under s11A; and
 - o the construction of roads over Aboriginal Land;
- establishing Land Councils and approving numerous matters connected with the operations of Land Councils, including:
 - o additional functions;
 - o disclosure of information by;
 - contracts exceeding \$100 000 in value;
 - terms and conditions of membership;
 - the rules and conduct of meetings; and
 - estimates of expenditure;
 - o payments by and to;
 - o expenditure statements;
 - o audits of accounts;
 - o performance of additional functions; and
 - o convening meetings;
- establishing and appointing membership of Land Trusts;
- recommending grants of land under the Act;
- appointing an arbitrator or a mining commissioner;

⁴⁴ Reeves, John, *Building on Land Rights for the next generation the review of the Aboriginal Land Rights (Northern Territory) Act 1976*, 2nd Ed., ATSIC, Canberra, 1998, p. 487.

- giving various consents or approvals, and attending to various matters, under the exploration and mining provisions contained in Part IV of the Act;
- being responsible for processing the appointment of an Aboriginal Land Commissioner by the Governor General;
- appointing the chairman of the Advisory Committee established in connection with the ABA and approving various payments into and out of the ABA;
- publishing the details of an agreement in respect of roads and tabling a proclamation of a mine proceeding in accordance with the national interest; and
- delegating his functions under the Act.

Appendix 4

Exploration Licence Application (ELA) Process⁴⁵



⁴⁵ HORSCATSI, *Unlocking the Future: The Report of the Inquiry into the Reeves Review of the Aboriginals Land Rights (Northern Territory) Act 1976*, August 1999.

Appendix 5

House of Representatives sub-committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA)—Unlocking the Future

The Report of the Inquiry into the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*

Recommendations

HORSCATSIA made 45 recommendations. These included:

- the ALRA not be amended without traditional Aboriginal owners understanding and consent;
- the Reeves Report recommendations to implement a system of Regional Land Councils be rejected;
- amend ALRA to allow Land Councils to delegate any or all their powers, except for the power of delegation itself, the power to surrender Aboriginal land;
- amend ALRA to provide an option for traditional Aboriginal owners to represent their own interests in land without Land Council involvement;
- the recommendation of the Reeves report to establish the Northern Territory Aboriginal Council be rejected;
- Land Councils consider the viability and usefulness of a peak Congress of Land Councils made up of representatives from each Land Council;
- ABA be retained as a statutory fund financed from Mining Royalty Equivalents;
- ALRA be amended to include a clear statement of purposes for the distribution of the funds in the ABA;
- the equity and efficiency of the Mining Withholding Tax applied to the Mining Royalty Equivalents be re-examined with a view to its abolition;
- Part IV of the ALRA be amended so there are no restrictions on the contents of agreements for exploration or mining, subject to commercial law requirements;
- the recommendation of the Reeves report to replace the permit system under *Aboriginal Land Act 1978 (NT)* with an amended Trespass Act be rejected;

- Land Councils initiate a public awareness campaign about the operation of the permit system;
- Land Councils undertake negotiations with the Northern Territory Government to consider practical difficulties associated with Land Councils complying with the Fences Act; and
- the role of the Minister for Aboriginal and Torres Strait Islander Affairs in the administration of ALRA be reviewed, with a view to reducing or removing the role altogether.

In addition HORSCATSIA recommends the Minister for Aboriginal and Torres Strait Islander Affairs establish projects teams to consult and advise on the following areas:

- distribution of money allocated under section 64(3) of ALRA;
- the allocation of a guaranteed allocation of amounts paid into the ABA;
- area access agreements and the workability of the permit system; and
- granting of title for beds and banks of rivers.

Appendix 6

Community visits and stakeholder consultations

Aboriginal communities visited

Angurugu

Baniyala

Bathurst Island

Bickerton Island

Kalkarinji

Melville Island

Mining meeting at Lajamanu

Nalawan outstation on the Roper River

Umbakumba

Stakeholder discussions

Bush Fire Council

Alice Springs

Centre for Aboriginal Economic Policy Research

Australian National University

Executive Director

Northern Territory Cattleman's Association

Manager

Tanami Operations

Newmont

General Manager

Newmont

Manager Indigenous Affairs

BHP Billiton

Groote Eylandt

Adviser to Syd Sterling

Minister for Education in the NT

Executive Officer

Amateur Fishermen's Association of NT

Uranium Industry Section
Department of Industry, Tourism and Resources
Department of Business, Industry and Resource Development
Northern Territory
Department of Infrastructure, Planning and Environment Northern Territory
Attorney-General's Department, Northern Territory Government
Office of Aboriginal and Torres Strait Islander Affairs
Department of Immigration and Multicultural and Indigenous Affairs
Principal Adviser on Indigenous Affairs to the
Minister for Immigration and Multicultural and Indigenous Affairs
Department of Finance and Administration
Canberra
Assistant Secretary
Policy and Operational Services
NT Department of Business, Industry and Resource Development.
Manager Aboriginal Land
Department of Lands NT
CEO of NT Minerals Council
Senator Trish Crossin
Senator for NT
Director Indigenous Policy
NT Chief Minister's Department

Appendix 7

Anindilyakwa Land Council

At the time of the audit the ANAO found that the ALC had recently been the subject of a review instigated by the former Minister of Aboriginal and Torres Strait Islander Affairs, Senator John Herron. In the ALC's 2000–01 annual report the Chairman advised that:

Due to some discontent among residents of Groote Eylandt and Bickerton Island the Minister for Aboriginal and Torres Strait Islander Affairs engaged a firm of accountants, Walter and Turnbull, to investigate a number of allegations against the Land Council. While in the main, the report by Walter and Turnbull, found that there were (no) major problems with the management and administration of the Anindilyakwa Land Council, there were deficiencies in its operations.

Subsequently consultants, Ross Hebblewhite & Associates were engaged by the Land Council to assist with implementing the Walter and Turnbull recommendations and help with the administration and management.

Some major issues the Anindilyakwa Land Council has begun addressing are:

- improved communications with all groups on Groote Eylandt and Bickerton Island;
- new structure to enable the ALC to become more involved in land management; and
- updated administrative processes and procedures, and royalty distributions.

The Walter and Turnbull Report proposed a number of measures to address these problems including:

- employing a person at the Land Council to assist in ensuring that the Land Council's decisions and actions were transparent;
- anthropological identification of all traditional owners; and
- that the policies and procedures of the Land Council should be improved significantly.

The ANAO found that a draft operations and procedures manual has been developed to assist with implementing the Walter and Turnbull recommendations and to help with the administration and management of the ALC. The manual outlines the Council's Operating Principles, Policies and Guidelines and suggests that they are to be monitored, reviewed and updated as required by the ALC Executive.

The administrative instructions that are included in the manual provide the ALC with the basis to assist in the maintenance of effective financial management and administration.

Index

A

Aboriginal Land Commissioner 37, 39, 40, 120

Aboriginal Land Rights (Northern Territory) Act 1976 5, 6, 9-11, 13-15, 17, 31, 38, 43, 44, 46, 57, 65, 85, 93, 100, 119, 122

Aboriginals Benefit Account 1, 3, 5, 6, 11, 14, 17, 21, 31, 37, 38, 45-47, 60, 105

Advocacy 81, 94, 97, 98

Anindilyakwa Land Council 6, 9, 18, 26, 32, 71, 126

Anthropology 36, 43, 69, 109

ATSIC 5, 6, 11-17, 21, 22, 26, 27, 38, 39, 40, 41, 43, 46, 48-52, 54-64, 75, 77, 78, 82, 105, 119

Audit Committees 17, 23, 26, 70-72, 83

B

Better practice 19, 70, 77, 85, 106, 107, 109

C

Central Land Council 6, 9, 12, 14, 18, 26, 31, 39, 71, 83

Commonwealth Authorities and Companies Act 1997 6, 11, 19, 24, 26, 36, 46, 71, 77, 85

E

Economic development 55, 60, 70, 94, 104

ELA 6, 23, 65, 69, 76, 80, 99, 101-104, 121

F

financial strategies 22, 60

fishing 13, 14, 40-42, 45, 109

I

investment 15, 22, 26, 47, 48, 52, 60-64

L

land claims 10, 39, 40, 57, 58, 94, 99, 100, 101

Land Council funding 5, 21, 45, 46, 58

Land rights 9, 11, 13, 14, 18, 31, 38, 42, 44, 64

land tenure 5, 39

M

Mining industry 13, 40, 41

Mining withholding tax 50, 122

Minister for Immigration and Multicultural and Indigenous Affairs 9, 12, 13, 31, 37, 38, 40, 42, 43, 49, 97, 99, 104, 107, 119, 121, 125

N

Native Title Act 1993 6, 39, 44

Northern Land Council 6, 9, 12, 14,
18, 31, 39, 74, 83, 93

Northern Territory Government 41,
42, 123, 125

O

outcome effectiveness indicators 15,
73, 75, 80

outcomes and outputs 5, 24, 27, 59,
64, 77, 82, 83, 111

output performance indicators 24, 81

P

pastoral 13, 14, 40, 42, 45, 65

performance Information 5, 15, 16, 19,
23, 27, 45, 65-67, 69, 71, 73,
75-77, 79-81, 83-85, 87, 88, 92, 93,
97, 98, 110, 111

permits 57, 65, 88-90, 104

R

Recommendation 5, 7, 9, 11, 17-19, 26,
27, 31, 36, 40, 42, 43, 54, 62, 63,
71, 72, 82, 90, 91, 99, 111, 122,
126

Royal Commission 9, 31, 32

royalty distribution 54, 79, 94, 109,
110, 126

royalty equivalent 12, 15, 21, 22, 38,
44, 46, 48-54, 57, 61, 63, 66

S

service charter 5, 16, 25, 27, 85, 87, 88,
90-92

stakeholder 5, 10-17, 19, 20, 22, 24-27,
36, 40, 41, 45, 58, 60, 62, 63, 65,
67, 73, 75-78, 83-99, 106, 107,
110, 111, 124

T

Tiwi Land Council 6, 9, 12, 18, 26, 32,
35, 39, 71,

tourism 6, 13, 40, 42, 48, 51, 125

traditional owners 9-21, 15-17, 20, 24,
25, 31, 33, 37, 40, 42, 55, 65-67,
69, 70, 72, 75, 83, 85-89, 91, 93,
96-104, 107, 109, 110, 121, 126