

NOTICE OF FILING

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Registry: NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit

No. NTD 17 of 2024

Federal Court of Australia
District Registry: Northern Territory
Division: General

LESLEY TURNER

Applicant

JACINTA NAMPIJINPA PRICE

Respondent


Affidavit of: **Lesley Turner**
Address: [REDACTED]
Occupation: Chief Executive Officer
Date: 24 March 2025

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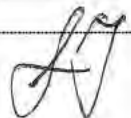
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I, Lesley Turner, of [REDACTED] affirm:

- I previously affirmed an affidavit on 21 February 2025 in this proceeding.


 A Justice of the Peace in the
 Northern Territory
 (08) 8951 5710

Filed on behalf of Lesley Turner, applicant
 Prepared by Victoria-Jane Otavski
 Law firm BlackBay Lawyers
 Tel [REDACTED] Fax _____
 Email [REDACTED]
 Address for service Level 30, 133 Castlereagh St, Sydney NSW 2000



2. Shown to me at the time of affirming this affidavit is a bundle of documents marked **Exhibit LT-2**. In this affidavit, I identify documents by reference to the number of the first page on which they appear in Exhibit LT-2.
3. I have read the affidavits made by Senator Price, Damian Wilks and Rebekah Hart (each dated 28 February 2025).

Management of Traditional Owner status

4. In paragraphs 33-36 of her affidavit, Senator Price says that she was concerned about the Central Land Council's management of Traditional Owner status, and that she was aware of concerns about this issue in the CLC constituency.
5. The CLC has a duty under the *Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Rights Act)* to consult with and have regard to the interests of Traditional Owners in relation to the management of land.
6. So that we can identify the relevant Traditional Owners to be consulted in each case, we maintain lists of Traditional Owners in respect of different land trusts. These lists are updated when there is a new consultation requirement or dispute, for example in relation to mining or exploration licences, grazing licences, gravel extraction, sacred site clearances or when major distribution meetings are conducted.
7. The CLC is responsible for administering and distributing royalty payments to Traditional Owners. These distributions are carried out by the CLC's Aboriginal Associations Management Centre (**AAMC**).
8. Senator Price's suggestion that the system could "enable if not encourage abuse, fraud and corruption" is ill-informed, baseless and offensive.
9. The CLC has had a Fraud and Corruption Policy at all times during my tenure as CEO. A copy of the version of the Policy which was in force in July 2024 is at page 10 of LT-2. A copy of the current version, which was approved by me on 23 September 2024, is at page 18 of LT-2.
10. The Traditional Owner lists are managed by the CLC's anthropology unit, which consists of 17 qualified, professional anthropologists. CLC anthropologists carry



out extensive consultations with senior Aboriginal people associated with the relevant area in order to determine Traditional Owner status according to the statutory definition of the term "Traditional Owner" in the Land Rights Act. This research is documented in detail. Over the more than four decades that the system has been in operation, this research has been tested in court in land rights and native title claims and has often been vindicated.

11. The AAMC was recently the subject of an internal audit which found that the Traditional Owner identification process maintained good records backed up by extensive documentation. Moreover, the Australian National Audit Office found, in its June 2023 report, that the CLC's processes for consulting with and obtaining informed consent from Traditional Owners were fit for purpose.
12. As far as I am aware, Senator Price has never put any questions to the CLC about the management of Traditional Owner status or sought access to any documentation about this process.
13. In paragraph 33 of her affidavit, Senator Price claims to have been told in 2021 and 2022 by two Eastern Arrernte women, Sharon and Natasha Watkins, that they tried to get hold of me in relation to a list of Traditional Owners, but that they never had any positive result.
14. I have no recollection of ever meeting with Sharon or Natasha Watkins. I have checked my calendars for 2021-2022 and I have no record of any appointments with them or any communications from them.
15. In paragraph 35 of her affidavit, Senator Price says that I was contacted in 2022 and 2023 by Lesley and Geraldine Martin, again about a list of Traditional Owners.
16. I have no recollection of meeting with Lesley and Geraldine Martin either, nor have I been able to find any record of any such appointment in my calendars for 2022-2023 or any record of a communication from them.
17. If a CLC constituent makes contact with me about an issue with a Traditional Owner list, I will take notes and then instruct the appropriate officers to respond to their query or to meet with them.



Alleged interaction with Senator Price and her mother

18. In paragraphs 50-54 of her affidavit, Senator Price alleges that she and her mother Bess Price met with me in Alice Springs in April 2021 in relation to Bess Price's claim to Traditional Owner status.
19. I have no recollection of meeting either Senator Price or Bess Price at this time, and I have been unable to find any record of such a meeting.
20. In relation to the timing of the meeting, I note that although I commenced my position as Interim CEO on 8 April 2021, I did not assume full authority until 5pm on 23 April 2021, following a hand-over meeting on 22 April 2021.
21. Bess Price's claim to Traditional Owner status was determined before I became CEO, but my understanding of what occurred, based on reviewing CLC records, is as follows.
22. In September 2019, Bess Price met with then-CEO Joe Martin-Jard and Principal Legal Officer James Nugent to discuss her claim of being a Traditional Owner of a disputed area. The CLC appointed Emeritus Professor Nicolas Peterson, a highly distinguished anthropologist at the Australian National University, to carry out research in order to evaluate the claim. Bess Price agreed to this process.
23. Emeritus Professor Peterson found that Bess Price did have some connection to the relevant area, but that it was not to the extent that she had claimed. On the basis of these findings, the CLC Executive at the time determined not to register her as a Traditional Owner. Bess Price was present at the Executive meeting when the report findings were considered.
24. I find Senator Price's allegations about lack of due process in Traditional Owner determinations even more offensive given that her own mother went through that process. She ought to know that there is no basis for her to allege that there is a widespread issue with lack of natural justice in Traditional Owner determinations, given the process that her own mother participated in.



Australian National Audit Office report

25. In paragraphs 41-42 of her affidavit, Senator Price refers to the Australian National Audit Office's June 2023 report titled "Governance of the Central Land Council" and asserts that its findings were "damning" of my management and operation of the CLC, and of my professionalism.
26. A copy of the Audit Office's report is at page 29 of LT-2.
27. Some of the key findings of the Audit Office were:
- (a) The CLC's governance arrangements were largely effective – page 8;
 - (b) Governance arrangements for the exercise of the CLC's statutory functions (negotiating and assisting with land use, assisting with commercial activities, consulting and obtaining informed consent, and distributing royalties and rents) were largely appropriate, although there could be greater monitoring of land use agreements – page 8;
 - (c) Arrangements to promote the proper use and management of resources were largely appropriate, except for arrangements to identify and manage fraud risks and conflicts of interest – page 8;
 - (d) A largely appropriate and fit for purpose policy and risk management framework was in place – page 8;
 - (e) Public reporting was largely consistent with legislative requirements and significant attention was paid to performance measurement – page 8;
 - (f) The CLC's processes for consulting with and obtaining informed consent from Traditional Owners were fit for purpose – pages 35, 44;
 - (g) Processes for distributing royalties and payments were well-established and complied with statutory requirements – page 35;
 - (h) The CLC was not actively implementing its Fraud and Corruption Plan because there were no regular fraud risk assessments and there was no general register of Council member interests, although Council meeting

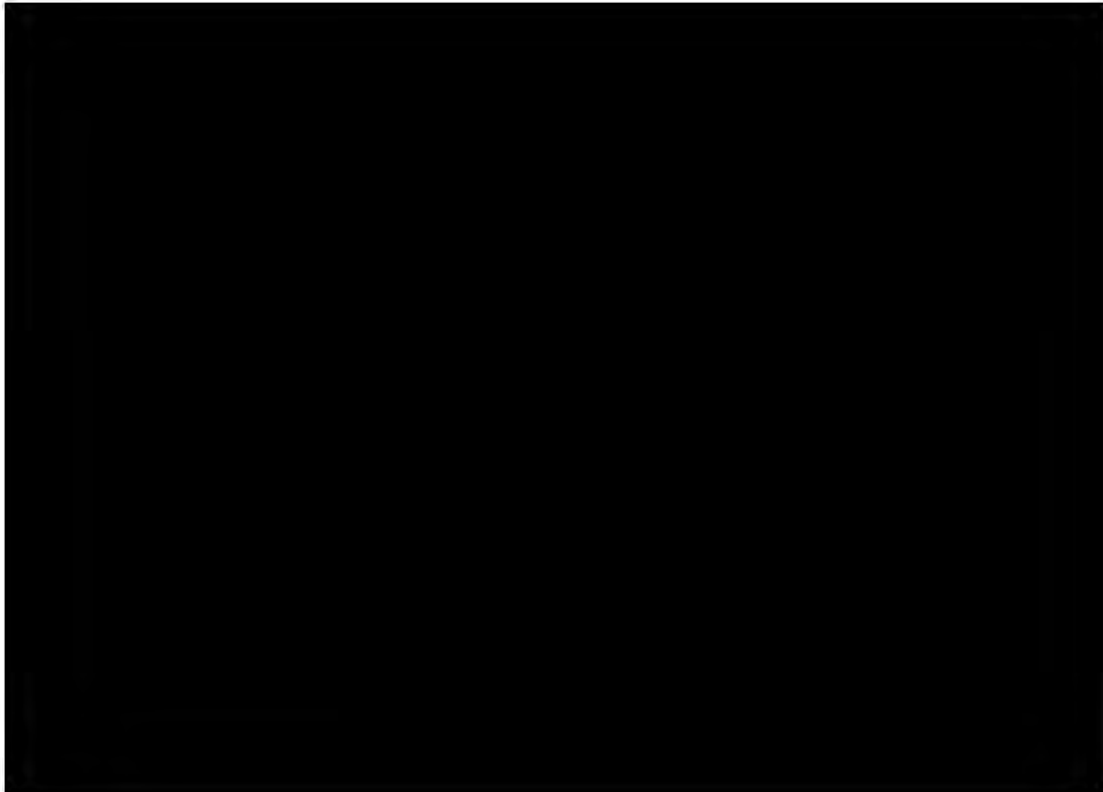


rules and the Code of Conduct did contain provisions for dealing with conflicts during meetings – page 55;

- (i) The CLC complied fully with the requirements of “Having an appropriate mechanism for preventing fraud, including making employees aware of what constitutes fraud”; “Having an appropriate mechanism for detecting and investigating fraud, including a confidential reporting process”; and “Having an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud” – pages 82-83.

28. The Audit Office did not make any finding to the effect that there were any actual instances of fraudulent activity.

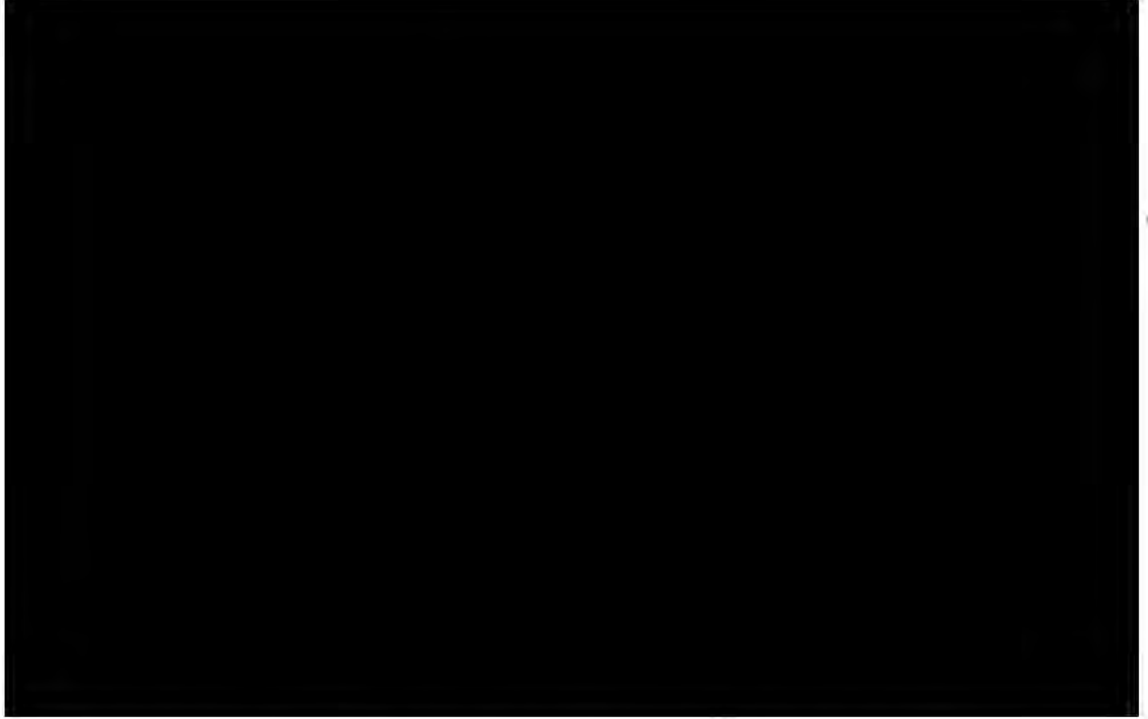
29.



30.



A handwritten signature in black ink, appearing to be 'AJ'.



31. As I said in paragraph 68 of my first affidavit, I believe that Senator Price has taken the Audit Office's negative findings regarding the CLC's implementation of its fraud policy out of context, and that she has misrepresented the totality of its findings. I am very frustrated and angry that she continues to do this.

32.

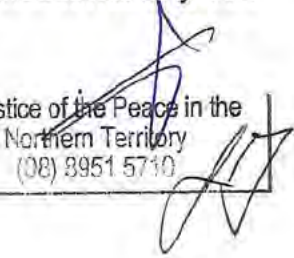


Matthew Palmer and Gavin Morris

33. On 5 June 2024, I sent a letter to Matthew Palmer regarding a certificate Mr Palmer had signed purporting to recognise a certain person as the Senior Custodian and Traditional Owner of Itjiltjari (Middleton Ponds). I was concerned that Mr Palmer appeared to have done so outside the CLC's formal processes for determining Traditional Owner status. I wished to ask him questions about the matter because I was concerned that there may have been a breach of statutory obligations under the *Public Governance, Performance and Accountability Act 2013* or the Land Rights Act.

34. A copy of my letter to Mr Palmer is at page 119 of LT-2.

A Justice of the Peace in the
Northern Territory
(08) 8951 5710



Form 59
Rule 29.02(1)

Exhibit Certificate

No. NTD 17 of 2024

Federal Court of Australia
District Registry: Northern Territory
Division: General


LESLEY TURNER

Applicant

JACINTA NAMPIJINPA PRICE

Respondent

This and the following pages are **Exhibit LT-2** to the affidavit of **Lesley Turner** sworn in Alice Springs this 24th day of March 2025, before me:


ROWENA MOLINA

A Justice of the Peace in the
Northern Territory
(08) 8951 5710

Local Courts Alice Springs
10 Parsons Street
PO Box 1394
ALICE SPRINGS NT 0870





CENTRAL LAND COUNCIL

FRAUD AND CORRUPTION – POLICY AND PROCEDURE

Policy No	FIN001
Date of issue	June 2021
Version	4.0
Application	All CLC employees
Related Documents	<ul style="list-style-type: none"> • <i>Commonwealth Fraud Control Framework 2017</i> • Central Land Council (CLC) Code of Conduct • Employment of Casual Staff Policy • CLC Enterprise Agreement 2017 to 2020. <ul style="list-style-type: none"> ○ Note especially the grievance procedure within the CLC EA. • Recruitment and Selection Policy • Standard Consultant Terms & Conditions (contract template) • Fraud Risk Register • Risk Management Framework 2020 • Risk Management Plan 2020
Policy Statement	<p>A Fraud and Corruption Policy is adopted as a requirement of financial risk measures recommended by financial professionals and with regard to the <i>Commonwealth Fraud Control Framework 2017</i> issued by the Attorney-General's Department under Section 10 of the <i>Public Governance, Performance and Accountability Rule 2014</i>.</p> <p>Fraud, theft or corruption is not condoned irrespective of whether it is attempted internally by employees or elected council members or externally by members of the public.</p>
Signed and Authorised By:	
Les Turner Chief Executive Officer	Date

2. Introduction

The Central Land Council (CLC) is adopting this Fraud and Corruption Policy as a requirement of *Commonwealth Fraud and Control Framework 2017* issued by the issued by the Attorney-General's Department under Section 10 of the *Public Governance, Performance and Accountability Rule 2014*. The CLC has always set itself high standards of honesty and probity.

CLC does not condone fraud, theft or corruption irrespective of whether it is attempted internally by employees or elected council members or externally by members of the public. The CLC is committed to this Fraud Policy that is designed to:

- Encourage prevention;
- Promote detection;
- Ensure protection;
- Transparent reporting; and
- Identify a clear approach for investigation.

This policy/procedure is based on a series of comprehensive and integrated procedures designed to prevent any attempted fraudulent or corrupt act. These procedures cover:

- Culture;
- Prevention;
- Detection and investigation;
- State/Australian Government initiatives
- Training; and
- Whistleblowing.

There is a continuous review of systems and internal controls by the Senior Management Group and a high degree of external scrutiny of CLC's business by a variety of bodies, including:

- External auditors
- Internal audit
- Audit Committee

3. Scope

This policy applies to all the staff (including officers), delegates and volunteers engaged directly or indirectly by CLC as well as all agents and contractors either engaged by the CLC or by an authorised contractor of CLC.

All reports/complaints received by CLC will be investigated and appropriate action will be taken.

CLC Council members and staff must be aware of the Council's intention to suspend or dismiss staff, report internal and/or external fraudulent activity to police and where recommended, prosecute Council members or staff and any other parties to the matter, found to be involved in fraudulent behavior. CLC will pursue recovery of any financial loss through civil proceedings.

4. Fraud Strategy

Staff are required to report all suspected irregularities to their Manager. Reporting is essential and:

- ensures the consistent treatment of information regarding fraud, theft and corruption
- ensures compliance with relevant legislation
- ensures all enquiries are routed through CLC's chain of command
- facilitates proper investigation by an experienced staff member; and
- ensures the proper implementation of a fraud response investigation plan.

Depending upon the nature and anticipated extent of the allegations, the Chief Executive Officer (CEO) will normally work closely with management and other agencies such as the police to ensure that all allegations and evidence is properly investigated and reported upon.

Action will be taken in accordance with the disciplinary provisions contained within the CLC Code of Conduct and Enterprise Agreement (EA) where the outcome of the investigation indicates improper behavior.

CLC will normally refer the matter to police where financial impropriety is discovered.

Where appropriate, the relevant Section Manager will be kept informed of the progress of the investigation.

5. Definitions

Anti-Fraud is defined as the measures taken within CLC to prevent, detect and investigate instances of fraud or perceived fraud.

Fraud may include (but is not limited to):

- theft (property, financial or information/data)
- accounting fraud (false invoices, misappropriation etc.)
- unlawful use of, or obtaining property, equipment, material or services
- causing a loss, or avoiding and/or creating a liability
- providing false or misleading information to the Commonwealth, or failing to provide it when there is a an obligation to do so
- misuse of Commonwealth assets, equipment or facilities
- making, or using false, forged or falsified documents, and
- wrongfully using Commonwealth information or intellectual property.

Theft is defined as being the dishonest appropriation of CLC's property with intent to deprive CLC of it permanently.

Corruption is defined as being the use of bribery, fraud or the irregular alteration and or distortion of records to conceal and/or misappropriate assets of CLC.

Whistleblowing means action by an employee to disclose malpractice in the form of irregularity, wrong-doing or serious failures of standards at work.

Internal fraud is where fraud against an entity is committed by its officials or contractors.

External fraud is where fraud comes from outside the entity from external parties such as clients, service providers, other members of the public or organised criminal gangs.

6. Culture

CLC is committed to ensuring that its culture will continue to be one of honesty and opposition to fraud, theft and corruption. CLC's Corporate Plan 2020-24 specifically supports 'honesty' and 'integrity' as core values to which the organisation is committed. There is an expectation and requirement that all individuals and organisations associated in whatever way with CLC will act with integrity and that CLC staff and members, at all levels, will lead by example in these matters.

CLC staff are positively encouraged to raise any concerns about suspected instances of fraud, theft and corruption that they may have on these issues where they are associated with CLC's activities.

They can do this in the knowledge that such concerns will be treated in confidence and properly investigated. Any instance must be reported to either the:

- Relevant Manager;
- General Manager or
- CEO

In the first instance, members of the public are also encouraged to report any concerns to the CEO.

7. Roles and Responsibilities

Responsibilities for fraud prevention rests with all levels of management, Council members, employees, volunteers and agency or contracted employees who represents the Council and who collectively must accept ownership of the controls relative to this policy.

Senior management is responsible for following up any allegation of fraud or corruption and will do so by immediately informing the CEO. Issues can be reported to the General Manager, and an investigating officer may be appointed depending on the complexity and seriousness of the allegation.

The investigating officer, usually the Legal Manager, Human Resources Manager, or Financial Controller, will:

- be properly trained and experienced to deal with deal promptly with the matter;
- ensure principles of natural justice and procedural fairness are maintained;
- record all evidence, ensure it is sound and adequately supported;
- ensure the security of all evidence;
- contact and liaise with other agencies, e.g. Police; and
- notify and liaise with the CEO.

Senior Management are expected to deal swiftly and firmly with those who have engaged in behavior constituting fraud or corruption. The Council should be considered as robust in dealing with financial irregularity or malpractice.

There is a need to ensure that any investigation process is not misused, therefore, any incidence of raising unfounded malicious allegations may be dealt with as a disciplinary matter. Any wrong doing or malpractice outside the scope of this Policy Document should be reported to the CEO.

CLC is required to report annually to their Minister on fraud risk and fraud control measures, including

- fraud initiatives undertaken by the agency in the reporting period, including an evaluation of their effectiveness
- planned fraud initiatives not yet in place
- information regarding significant fraud risks for the agency, and
- significant fraud incidents which occurred during the reporting period.

CLC is required to certify in the Annual Report that:

- CLC has prepared fraud risk assessment and fraud control plans
- CLC has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meets the specific needs of the agency, and
- they have taken all reasonable measures to minimise the incidence of fraud in CLC and to investigate and recover the proceeds of fraud against CLC, and
- fraud data has been collected and reported in accordance with the Commonwealth Fraud Control Framework

8. Prevention – Staff

It is recognised that a key preventative measure to combat fraud, theft and corruption is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential staff.

Staff recruitment must be in accordance with merit selection procedures contained in the Staff Recruitment and Selection Policy and Enterprise Agreement. CLC will obtain references before employment offers are made and obtain criminal history checks deemed necessary. A schedule is maintained by Human Resources which designates which positions are mandatory for such checks, including executive roles and 'Finance' and 'Human Resources' positions but may include other high risk roles associated with funding and distributions.

Staff are expected to adhere to established employment policies and to follow CLC's Code of Conduct together with, where applicable, the Code of Ethics of their professional body.

Staff are reminded that they must operate within the relevant legislation, regarding pecuniary interests in contracts relating to CLC or fees and rewards other than proper remuneration.

9. Elected Members

Council and Executive Committee members are required to operate within:

- Council & Executive Code of Conduct;
- *Aboriginal Land Rights (Northern Territory) Act 1976*;
- *Native Title Act (1993)*; and
- Other relevant legislation.

These matters are specifically brought to the attention of Elected Members in CLC's Code of Conduct and include the declaration and registration with the Council's CEO, potential areas of conflict between Elected Members' CLC duties and responsibilities and any other areas of their personal or professional lives.

10. Systems

CLC has Procedures and Delegations/Authorisations that require staff, when dealing with CLC's affairs, to act in accordance with best practice.

The CEO and staff have a statutory responsibility under Commonwealth legislation to ensure the proper arrangements of CLC's financial affairs and has published Delegations, and Policies & Procedures to guide and control the processes with respect to contracts for works, supplies and services. These documents outline the procedures and responsibilities of CLC employees.

CLC has developed and is committed to continuing with systems and procedures which incorporate efficient and effective internal controls and which include adequate separation of duties. All staff have a responsibility to ensure these controls are properly maintained and documented. Their existence and appropriateness may be independently monitored by CLC's external auditors and Audit Committee.

CLC will undertake a fraud risk assessment at least once every two years as part of a formalised risk management framework. In developing fraud risk assessment and fraud control plan, CLC will apply a methodology consistent with the relevant recognised standard, the Australian/New Zealand standard AS/NZ ISO 31000-2009 *Risk Management* and Australian standard AS 8001-2008 *Fraud and Corruption Control*.

11. Fraud Control Plans

Fraud risk assessment must be followed by the development (or updating) of and implementation of a fraud control plan to manage the risk. The CLC's fraud risk register template is attached as Annexure A.

12. Working with other Agencies

Arrangements are in place and continue to be developed to encourage the exchange of information between CLC and other agencies on national and local fraud, theft and corruption activity in relation to Statutory Authorities.

These include:

- The Attorney General's Department,
- Australian National Audit Office (ANAO), and,
- Other Federal Government departments where applicable.

13. Detection, Investigation and Response

Fraud detection, investigation and response are key elements of the overall fraud control framework. Early detection of the fraud is an essential element of fraud control and particularly in areas of identified high risks. CLC continues to develop preventative systems, particularly internal control systems within CLC, designed to provide indicators of any fraudulent activity.

Despite the best efforts of financial managers and auditors, frauds and thefts may be discovered by chance or from a 'tip off'. If alert and observant CLC staff, CLC elected members and members of

the public become aware of suspected instances of fraud, theft and corruption, every opportunity is to be made available for them to report any suspicions to the relevant officers of CLC.

14. Arrangements for Members of the Public

Members of the public are encouraged to report all suspected irregularities, including suspected fraud, theft or corruption to the CEO.

15. Fraud & Prosecution Policy

CLC has adopted policies and procedures to help ensure investigations into suspected fraud and irregularities are carried out consistently, with due care and by properly trained and experienced officers. These policies and procedures ensure that where allegations of fraud are found to be proven, an investigation is progressed to be reported to relevant authorities (which may result in prosecution or penalty).

16. Training

CLC recognises that the effectiveness of its Fraud Policy will depend largely on the effectiveness of programmed training and responsiveness of staff throughout the organisation. To facilitate this, CLC has an induction program which requires Section Managers to arrange for responsibilities to be highlighted and re-enforced.

17. Audit Committee (External Reporting)

All serious incidences of proven fraud are to be reported to the Chairperson of the Audit Committee in timely manner.

18. Whistleblowing

CLC is aware of the difficulties and conflicts that may arise for staff and Elected Members who suspect a colleague of fraud, theft or corruption. It is, nevertheless, essential that all instances are reported without delay. It is incumbent on all staff and Elected Members to report instances or suspicions of fraud, theft and corruption.

Wherever possible all instances reported will be treated in the strictest confidence. It is CLC's intention that any person reporting a concern or incident will as far as is possible, have their identity kept confidential. However, it should be understood that it is impossible to guarantee anonymity, especially where disciplinary action or prosecution arises.

CLC is sensitive to the potential difficulties staff and Elected Members may face if they report an incident and subsequently have to continue working with the individual(s) concerned. It is CLC's intention that every reasonable measure will be taken to ensure that no reprisals are taken against whistleblowers.

Finally, no one will be penalised for making an allegation that is subsequently proved to be groundless, where the allegation has been made in good faith. However, CLC will not tolerate individuals making malicious, vexatious or unfounded allegations and disciplinary action may be taken against such persons in accordance with the Code of Conduct.

Annexure A – Fraud Risk Register

[Click here to go to Register sheet](#)

The definition of fraud against the Commonwealth

The definition of fraud against the Commonwealth as stated in the Guidelines, is ‘dishonestly obtaining a benefit, or causing a loss, by deception or other means’.

The mental or fault element for the offence of fraud requires more than carelessness, accident or error. Examples of the fault elements necessary to establish fraudulent behaviour are contained in Part 7.3 of the Commonwealth Criminal Code. Dishonesty is determined ‘according to the standards of ordinary people; and known by the defendant to be dishonest according to the standards of ordinary people’ (s 130.3 Criminal Code).

The definition may include (but is not limited to):

- theft;
- accounting fraud (false invoices, misappropriation etc);
- unlawful use of, or obtaining property, equipment, material or services;
- causing a loss, or avoiding and/or creating a liability;
- providing false or misleading information to the Commonwealth, or failing to provide it when there is an obligation to do so;
- misuse of Commonwealth assets, equipment or facilities;
- making, or using false, forged or falsified documents; and
- wrongfully using Commonwealth information or intellectual property.

A benefit is not restricted to monetary or material benefits and may be tangible or intangible, including the unauthorised provision of access to or disclosure of information. A benefit may also be obtained by a third party rather than, or in addition to, the perpetrator of the fraud.

CLC investigations register (STRICTLY CONFIDENTIAL)

This register is to be maintained by CLC Finance and HR in line with the revised ANAO requirements around Fraud detection, control and reporting. A copy of the CLC's Fraud policy is on the intranet.

[Click here to look at definition sheet](#)

Type of report	Date of Incident	Time of Incident (if applicable)	Employee Name	Department / Unit	Position	Description of incident	Investigation designated to	Date HR notified (if applicable)	Recommendations/outcome	Payroll Deduction / Other Revoery details	Comcover / Comcare status
EXAMPLE ONLY ON THIS LINE: Items on Purchase Order	1/01/2012	n/a	John Smith	Anthropology	Anthropologist	Purchase Order appears to include item which are of a personal (and prohibited) nature (cigarettes - \$23).	Account Payable		Charge to employee account, notify manager.		Not notifiable
EXAMPLE ONLY ON THIS LINE: VMO private rego number	1/07/2012	n/a	Jane Doe	Ranger Program	Ranger	VMO 65432 has a private Rego - charged to ranger programs	Ranger Program Coordinator		Coordinator confirmed use of private vehicle was authorised in this case when LCxx broke down at yyyy.		Not notifiable



Fraud & Corruption Control Policy

DATE OF ISSUE: 01 October 2024

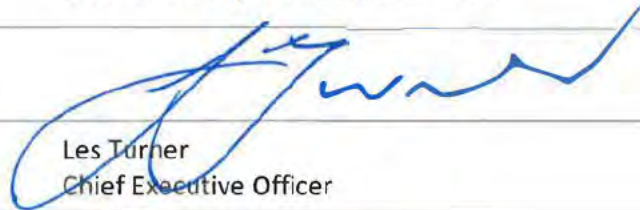
eDIS REFERENCE: D24-68963

RELATED DOCUMENTS:

- Public Governance, Performance and Accountability Act 2013 (PGPA Act)
- Code of Conduct – CLC employees
- CLC Gifts and Benefits Policy
- CLC Whistleblower Policy (Public Interest Disclosure)

RESPONSIBILITY: General Manager Corporate Services

SIGNED AND AUTHORISED:



Les Turner
Chief Executive Officer

DATE: 23 SEPTEMBER 2024



Fraud and Corruption Control Policy

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1. Introduction

The Central Land Council (CLC) Fraud & Corruption Control Policy (the Policy) aims to ensure that fraud and corruption risks are appropriately and effectively managed.

CLC has a zero tolerance for fraud and corruption, including theft, whether it occurs or is attempted from within by employees, officials or elected Council members, or perpetrated externally on CLC by third parties such as contractors/suppliers or the public.

Section 10 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) sets out requirements for Commonwealth entities (including the CLC) with relation to managing risks and incidents of fraud and corruption, this is known as the *Fraud & Corruption Rule*. As such, the Accountable Authority of the CLC has approved this policy to:

- Establish the high-level governance expectations for fraud & corruption control
- Promote a culture that supports clear understanding of and positive engagement with fraud & corruption control
- Identify key stakeholders with regards to fraud & corruption control and their responsibilities.

This policy aligns with the CLC Risk Management Framework. Where appropriate this policy also conforms to the Commonwealth Fraud and Corruption policy (which is not mandatory for Commonwealth Corporate Entities) and RMG201 – Preventing, detecting and dealing with fraud and corruption.

2. Scope

This policy applies to all staff (including officers), delegates and volunteers engaged directly or indirectly by CLC, as well as all agents and contractors either engaged by the CLC or by an authorised contractor of CLC (in relation to the services contracted to deliver to the CLC).

3. Principles

Consistent with the Fraud and Corruption Rule the objectives of this policy are to:

1. Protect the money, assets and knowledge of CLC
2. Protect the money, assets and knowledge held by CLC on behalf of its constituents
3. Protect the reputation of CLC
4. Comply with the legislative and other requirements with regards to fraud & corruption control.

To achieve these objectives CLC will ensure it maintains appropriate systems to support:

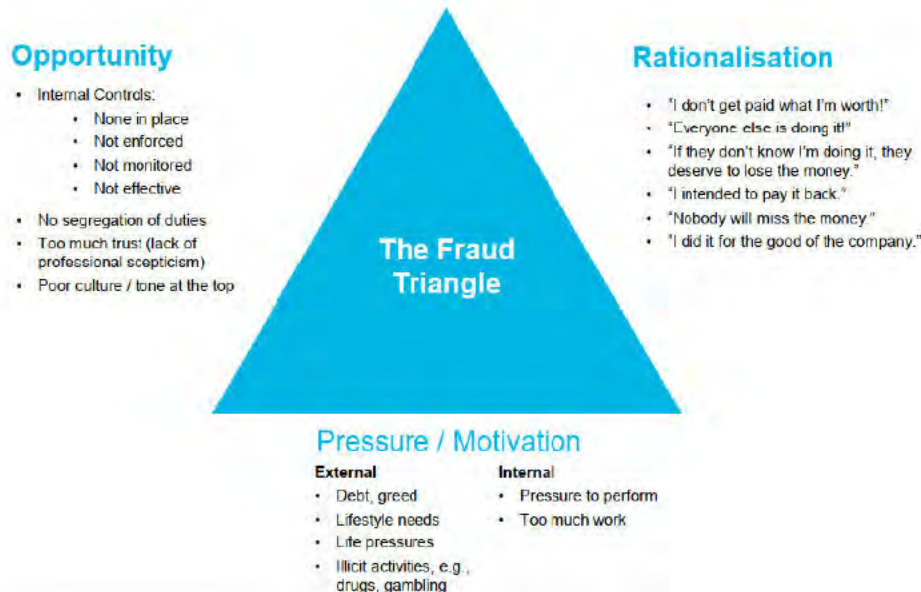
1. Prevention of fraud & corruption
2. Detection of fraud & corruption
3. Responding appropriately to fraud and corruption events

4. Definitions

Fraud	<p>Dishonestly obtaining (including attempting to obtain) a gain or benefit, or causing a loss or risk of loss, by deception or other means. The conduct does not need to represent a breach of criminal law.</p> <p>A benefit or loss is not restricted to a material benefit or loss, and may be tangible or intangible. A benefit may also be obtained by a third party.</p> <p>Fraud requires intent. It requires more than carelessness, accident or error. When intent cannot be shown, an incident may be non-compliance rather than fraud.</p> <p>A benefit is not restricted to a material benefit, and may be tangible or intangible, including information.</p>
Corruption	<p>Any conduct that does or could compromise the integrity, accountability or probity of CLC. This includes improper use of your position or knowledge obtained while at CLC, improper access to systems or improper use of assets.</p>

5. Risk factors

In order to control risks of fraud and corruption it is important to understand factors that affect the risk. Some of the factors affecting fraud risk are shown below:



6. Fraud and Corruption Risk Assessment, Control & Treatment

The assessment, control and treatment of fraud and corruption risk broadly follows the steps relating to risk management identified in the CLC Risk Management Policy, outlined in the diagram below. The Fraud and Corruption Rule uses specific terminology outlined in subsequent paragraphs.



a. Fraud and Corruption Risk Assessment

Part A of the Fraud and Corruption Rule requires that CLC *conduct assessments of fraud and corruption risks regularly and when there is a substantial change in structure, functions or activities.*

To comply with this requirement **CLC will complete an Organisation-Wide Fraud and Corruption Risk assessment at least every 2 years.** This assessment will be coordinated by the General Manager Corporate Services in collaboration with other General Managers and managers.

The Fraud and Corruption Risk Assessment broadly aligns with the steps *Establish Context, Identify Risks, and Analyse Risks* from the CLC Risk Management process.

The Fraud and Corruption Risk Assessment aims to identify areas of potential fraud and corruption risk (taking into account CLC's environment, operations and risk factors), the level of risk associated with each, as well as any particular causes or effects of the risk.

The outcome of a *Fraud and Corruption Risk Assessment* is a *Fraud and Corruption Risk Register* which identifies and evaluates risks. The completing manager will determine the number of risks to be included, noting that some low level risks may be excluded from the register.

A targeted Fraud and Corruption Risk Assessment may be conducted at any point and focusses on a particular project, change or system. Targeted assessments are the responsibility of the responsible manager and may draw support from other units or experts as needed.

CLC will complete at least one targeted Fraud and Corruption Risk assessment each year. This assessment will be coordinated by the General Manager Corporate Services in collaboration with other General Managers and managers.

Part E (ii) of the Fraud and Corruption Rule requires CLC to ensure that risks of Fraud and Corruption are taken into account in planning and conducting its activities. This may be incorporated into the whole of organisation assessment or may be completed as a targeted assessment.

b. Fraud and Corruption Control Plan

Part B of the Fraud and Corruption Rule requires that CLC *develop and implement control plans to deal with fraud and corruption risks, updating the plans as soon as practicable after conducting a fraud risk assessment.*

The Fraud and Corruption Control Plan broadly aligns with the steps *Risk Evaluation and Risk Treatment* from the CLC Risk Management process.

Each risk included in a *Fraud and Corruption Risk Register* (outlined in 'a' above) should be evaluated for:

- Existing controls.
- New recommended treatments.
- Owner of the Risk/controls/treatments

Noting that prior to approving a new recommended treatment, it will require evaluation, acceptance and planning as well as expecting a certain level of *value or return* from the treatment.

c. Fraud and Corruption Control review

Part C of the Fraud and Corruption Rule requires that CLC *conduct periodic reviews of the effectiveness of CLC's fraud and corruption controls.*

The Fraud and Corruption Control review broadly aligns with the step *Monitor and review* from the CLC Risk Management Process, with a specific focus on control effectiveness.

Control effectiveness can be considered as a whole, or grouped or individually at the discretion of the completing manager.

Controls should be rated as Effective, Partly-Effective, or Ineffective.

It can be useful to consider what the intended effect of the control is; to reduce likelihood, reduce severity, to detect events, or other (eg: velocity).

Partly effective controls should be assessed as to whether the design or implementation is the factor reducing effectiveness, so that weaknesses can be appropriately addressed.

Ineffective controls should be reviewed.

This may result in the need to update the Fraud and corruption Control Plan (B.)

A review of the effectiveness of controls will be incorporated into the Fraud Risk assessments, with organisation-wide reviews at least each 2 years and targeted reviews conducted on an ad-hoc basis.

7. Governance

Part D of the Fraud and Corruption Rule requires CLC to ensure that:

- i) It has governance structures and processes to effectively oversee and manage risks of fraud and corruption
- ii) It has officials who are responsible for managing fraud and corruption risks and
- iii) It keeps records identifying those structures, processes and officials

To satisfy this requirement the below roles and responsibilities exist with regards to this policy.

Accountable Authority	Ensure that CLC meets the requirements of PGPA Rule 10 by, taking all reasonable measures to prevent, detect and respond to fraud and corruption.
CEO	Setting and communicating the organisational risk appetite. Approve the Fraud and Corruption Control Policy.
Executive Management Team (EMT)	Oversight of Fraud and Corruption risks within their areas of responsibility Receiving and responding to periodic reports on fraud and corruption control.

Audit & Risk Committee	Assure itself that fraud and corruption control systems are adequate for the size, scope and complexity of operations.
General Manager Corporate Services	Ensure completion of Fraud and Corruption Risk Assessments, control plans and control reviews as described. Provide regular reports to the Executive Management Team with regards to the prevention, detection and organisational responses to fraud and corruption risks. Ensure regular review and updates to this policy.
Human Resources Manager	Ensure that appropriate training relating fraud and corruption control is provided to staff.
Managers	Ensuring that staff are inducted and aware of their responsibilities with regards to this policy.
All Staff	Supporting and promoting a culture of honesty and integrity Implement reasonable measures to prevent fraud and corruption risk, and report issues in accordance with the <i>Detection and internal reporting</i> section.
Risk Owner	Responsible for a particular risk, monitoring for events, and changes to risk level. The risk owner is identified in the Fraud and Corruption Risk Register
Control Owner	Responsible for implementation and management of a risk control. The control owner is identified in the risk register (or is the same as the Risk Owner).

8. Training

Part E (i) of the Fraud and Corruption Rule requires CLC to ensure that all officials are made aware of what constitutes fraud and corruption.

To satisfy this requirement CLC will communicate Fraud and Corruption requirements through the following mechanisms:

1. This Policy is available to all staff on the CLC document management system.
2. Induction requires all staff complete basic fraud and corruption awareness training on commencement.
3. Targeted training. Identified staff will participate in targeted training to support further understanding of risk factors, prevention and detection.

In addition many staff will participate in the development of Fraud and Corruption Risk Assessment, Control Plans and Control reviews; contributing to awareness and control.

Any staff member that is identified as responsible for conducting a fraud and corruption investigation will hold adequate skills and knowledge to effectively carry out the investigation.

9. Detection and internal reporting

Part F (i) of the Fraud and Corruption Rule requires CLC to ensure it has appropriate mechanisms for detecting fraud and corruption, including processes for officials of the entity and other persons to report suspected fraud and corruption confidentially.

To satisfy this requirement CLC:

1. Implements *Detective Controls* to detect fraud and corruption where appropriate. These will differ based on the nature of the risk but could include *account reconciliations, intrusion detection systems* or *monitoring artefact resale websites*.
2. Supports confidential disclosure through a clear internal reporting framework and supportive workplace culture. (refer below)
3. Implements and maintains a *Public Interest Disclosure (Whistleblower) policy* for the confidential for eligible disclosures to have protected reporting and investigation of suspected fraud and corruption accordance with the *Public Interest Disclosure Act 2013*.
4. External reporting options. CLC supports confidential disclosure through an Independent Disclosure management Service, the Commonwealth Ombudsman <https://www.ombudsman.gov.au/>, or in the case of serious or complex fraud or corruption through the National Anti-Corruption Commission <https://report.nacc.gov.au/>.

Internal reporting framework:

Option 1: Confidential report seeking Public Interest Disclosure (whistleblower) protection.

If you wish to report a matter with the protection of the Public Interest Disclosure Act (PID Act), in the first instance you must contact an *Authorised Officer* nominated in CLC's *Whistleblower policy*; refer to the CLC *Whistleblower Policy* for the list of officers and these procedures.

An authorised officer will provide advice as to whether the disclosure is eligible to be covered by the PID Act and therefore the CLC's Whistleblower Policy, and information about the process involved. Any reports received through this channel will be dealt with in accordance with that policy.

Option 2: Confidential report without whistleblower protection.

Any person that detects suspected fraud or corruption or otherwise receives a report of suspected fraud or corruption should contact one of the below persons.

If you first report to a person who is not an authorised officer under the CLC PID Whistleblower policy, then the matter will not be eligible to be disclosed through that process. If you wish to make an 'eligible disclosure' under the public interest disclosure (whistleblower) policy refer to option 2 below).

General Manager Corporate Services Financial Controller Manager Human Resources Principal Legal Officer	Where the suspicion of fraud or corruption is based on a detective control or other genuine concern.
--	--

CEO	If the above persons are unavailable or disclosure to them may be inappropriate then you should contact the CEO.
Your supervisor	Employees may choose to report to their immediate supervisor.

10. Investigation

Part F (i) of the Fraud and Corruption Rule requires CLC to ensure it has appropriate mechanisms for investigating or otherwise responding to fraud and corruption or suspected fraud and corruption.

All reports of suspected fraud and corruption will be taken seriously and carefully assessed.

The staff member receiving a report not seeking whistleblower protection will become or appoint an independent *Investigation Coordinator*.

The *Investigation Coordinator* will collect details and decide on the appropriate next steps. This may include:

- Deciding not to proceed with an investigation.
- Deciding to appoint an internal investigator.
- Deciding to appoint an external investigator.

The *Investigation Coordinator* will keep records of the report, their decision and any reasons for the decision.

The *Investigation Coordinator* will generally conduct the investigation but will collaborate with various stakeholders (HR, legal, finance, IT, etc) to collect information relevant to the investigation.

a. Fair treatment

Investigations will be conducted in a fair and objective manner in accordance with the principles of natural justice and CLC's usual investigation procedure. The exact process, extent of the investigation activities and timeframes may vary depending on the nature and complexity of the disclosable conduct, but all investigations must be:

- Conducted by someone independent from the business unit and staff concerned.
- Commenced as soon as practicable after approval to proceed is given.
- Completed within a reasonable timeframe.

If you are the subject of an investigation, CLC will support and treat you fairly by ensuring:

- a fair and objective assessment of the concern;
- details of the reported disclosable conduct are only provided to those who need to know, e.g. investigator, or specific senior management personnel;
- a fair and independent investigation process in accordance with an established investigation procedure; and
- Where an allegation appears to be made out on the evidence, afford you the opportunity to respond to the allegation

b. Outcomes

At the completion of any investigation the *Investigation Coordinator* will record the outcome of the investigation.

Possible outcomes may include any measure up to termination of employment, referral to police and/or referral to the National Anti-Corruption Commission.

11. Recording and Reporting

Part F (i) of the Fraud and Corruption Rule requires CLC to ensure it has appropriate mechanisms for recording and reporting incidents of fraud or corruption or suspected fraud or corruption.

To satisfy this requirement CLC will:

1. Maintain a fraud investigation register that contains the details of any reports of suspected fraud, whether it proceeded to investigation and if so the outcome of the investigation.
2. Report instances of significant or complex fraud or corruption to CLC's Audit & Risk Committee who provide oversight of the adequacy of CLC's systems of risk management including fraud and corruption.
3. Report instances of significant or complex fraud or corruption to CLC's Minister as well as the Finance Minister in accordance with PGPA Act Section 19.

In addition to the above CLC reports annually to its auditors, the ANAO, or their appointed representative about any significant fraud and corruption events encountered during the reporting period, and the fraud and corruption control measures implemented and operating. This includes:

- Fraud and corruption initiatives undertaken by CLC in the reporting period, including the evaluation of the effectiveness of fraud and corruption controls
- Planned fraud and corruption initiatives not yet in place but will be implemented, particularly in response to any fraud and corruption incidents dealt with during the reporting period
- Information regarding current, and emerging significant fraud and corruption risks to CLC's operations.

CLC may also provide information about fraud and corruption each year to the Australian Institute of Criminology (AIC) as requested by the AIC.

The Auditor-General
Auditor-General Report No.35 2022–23
Performance Audit

Governance of the Central Land Council

Central Land Council

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Senior Executive Director
Corporate Management Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Or via email:

communication@anao.gov.au.





Canberra ACT

7 June 2023

Dear President
Dear Mr Speaker

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

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

Yours sincerely

A handwritten signature in black ink, which reads 'Grant Hehir'. The signature is written in a cursive, flowing style.

Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:

Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300

Email: ag1@anao.gov.au

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Audit team

Tony Varnes	Dr Isabelle Favre
Eliza Glascott	Weinnie Zhou
Grace Sixsmith	Kai Swoboda
Sean Brindle	Sam Hayward
Graeme Corbett	Katiloka Ata
Andrew Grice	Daniel Whyte
Christine Chalmers	

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Audit snapshot

Auditor-General Report No.35 2022–23 Governance of the Central Land Council

Why did we do this audit?

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

What did we find?

- ▶ The CLC's governance arrangements under the ALRA, NTA and PGPA Act are largely effective.
- ▶ There are instruments of delegation under the ALRA and authorisations, however these could be improved, and there is a lack of clarity as to whether the accountable authority can delegate.
- ▶ The CLC's governance arrangements under the ALRA and NTA are largely effective.
- ▶ The CLC's arrangements to promote the proper use and management of resources under the PGPA Act are largely appropriate, except for arrangements to manage risk of fraud and conflicts of interest.

Key facts

- ▶ The Central Land Council (CLC) was established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The CLC is also a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and a Native Title Representative Body under the *Native Title Act 1993* (NTA).
- ▶ The CLC jurisdiction covers 777,000 square kilometres (one tenth of the Australian land mass). The Council is comprised of 90 members.

What did we recommend?

- ▶ There were 11 recommendations to the CLC: one aimed at documenting governance arrangements relating to the accountable authority; four aimed at improving governance arrangements under the ALRA and six aimed at improving governance arrangements under the PGPA Act.
- ▶ The CLC agreed to ten recommendations, and partly agreed to one recommendation.

24,000

Estimated Aboriginal population in the CLC area.

\$34.4 million

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

\$80.2 million

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

Summary and recommendations

Background

1. Four Northern Territory (NT) Land Councils are established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) to represent the interests of Aboriginal people within their respective regions and assist them with the management of Aboriginal land. The four NT Land Councils are corporate Commonwealth entities and must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).
2. The *Native Title Act 1993* (NTA) provides for the Land Councils' responsibilities as native title representative bodies. The NTA provides a mechanism for the recognition of the rights and interests of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and customs. The Central Land Council (CLC) was established in 1973 to represent the Aboriginal people of the central region of the NT. The Council has 90 members and an Executive Committee comprised of 11 members. In 2021–22, the CLC received \$34.4 million from the Aboriginals Benefit Account for its operations and \$15.9 million from specific purpose contracts (primarily from the Australian Government). It also received \$82.8 million from land use rents and royalties in trust for distribution to its constituents.

Rationale for undertaking the audit

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

Audit objective and criteria

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

Conclusion

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

8. Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. While the CLC has an instrument of delegation for functions and powers under the ALRA, there is a lack of specificity and inappropriate reference to sub-delegation. Accountable Authority Instructions relating to PGPA Act powers and functions lack specificity. Greater clarity is required for the Northern Territory (NT) Land Councils in relation to how accountable authority delegations are meant to be implemented under the two Acts.

9. The CLC's governance arrangements under the ALRA and NTA are largely effective. The establishment and governance of the Council and its Executive Committee are largely appropriate and comply with legislative requirements. Governance arrangements for the exercise of the CLC's statutory functions (comprising negotiating and assisting with land use; assisting with commercial activities; consulting and obtaining informed consent; and distributing royalties and rents) are largely appropriate. There could be greater monitoring of land use agreements.

10. The CLC's arrangements to promote the proper use and management of resources are largely appropriate, except for arrangements to identify and manage fraud risks and conflicts of interest. A largely fit for purpose policy and risk management framework is in place. Public reporting in the form of the corporate plan and annual report are largely consistent with legislative requirements. Significant attention is paid to performance measurement. Audit and Risk Committee member composition and rotation is consistent with its Charter, although the Audit Committee could improve its reporting and consideration of performance measures. The main deficiencies in the CLC's arrangements to promote the proper use and management of resources are in relation to measures to support the integrity of operations: the system of fraud control is not fully effective and conflict of interest management is developing.

Supporting findings

Exercise of decision-making authority

11. The CLC has a delegation instrument for powers and functions that belong to the Council under the ALRA. Greater specificity in the delegation instrument in relation to the functions and powers that are being delegated would improve the instrument and provide greater clarity to delegates. The instrument sub-delegates ALRA functions where there is no legislative power for sub-delegation.

12. A document titled 'Accountable Authority Instructions' has been established by the CLC Chief Executive Officer (CEO). The Accountable Authority Instructions contain authorisations; however, the authorisations lack specificity in places. There is no governance document regarding how the CEO and Chair of the Land Council (the joint accountable authority) expect to manage their joint responsibilities. There is a lack of clarity as to whether the accountable authority of the CLC has any power to delegate under the PGPA Act and ALRA.

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

13. The CLC has an approved method of choice, which is largely followed. There is clear guidance on the roles and responsibilities of Council and Executive Committee members. There are approved meeting rules, which are followed. Council meetings and processes are designed to support informed decision-making by members although until April 2023 the CLC did not promote the accessibility of rules and minutes to its constituents. The reporting to the full Council by the Executive Committee, which has broad delegations, is insufficient and not consistent with the full Council's accountability for all decisions made under the ALRA.

14. The CLC's governance arrangements to exercise its statutory functions under the ALRA and the NTA are largely appropriate.

- Negotiating land use and access — There are established processes for negotiating and assisting with land use and access, although more could be done to monitor Part IV agreement terms and conditions. There is a backlog in processing Part IV agreements.
- Assisting with commercial and other activities — Mechanisms to assist with commercial activities are established and the CLC has a Community Development Program that is primarily funded by land use agreements and which is regularly evaluated. Procurement processes for the delivery of Community Development Program projects could be more transparent.
- Consulting with Aboriginal people and obtaining consent — Processes for consulting with and obtaining informed consent from Traditional Owners and Native Title holders are fit for purpose. Complaints handling processes (which were the subject of a 2021 external review recommendation) are developing.
- Distributing royalties and payments — Distribution processes are well established and comply with the requirements of the ALRA and NTA. Transparent accounting of the distributions from the Land Use Trust Account to the CLC for Community Development Program projects can be improved. The existing mechanisms to reconcile the distributions made to or for the benefit of Traditional Owners against the distributions specified in the land use agreements could be enhanced.

Arrangements to promote proper use and management of resources

15. The CLC Risk Management Plan is largely aligned with the Commonwealth Risk Management Policy. Approximately one-third of management level staff have received non-mandatory training in risk management. CLC commissioned a review of its risk management processes in 2022. The CLC has an extensive policy framework. Some policies could be more detailed and require endorsement at an appropriate level, and some key governance policies do not exist.

16. The CLC is not actively implementing its Fraud and Corruption Plan. There are no regular fraud risk assessments. There is no general register of Council member interests, however Council meeting rules and a Code of Conduct contain provisions for dealing with conflicts during meetings. These provisions are weakened by a lack of consistency in how conflicts are meant to be managed and a lack of transparency in meeting minutes as to how conflicts are managed in practice. There is also a lack of transparency over how potential employee conflicts are managed.

17. The CLC 2021–2025 Corporate Plan and Annual Report complied with PGPA Rule requirements except that they do not contain accountable authority certification that the annual performance statements accurately present CLC’s performance in the reporting period. Performance measures are clearly defined, with appropriate targets. Performance measures predominantly measure activities or outputs, with little performance information provided in relation to outcomes and the achievement of purpose. There is a clear line of sight between performance measures outlined in the corporate plan and performance results in the annual report. The CLC accountable authority and Council were engaged in the production of the corporate plan.

18. The CLC has a developing internal audit function. The Audit and Risk Committee member composition and rotation is consistent with the Charter. However, Audit and Risk Committee members do not comply with Charter requirements to annually declare material personal interests. CLC’s Audit and Risk Committee could improve its reporting to the accountable authority. The Audit and Risk Committee has not documented a substantive review of the CLC’s performance reporting.

Recommendations

Recommendation no. 1 Paragraph 2.18

The Central Land Council establish a governance document setting out:

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

Central Land Council: *Agreed.*

Recommendation no. 2 Paragraph 3.23

The Central Land Council increase the accessibility of the Council and Executive Committee meeting rules and minutes (which could include the use of the Central Land Council website, newsletter, radio and social media platforms to promote how the rules and minutes can be accessed).

Central Land Council: *Agreed.*

Recommendation no. 3 Paragraph 3.30

The Central Land Council develop a mechanism to improve full Council visibility of decisions made on its behalf by the Executive Committee.

Central Land Council: *Agreed.*

Recommendation no. 4
Paragraph 3.39

The Central Land Council strengthen monitoring against Part IV agreements to detect and address any non-compliance with agreement conditions.

Central Land Council: *Agreed.*

Recommendation no. 5
Paragraph 3.61

The Central Land Council strengthen the procurement components of the Community Development Program by documenting specific procurement procedures.

Central Land Council: *Agreed.*

Recommendation no. 6
Paragraph 4.13

The Central Land Council:

- (a) review its Risk Management Plan in line with its commitment to conduct an annual review and in doing so remove references to obsolete frameworks or policies; and
- (b) ensure the Risk Management Plan and the risk profile are endorsed by the accountable authority of the Central Land Council.

Central Land Council: *Agreed.*

Recommendation no. 7
Paragraph 4.20

The Central Land Council conduct a review of its policy suite to ensure that important governance elements and functions have an associated policy, that key policies are endorsed and appropriately reviewed, and that content is complete and accurate.

Central Land Council: *Agreed.*

Recommendation no. 8
Paragraph 4.25

The Central Land Council:

- (a) conduct fraud risk assessments regularly, in accordance with its Fraud Policy; and
- (b) implement a fraud control plan to manage fraud risks identified during the assessments.

Central Land Council: *Agreed.*

Recommendation no. 9
Paragraph 4.37

The Central Land Council:

- (a) make the requirements for managing conflicts of interest in Council and Executive Committee meetings consistent across governance documents; and
- (b) implement a fit for purpose conflict of interest declaration and management process that is aligned to the Code of Conduct for employees.

Central Land Council: *Agreed.*

Recommendation no. 10
Paragraph 4.68

The Central Land Council accountable authority ensure that Audit and Risk Committee members make an annual declaration of material personal interests.

Central Land Council: *Agreed.*

Recommendation no. 11
Paragraph 4.80

The accountable authority of the Central Land Council:

- (a) amend the Audit and Risk Committee Charter to require the Audit and Risk Committee to provide a written statement to the accountable authority, at least annually, about the appropriateness of the Central Land Council's financial and performance reporting; systems of risk oversight and management; and system of internal control; and
- (b) annually assess the performance of the Audit and Risk Committee to confirm that it is effectively undertaking all mandatory functions.

Central Land Council: *Disagreed to (a); Agreed to (b).*

Summary of entity response

19. The CLC's summary response is provided below and its full response is included at Appendix 1. An extract of the draft report was also provided to PricewaterhouseCoopers (PwC). PwC's response can be found at Appendix 1. The improvements observed by the ANAO during the course of this audit are at Appendix 2.

The Central Land Council (CLC) welcomes the opportunity to participate in this performance audit by the Australian National Audit Office (ANAO), and the opportunity to respond to the draft performance audit report provided on 17 April 2023. The CLC notes that this response is prepared in advance of the ANAO's finalisation of the report contents.

The Central Land Council was established by the *Aboriginal Land Rights (Northern Territory) Act 1976*, and is guided by the strong governance of its council of 90 Aboriginal people elected by their communities to represent them. The CLC is committed to effectively fulfilling its statutory functions and has been representing, protecting and advocating for Aboriginal peoples' rights and interests since its establishment. The CLC is committed in principle and practice to accountability and transparency, and seeks to model this throughout its work and particularly for its Aboriginal constituents.

Overall, the CLC agrees with the ANAO's recommendations, with some clarifications on scope or implementation which are included in the CLC's response to the recommendations. The CLC has reported on actions already undertaken or planned in order to address the recommendations. In addition, the CLC has also actioned several suggested opportunities for improvement.

The CLC consider this a worthwhile exercise to support it in its continuous improvement in ensuring that its governance arrangements support it in the delivery of positive outcomes for Aboriginal people across our region.

Audit findings

1. Background

Introduction

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

Legislative framework

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

- the *Native Title Act 1993* (NTA), which provides for the Land Councils' responsibilities as Native Title Representative Bodies; and
- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), which set the Land Councils' requirements as corporate Commonwealth entities.¹

Aboriginal Land Rights (Northern Territory) Act 1976

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

1.4 The Aboriginal Land Commissioner undertakes inquiries into traditional land claims in the NT.² Upon the Aboriginal Land Commissioner's satisfaction that the Traditional Owners³ have been correctly identified according to Aboriginal law, he or she provides a report to the Commonwealth minister responsible for the administration of the ALRA and the Administrator of the NT.⁴ The Commonwealth minister decides whether to recommend to the Governor-General of Australia to grant all or part of the land under claim.

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

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

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

4 As at December 2022, the Commonwealth minister responsible for the administration of the ALRA was the Minister for Indigenous Australians. The Administrator of the NT represents the Crown in the NT. Their role is essentially the same as state governors across Australia.

1.5 Once land has been granted, it is held by a Land Trust⁵, and Traditional Owners manage their land with the help of their Land Council. Aboriginal land is a form of ‘inalienable’ freehold, which means it cannot be bought or sold, and Traditional Owners of the land have the right of exclusive access and the power to veto proposals to access or use land. As at 2016 Aboriginal people held freehold title to approximately 50 per cent of the NT land mass and 85 per cent of its coastline.⁶

Native Title Act 1993

1.6 Determinations of native title recognise the ongoing connection of Aboriginal and Torres Strait Islander peoples to specific areas of land and waters. Successful claims under the NTA give Aboriginal and Torres Strait Islander peoples a collection of rights, which may include exclusive possession or such rights as the right to camp, hunt, use water, hold meetings, perform ceremony and protect cultural sites.⁷ As at 2023 native title has been recognised over 358,402 square kilometres (25 per cent) of land and waters in the NT.⁸

1.7 Under the ALRA, land rights usually comprise a grant of freehold title to Aboriginal peoples. By contrast, native title arises as a result of recognition, under Australian common law, of pre-existing Indigenous rights and interests according to traditional laws and customs. It does not provide for a process to grant ownership of the land as the ALRA does.⁹

Public Governance, Performance and Accountability Act 2013

1.8 The four NT Land Councils are corporate Commonwealth entities¹⁰ and as such also must comply with the requirements of the PGPA Act and Rule. The four NT Land Councils are also registered as charities with the Australian Charities and Not-for-profits Commission (ACNC).¹¹

Governance structures under the ALRA and NTA

Northern Territory Land Councils

1.9 The CLC and NLC were established in 1973 as part of the Australian Government’s Aboriginal Land Rights Commission (Woodward Royal Commission) to inquire into the appropriate way to recognise Aboriginal land rights in the NT. The function of the Land Councils at that time was to

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

6 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Information Handbook Northern Territory 2016*, p. 3. Schedule 1 of the ALRA defines the land that has been recognised as Aboriginal freehold.

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

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

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

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

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

represent the views of Aboriginal people to the Woodward Royal Commission. The CLC and NLC are responsible for the southern and northern parts of the NT, respectively.

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

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

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

Native Title Representative Bodies

1.13 Once a native title determination is made, the NTA prescribes that native title holders must establish a prescribed body corporate¹² to manage and protect their native title rights and interests. Native Title Representative Bodies are organisations appointed under the NTA and funded by the National Indigenous Australians Agency (NIAA) to assist Indigenous people with all aspects of their native title claims, and in some cases the management of native title rights once a claim has been determined. There are 14 Native Title Representative Bodies in Australia, including two in the NT. The NLC is the Native Title Representative Body for the northern region, including the Tiwi Islands and Groote Archipelago, and the CLC represents those within the NT's southern region.

National Indigenous Australians Agency

1.14 The NIAA was established as an executive agency in May 2019 to provide advice to and support the Minister for Indigenous Australians (the Minister), including in relation to Land Councils and the exercise of his or her powers under the ALRA and the NTA.¹³ These functions were previously undertaken by the Department of the Prime Minister and Cabinet. The NIAA advised the ANAO that:

While [NIAA] is not involved in the daily operations of land councils, it does provide support where required, performance monitoring and some administrative oversight. A range of branches within the [NIAA] provide information and support on various issues, including land and native title

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

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

programs, Indigenous Portfolio Bodies Section, environment and rangers programs, specific policy and program areas for grants activities, and finance teams.

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

Functions of the Land Councils

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

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

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

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

1.19 The ALRA prescribes that, in carrying out its functions, a Land Council must not take any action unless it is satisfied that Traditional Owners understand the nature and purpose of the action and consent to it; and any Aboriginal group that may be affected by the proposed action has been consulted. The NTA prescribes that the Native Title Representative Body must consult with native title holders and for some of the functions, be satisfied that they consent to the course of action being taken on their behalf. Given that the vast majority of claims to land under the ALRA are settled as at March 2023¹⁴, facilitating the benefits that can be derived from land rights has been identified by the larger NT Land Councils as an increasing focus and priority.

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

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

14 A 1987 amendment to the ALRA prevents the Aboriginal Land Commissioner from dealing with claims lodged after 5 June 1997 (ALRA subsection 67A(6)). As at March 2023 two land claims remained unresolved in the area of the CLC and 32 in the area of the NLC. There are no unresolved claims in the area of the ALC and TLC.

Land use and access arrangements

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

Table 1.1: Land use and access arrangements

Land use and access arrangements	Description	Legislation	Selected provisions	Payment distribution
'Royalty equivalents'	Mining monies	ALRA	Subsection 64(3)	The monies take the form of royalties. Under the ALRA subsection 64(3), a defined amount of mining royalties must be debited from the Aboriginals Benefit Account from time to time and paid to Land Councils for distribution to Aboriginal corporations.
'Part IV agreements' ^a	Mining and exploration monies	ALRA	Part IV (sections 42, 43, 44, and 46)	The monies are specified in an agreement with the land use applicant. Payments are made to Aboriginal corporations, Traditional Owners or another entity as defined in an agreement that is established under Part IV of the ALRA.
'Section 19 (s19) agreements' ^a	Primarily non-mining and some mining related monies	ALRA	Sections 15, 16 and 19	The monies are specified in an agreement with the land use applicant. Payments are made to Aboriginal corporations, Traditional Owners or another entity, as defined in an agreement that is not established under Part IV of the ALRA.
'Township leases' ^b	Township lease monies	ALRA	Section 19A	The monies derive from township leases. Payments are made to Aboriginal corporations.
'Permits'	Enabling access to Aboriginal land or roads	ALRA	Section 70	Fees are payable to and defined by the Land Council.
'Native title agreements' ^a	Any monies from land use for land subject to native title claim	NTA	Various	The monies are specified in an agreement with the land use applicant. Payments are made to native title holders. ^a

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

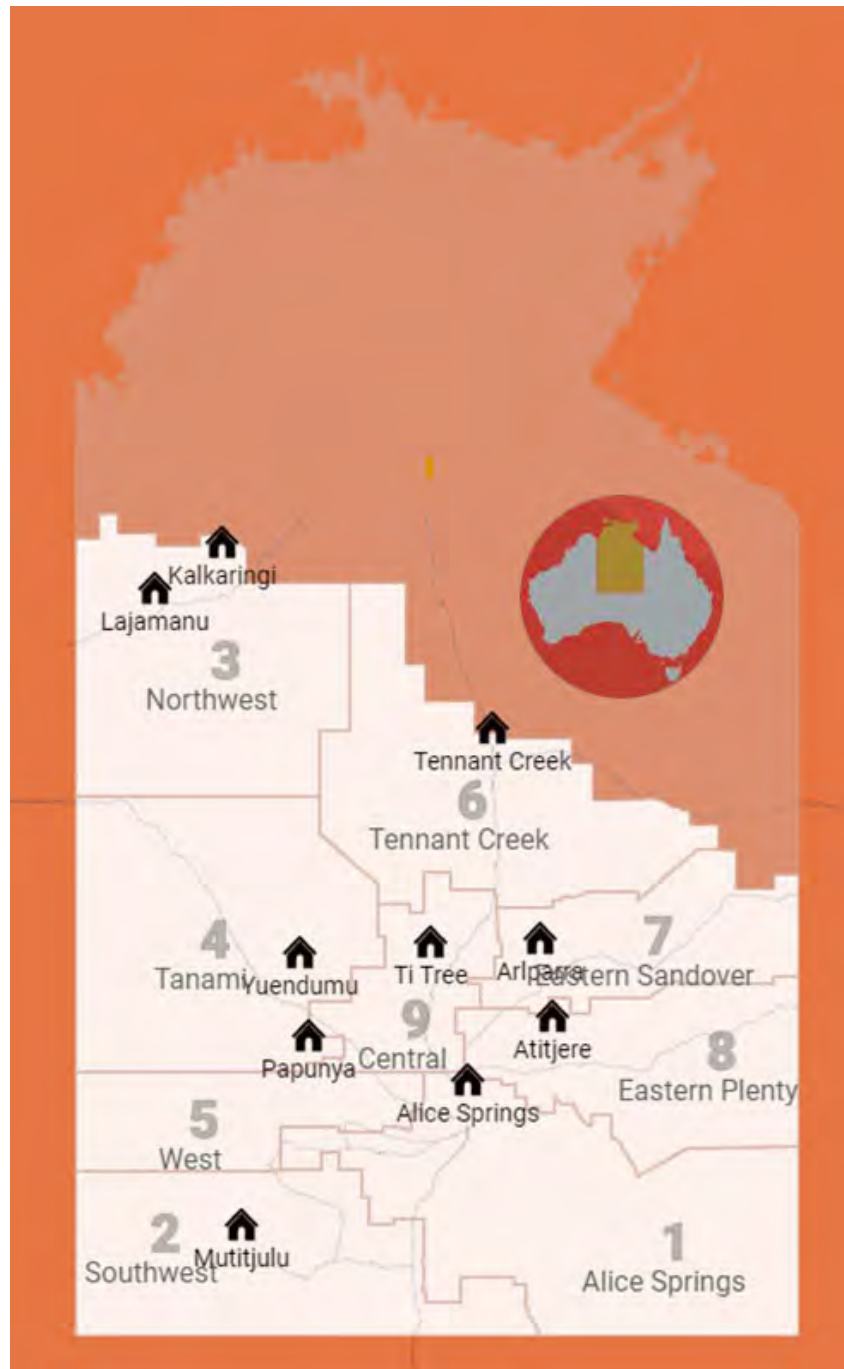
Note b: In this table Township leases are voluntary agreements between Traditional Owners and the Australian Government, established by the Executive Director of Township Leasing under ALRA section 19A. The Executive Director of Township Leasing manages the land in the township on behalf of the Traditional Owners and the community for up to 99 years, including sub-leases to business and governments and the protection of sacred sites.

Source: ANAO analysis.

About the Central Land Council

1.23 The CLC's jurisdiction covers the south of the NT, from Kalkaringi and Tennant Creek, to the South Australian border. The CLC represents around 24,000 Aboriginal people across 777,000 square kilometres.

Figure 1.1: Map of Central Land Council jurisdiction



Source: Central Land Council.

1.24 The full Council has 90 members and elects an Executive Committee. The Executive Committee is comprised of the Council Chair, the Deputy Chair and one Council member from each of the CLC's nine regions.

1.25 As at 30 June 2022 the CLC had 266 employees (246.5 paid full time equivalent over 2021–22), of which 98 were rangers.¹⁵ It has eight offices across the NT, with its head office located in Alice Springs.

1.26 In 2021–22 the CLC received \$50.2 million, comprising a \$34.4 million appropriation from the Aboriginals Benefit Account for its operations and \$15.9 million from specific purpose contracts (primarily from government and including \$0.9 million from the Aboriginals Benefit Account). The CLC also received \$14.7 million under the NT Indigenous Economic Stimulus Package in 2021–22 and \$22 million in 2020–21.¹⁶ In 2021–22 royalties, rents, lease monies and native title compensation of \$82.8 million were paid into the CLC's Land Use Trust Account for distribution to land owners and community members. The CLC holds property and other non-financial assets valued at \$37.5 million.

Rationale for undertaking the audit

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

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

Audit approach

Audit objective, criteria and scope

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

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

- Has the CLC appropriately exercised its decision-making authority under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Native Title Act 1993* and the *Public Governance, Performance and Accountability Act 2013*?
- Is the CLC effectively governing its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* and *Native Title Act 1993*?

¹⁵ Rangers are employed under the Working on Country program to provide environmental services.

¹⁶ In total, \$100 million were allocated as part of the NT Indigenous Economic Stimulus Package to the four NT Land Councils, in two tranches. The CLC and NLC received \$36.7 million each and the ALC and TLC received \$13.3 million each.

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

Audit methodology

1.31 The audit involved:

- reviewing legislation, regulations, policies and best practice standards;
- reviewing CLC documentation, including charters, meeting papers and minutes, policies and procedures, annual reports, corporate plans and correspondence;
- observing meetings of the Council, Audit Committee, Traditional Owners and Aboriginal corporations;
- visits to the NT including Alice Springs, Hermannsburg, Kings Canyon (Watarrka) and Tennant Creek;
- meetings with Council members and CLC staff;
- meetings with constituents of the CLC;
- meetings with officers from relevant business areas within:
 - Australian Government entities (including the NIAA, Office of Township Leasing and Office of the Registrar of Indigenous Corporations)
 - NT Government
 - NT local government;
- meetings with Aboriginal corporations, a business, peak bodies and non-government organisations; and
- 12 submissions from businesses, Aboriginal corporations, members of the public, and a peak body.

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

1.33 The team members for this audit were Tony Varnes, Dr Isabelle Favre, Eliza Glascott, Weinnie Zhou, Grace Sixsmith, Kai Swoboda, Sean Brindle, Sam Hayward, Graeme Corbett, Katiloka Ata, Andrew Grice, Daniel Whyte and Christine Chalmers.

2. Exercise of decision-making authority

Areas examined

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

Conclusion

Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. While the CLC has an instrument of delegation for functions and powers under the ALRA, there is a lack of specificity and inappropriate reference to sub-delegation. Accountable Authority Instructions relating to PGPA Act powers and functions lack specificity. Greater clarity is required for the Northern Territory (NT) Land Councils in relation to how accountable authority delegations are meant to be implemented under the two Acts.

Areas for improvement

The ANAO made one recommendation to the CLC to establish a governance document setting out how the accountable authority wishes to exercise its joint authority. The ANAO also suggested that the CLC could improve its delegation instrument under the ALRA by not sub-delegating and by making it more specific, and that it should ensure that its authorisation instrument is appropriately titled and specific.

2.1 Authorisations and delegations are a fundamental part of good governance. They play an important role in ensuring that the entity is acting in accordance with the legal framework that applies to it. An entity needs to put in place arrangements to devolve decision-making power from the ultimate repository of that power to the relevant officers of the entity, as the ultimate repository of that power cannot do everything.¹⁷

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

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

¹⁷ Australian Government Solicitor, *Fact Sheet No 11: Corporate Commonwealth entities – authorisations and delegations*, AGS, 2014, p. 1.

functions'; and the accountable authority is the primary decision-maker in relation to performance and proper use of resources under finance law.

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

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

The CLC has a delegation instrument for powers and functions that belong to the Council under the ALRA. Greater specificity in the delegation instrument in relation to the functions and powers that are being delegated would improve the instrument and provide greater clarity to delegates. The instrument sub-delegates ALRA functions where there is no legislative power for sub-delegation.

2.5 The Australian Government Solicitor has noted that when enabling legislation establishes a board or Council as having ultimate control over the operations of the entity, most commonly the enabling legislation prescribes the CEO or director as the officer responsible for the day-to-day management of the entity.¹⁸ This may result in the CEO having 'implied authority', although the Australian Government Solicitor advises that even so it is generally better that decision-making power be expressly delegated.¹⁹ The ALRA is silent on the role of the CEO (in both their capacity as a CEO and as one of the accountability authorities) or other officials, and an instrument of delegation for functions and powers under the ALRA is therefore required.

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

2.7 The CLC made its first instrument of delegation in 1978 and this was amended 10 times. On 13 September 2022 the Council ratified under common seal the most recent instrument to delegate its powers under sections 27 and 28 of the ALRA and subsection 5(4) of the *Aboriginal Land Act 1978* (NT).

2.8 Powers and functions were delegated to the Executive Committee of the Council or the CEO of the CLC.

- Non-delegated ALRA powers (that is, those retained by the Council) are clearly set out in the instrument of delegation and include the power to request the Minister for Indigenous Australians (the Minister) vary the method of choice for Council members; the power to

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

19 *ibid*, p. 2.

elect the Chair and Deputy Chair of the Council; the power to make Council meeting rules; the power to co-opt members; and powers which cannot be delegated under subsection 28(2) of the ALRA.

- The delegation instrument delegates all other powers under the ALRA (except those expressly delegated to the CEO) to the Executive Committee. The devolution of power to the Executive Committee is broad.
- The delegation instrument delegates specified powers under the NTA to the Executive Committee. These relate to the certification of native title determination applications, to the certification and ability to enter into Indigenous land use agreements, and to internal review functions.
- The delegation instrument delegates to the CEO powers and functions relating to either the ALRA or NTA. For example, it delegates the ‘supervision and control of organizational procedures and management’; and the powers to apply for grants, execute Community Development agreements, execute funding agreements related to the Indigenous Economic Stimulus Package and issue permits.

2.9 Although there is a delegation instrument, it could be improved in several ways.

- It does not always clearly identify which specific sections of the ALRA are being delegated to the CEO and this can create ambiguity (for example, the delegation of the authority to execute on behalf of the Council any applications for grants and acceptance of grants for funds lacks specificity).
- Administrative functions such as ‘all powers relating to the supervision and control of organisational procedures and management’ are not something that would normally be referred to in a delegation instrument, but rather in Accountable Authority Instructions.
- The delegation instrument allows for the CEO to sub-delegate powers by written authorisation to the General Manager of the CLC during periods of absence.²⁰ Typically it is not possible for a delegate to ‘sub-delegate’, unless there is a specific legislative power to sub-delegate.

Opportunity for improvement

2.10 The Central Land Council could improve the instruments of delegation under the ALRA by:

- increasing specificity by referring to the legislative sections for powers and functions it delegates; and
- avoiding sub-delegation which is not provided for under the ALRA.

²⁰ The ANAO did not examine sub-delegation instruments.

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

A document titled 'Accountable Authority Instructions' has been established by the CLC CEO. The Accountable Authority Instructions contain authorisations; however, the authorisations lack specificity in places. There is no governance document regarding how the CEO and Chair of the Land Council (the joint accountable authority) expect to manage their joint responsibilities. There is a lack of clarity as to whether the accountable authority of the CLC has any power to delegate under the PGPA Act and ALRA.

2.11 The accountable authority (that is, the Chair and CEO) of the CLC established procurement and expenditure Accountable Authority Instructions (AAIs) under section 20A of the PGPA Act in July 2022. The AAIs state that the CEO — as 'the officer appointed to administer the CLC' and 'on behalf of accountable authority' — authorises various officials to perform specific financial functions within specified approval limits.

2.12 The heading of the document refers to 'Accountable Authority Instructions', however the body of the document refers to authorisations. The document is not in accordance with the Department of Finance's model AAIs for corporate Commonwealth entities in that they are worded as instruments of authorisation and do not provide officials with instructions that the accountable authority expects them to follow.²¹

2.13 The AAIs authorise certain officials to make 'commitments to spend money within the authorised limits'. The instrument also authorises: specific officials to dispose of specific assets that do not exceed a specified amount; specific officials to sign cheques or authorise electronic funds transfers on behalf of the CLC for specific accounts; and specific officials who may receive and deposit money, process purchase orders, approve payroll, or authorise domestic travel bookings. Each authorisation includes a statement that no authorisation is given that is inconsistent with the ALRA, NTA or PGPA Act.

2.14 As with the ALRA / NTA delegation instrument (see paragraph 2.9), the AAIs do not refer to the specific provisions of the PGPA Act when describing the authorisation. Some of the authorisations are very broad. Some of the authorisations appear to relate to ALRA functions, although this is difficult to determine given the lack of specificity. For example, the Executive Manager Professional Services Division is given the authority 'to negotiate mining agreements'. The accountable authority has no authority to authorise ALRA functions and powers.

Opportunity for improvement

2.15 The document that provides authorisations should be renamed as it is not Accountable Authority Instructions. Alternatively, the document should be adapted to be Accountable Authority Instructions. The specific provisions of the PGPA Act should be referenced.

21 Department of Finance, *Resource Management Guide 206 Accountable Authority Instructions* [Internet], Finance, November 2021, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/risk-internal-controls/accountable-authority-instructions-aais-rmg-206> [accessed 18 February 2023].

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

2.17 It is usual practice for an accountable authority made up of multiple individuals, such as boards, to have an operational charter setting out how the accountable authority operates. The CLC does not have such a document.

Recommendation no. 1

2.18 The Central Land Council establish a governance document setting out:

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

Central Land Council response: *Agreed.*

2.19 *The accountable authority of the Central Land Council (CLC) ensures that it performs its functions and duties under the PGPA and will progress the suggested improvement for purposes of additional clarity. The CLC will develop an advice document outlining information on the roles of the accountable authority under the PGPA Act and the role of the Council under the ALRA.*

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

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

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

Areas examined

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

Conclusion

The CLC's governance arrangements under the ALRA and NTA are largely effective. The establishment and governance of the Council and its Executive Committee are largely appropriate and comply with legislative requirements. Governance arrangements for the exercise of the CLC's statutory functions (comprising negotiating and assisting with land use; assisting with commercial activities; consulting and obtaining informed consent; and distributing royalties and rents) are largely appropriate. There could be greater monitoring of land use agreements.

Areas for improvement

The ANAO made four recommendations to the CLC aimed at improving the accessibility of Council minutes and rules to the CLC's constituents; increasing the visibility of decisions made by the Executive Committee on behalf of the Council; increasing monitoring of land use agreements for compliance with agreement conditions; and increasing transparency around Community Development Program procurement of delivery partners. The ANAO also suggested that the CLC could publish a list of recognised entities; and improve mechanisms to reconcile distributions of land agreement monies across the various CLC teams.

3.1 The Northern Territory (NT) Land Councils' key purpose is to assist in claiming Aboriginal land and once a claim has been granted, to manage Aboriginal land on behalf of Traditional Owners and other Aboriginal people living in the area of the Land Council. To achieve this purpose, the ALRA prescribes that specific governance arrangements must be in place for Land Councils to manage their operations. The arrangements relate to: appointments to key governance positions; the establishment and conduct of Council and committee meetings; and the establishment of registers of Council and Land Trust members, and of Traditional Owners.²²

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

- Negotiation and assistance — Land Councils must assist Traditional Owners and Aboriginal people with land claims²³, negotiate on behalf of Traditional Owners and other Aboriginal

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

23 There are two unresolved ALRA land claims in the area of the CLC.

people with third parties wanting to use or access Aboriginal land; and assist Aboriginal people to carry out commercial activities and protect sacred sites.²⁴

- Consultation and consent — Land Councils must consult with Traditional Owners and Aboriginal people in the area of the Land Council about the management of land and endeavour to protect their interests.²⁵
- Distribution of royalties and payments — Land Councils must distribute royalties and other payments, such as rents, to, or on behalf of, Traditional Owners.²⁶

3.3 Land Councils and Land Trusts are exempt from compliance with the *Freedom of Information Act 1982*.²⁷ There are also no appeal or review mechanisms in the ALRA. This reinforces the importance of effective governance arrangements to support the management of Land Councils' key activities.

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

The CLC has an approved method of choice, which is largely followed. There is clear guidance on the roles and responsibilities of Council and Executive Committee members. There are approved meeting rules, which are followed. Council meetings and processes are designed to support informed decision-making by members although until April 2023 the CLC did not promote the accessibility of rules and minutes to its constituents. The reporting to the full Council by the Executive Committee, which has broad delegations, is insufficient and not consistent with the full Council's accountability for all decisions made under the ALRA.

Appointment of key governance positions

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

Development of the Central Land Council's method of choice

3.5 The CLC method of choice as at March 2023 was approved by the Minister for Indigenous Australians (the Minister) on 31 January 2019, and replaced a previous method of choice approved in 2016. The 2019 method of choice reflected changes in population numbers in various small communities and outstations, in line with a Council resolution from November 2018. The 2019 method establishes the composition of the Council and the selection process.

3.6 Ninety members are nominated, comprised of seven to 15 members from the nine regions. Within each region, members are: nominated from discrete communities or locations which are allocated one or two members each (76 positions); or nominated by a formal resolution of a

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

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

26 *ibid.*, section 35.

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

'recognised entity' (14 positions). Across the nine regions, there are 64 specified communities and 11 recognised entities.

3.7 A 'recognised entity' is an incorporated Aboriginal association or Aboriginal corporation that has been recognised by resolution of the Council.²⁸ The board of the recognised entity must have members who are Traditional Owners or Aboriginal people living in the area of the recognised entity. The CLC does not have criteria or guidelines for selecting which entities to recognise. The method of choice provided to the Minister for approval did not specify any criteria or list the names of the recognised entities.

3.8 The method of choice does not prescribe in detail how specified communities or recognised entities are to select a nominee, and the method for nomination may differ depending on the community or entity. For communities, nominations are usually made during a location-specific meeting facilitated by CLC staff. While the CLC staff usually attend and record minutes and resolutions of the meetings at which community members are nominated, the CLC does not scrutinise the mechanism adopted by recognised entities to nominate a member to the Council.

3.9 Under the method of choice, a valid nomination can be received either by:

- for community nominations — signed confirmation from a CLC staff member that a community meeting was held to receive a nomination and signed acceptance of that nomination by the nominee; or
- for recognised entity nominations — a signed nomination from an office holder, contact person or public officer of the recognised entity.

3.10 The method of choice that is approved by the Minister is partly accessible to the community. The CLC website includes information about which communities have nominated or elected members.²⁹ The map does not show the names or locations of the 'recognised entities'. The method for nominating or electing members from communities or recognised entities is not described on the website.

Opportunity for improvement

3.11 To provide maximum transparency over Council nominations, there would be merit in the CLC publishing a list of recognised entities and the criteria for recognition.

Council member appointments

3.12 The CLC ran a nomination process in February 2022. The CLC method of choice is silent on how the nomination process should be promoted. For the February 2022 nomination process, the

28 As at March 2023 the recognised entities are: Julalikari Council Aboriginal Corporation, Tangentyere Council Aboriginal Corporation, Patta Aboriginal Corporation, Julalikari Burramana Aboriginal Corporation, Urapuntja Aboriginal Corporation, Arramwelke Aboriginal Corporation, Tjuwanpa Oustation Resource Centre Aboriginal Corporation, Lhere Artepe Aboriginal Corporation, Ingkerreke Aboriginal Resource Centre Aboriginal Corporation, Owairtilla Council, and Tjuwanpa Oustation Resource Centre Aboriginal Corporation.

29 Central Land Council, *Our Map (Council Members)* [Internet], available from <https://www.clc.org.au/map/> [accessed 12 February 2023].

process was promoted through: posters; an advertisement in *Land Rights News*³⁰; and television and radio announcements in four local Aboriginal languages and English.³¹

3.13 Council member appointments were made in February 2022 largely in accordance with the approved method of choice.

- Nominations were not all received by the due date and 14 vacancies remained on the Council as of April 2022. Seven of these positions were filled by temporary appointments by recognised entities at the April 2022 Council meeting, with seven community nominations remaining pending at that time. The CLC advised the ANAO that the decision to appoint a temporary member is at the discretion of the community or recognised entity.
- ANAO sampled 17 Council positions (comprising seven recognised entities and 10 communities) for a closer examination of nomination processes.³²
 - Of the 17 sampled positions, 13 were filled in April 2022.³³
 - The ANAO was able to locate the required nomination documentation for all the sampled filled positions.
 - Of the four sampled unfilled positions as at April 2022, three (all recognised entity positions) were temporarily filled. A subsequent permanent appointment was made, in one instance by the recognised entity following a formal resolution of the recognised entity's governing body, and in another instance by the CLC holding a community meeting on the request of the recognised entity. One of the unfilled positions as at April 2022 (a community position) remained vacant as at March 2023.³⁴

3.14 The full list of confirmed Council members is published on the CLC website.³⁵ Members are listed by region, and a short biography is included for each. As at March 2023, 20 of the 86 members were women (23 per cent).

Election of the Chair and Deputy Chair

3.15 Other than stating that the Chair holds office on a full-time basis, the CLC method of choice is silent about how the Chair and Deputy Chair are to be selected. The Chair and Deputy Chair were elected in April 2022 by Council members through secret ballot³⁶, in a process managed by the Northern Territory Electoral Commission.

30 The CLC's website states that *Land Rights News* is Australia's 'longest-running Aboriginal newspaper and the only printed newspaper in Central Australia'. There are three issues per year and the CLC claims that it 'reliably reaches all remote communities in the CLC region and beyond'. Central Land Council, *Land Rights News* [Internet], CLC, available from <https://www.clc.org.au/land-rights-news/> [accessed 12 February 2023].

31 The English radio announcement script stressed the importance of increasing the number of women and young people on the Council. The ANAO did not examine scripts in other languages.

32 The ANAO randomly sampled 10 community positions, and seven recognised entities (being one recognised entity position for each region which had a recognised entity) across the nine CLC regions.

33 The unfilled sampled positions were comprised of three recognised entity positions and one community position.

34 In May 2023 the CLC advised the ANAO that the community position had been filled by an election process.

35 Central Land Council, *Who we are* [Internet], available from <https://www.clc.org.au/who-we-are/#our-members> [accessed 7 February 2023].

36 The Chair elected in April 2022 passed away in November 2022. Elections for a new Chair were held in February 2023.

Remuneration of Council Chair and members

3.16 The remuneration of Council members is determined by the Remuneration Tribunal.³⁷ As at March 2023 the prescribed remuneration of the Chair as a full-time office holder was \$227,800. The prescribed daily fees for Council members when engaged on the general functions or duties of the Land Council were \$344, and \$520 if Council members were engaged in functions or duties as a member of the Executive Committee.³⁸

Guidance and training for Council members

3.17 The CLC method of choice and Council meeting rules are silent on member induction and training. The Executive Committee meeting rules state that:

Staff will ensure that appropriate induction training and materials are provided for members at the beginning of each term, including training on the responsibilities of Executive members and the CLC Code of Conduct. Staff will ensure that ongoing training is provided to the Executive to ensure members can fulfil their responsibilities.

3.18 The CLC has developed guidance for new Council and Executive Committee members. A handbook titled *Governance at the Central Land Council - your guide to being a council member* (2022 handbook) was first produced in 2016 and re-published in 2022. The 2022 handbook outlines the roles and responsibilities of Council members, including the Chair and Deputy Chair and Executive Committee. It also outlines the requirements of the ALRA, the NTA and the *Public Governance, Performance and Accountability Act 2013*; the role of the CEO and senior managers; the CLC Code of Conduct; and the rules and procedures that apply to Council meetings.

3.19 Under subsection 7(11) of the *Remuneration Tribunal Act 1973*, a full-time public office holder is prohibited from receiving remuneration for holding, or performing the duties of, another public office. The CLC advised that, as at March 2023, the CLC Chair did not hold any other paid public positions, and held two unpaid board positions.³⁹ The ANAO did not examine whether the Chair's performance of duties for other entities impact on his capacity to complete his duties for the Council as a full-time remunerated public office holder.

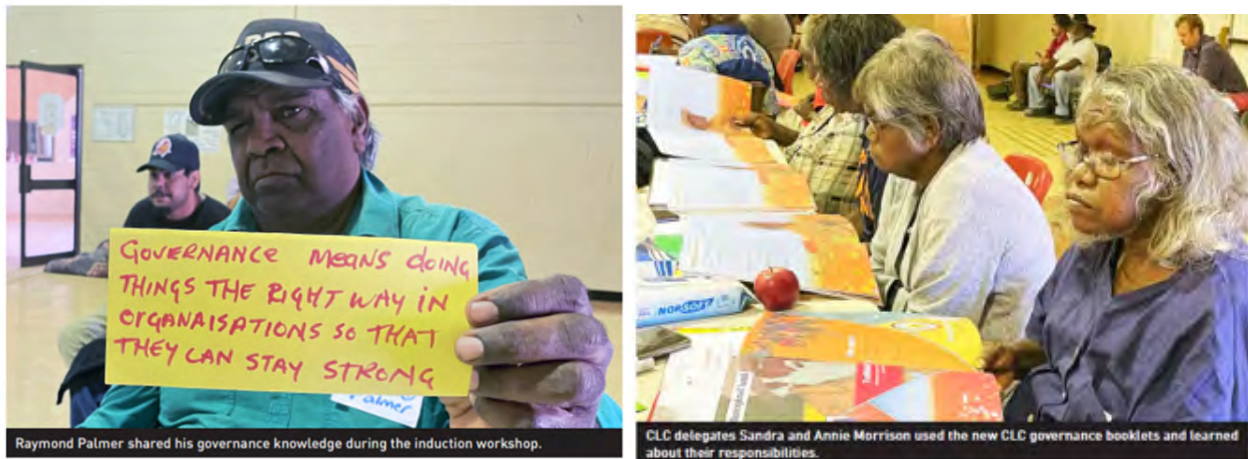
3.20 The CLC provides governance training for Council members, including the Executive Committee. A training provider was contracted in April 2022 to provide mentoring and support for the Chair and Deputy Chair. Newly appointed Council members were provided with an induction which includes information about governance.

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

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

39 The two organisations are Lhere Artepe Aboriginal Corporation and Ingerreke Services Aboriginal Corporation.

Figure 3.1: Council members at the Council induction, April 2022



Source: CLC Council News April 2022.

Establishing and implementing meeting and committee rules

Establishment of committees

3.21 The CLC established the Executive Committee in accordance with the ALRA (see Appendix 5). The Executive Committee is comprised of 11 members (one representative from each of the nine regions, plus the Chair and Deputy Chair of the Council). Executive Committee members are nominated by members from their region at the Council meeting following the election of the Chair and Deputy Chair. The CLC advised the ANAO that this can be done using a method selected by the region and can be either a secret ballot or a show of hands. Each region nominates one Executive Committee member and an alternate. Nominations are recorded in the Council meeting minutes and passed by resolution of the full Council.

Establishment and communication of Council and committee meeting rules

3.22 The CLC has largely complied with the requirements of the ALRA in relation to the establishment and communication of Council and committee meeting rules (see Appendix 6).

- The CLC established meeting rules for the Council, which were approved by the Minister on 26 June 2021.
- The rules for the Executive Committee were resolved by the Council in November 2015. The Executive Committee meeting rules address the conduct of meetings, the required quorum, management of conflicts, attendance and the management of vacancies, among other matters.
- It is not clear if the CLC has complied with the ALRA requirement to make Council meeting rules and minutes, and Executive Committee meeting minutes, available to Traditional Owners and any Aboriginal people living in the area of the Land Council. The CLC advised the ANAO that meeting rules and minutes are available to constituents for inspection upon request and the 2022 handbook states that 'All Aboriginal people in the CLC area are allowed to see the minutes at the CLC office and at no cost'. However, prior to April 2023 the CLC had not promoted the fact that meeting rules and minutes are available, which reduces the transparency of the process. As the CLC has not maintained a register of

requests, it is not possible for the ANAO to confirm whether any requests for access have been made and if meetings rules and minutes were provided as required under the ALRA.

Recommendation no. 2

3.23 The Central Land Council increase the accessibility of the Council and Executive Committee meeting rules and minutes (which could include the use of the Central Land Council website, newsletter, radio and social media platforms to promote how the rules and minutes can be accessed).

Central Land Council response: Agreed.

3.24 *The CLC provides Aboriginal constituents access to meeting rules and minutes upon their request. The CLC agrees that it would be an improvement to proactively enhance constituent awareness of their ability to view these documents. The CLC have taken steps to increase constituent awareness, including highlighting in the Council News newsletter which provides an overview of matters discussed at the Council meeting and is distributed to every community in the CLC region. Note that the CEO also provides an overview of the meeting outcomes through the CAAMA radio channel. The Council News Newsletter for the April 2023 Council meeting informed Aboriginal people of the CLC region that they can look at the Council rules and the Council minutes at the CLC Alice Springs office. The Council News newsletter is also published on our website and distribution to communities has commenced. The CLC will continue to take steps to inform constituents of their ability to access the rules and minutes.*

3.25 The Executive Committee meeting rules do not address the focus and purpose of the Executive Committee (which are more clearly set out in the 2022 handbook), and do not specify the powers and functions delegated to the Executive Committee by the Council. As described in paragraph 2.8, the Council has delegated broad powers to the Executive Committee, including the confirmation of consultation and negotiation outcomes and entering into land use agreements on behalf of the Council. Neither the Council rules nor the Executive Committee meeting rules require that the Executive Committee report back to the full Council, nor do they establish a process whereby the member representing a region must report back to constituents.

Implementation of meeting rules

3.26 The CLC held three Council meetings and seven Executive Committee meetings in 2021–22.⁴⁰ The ANAO analysed the minutes of the Council and Executive Committee meetings in 2021–22 to determine if the meeting rules and ALRA had been complied with. Overall, the meeting rules were implemented appropriately in relation to: meeting frequency; quorum; that decisions are formally resolved; and that minutes are kept and subsequently confirmed.

3.27 The Council meeting rules are silent on the preparation of meeting papers, however do prescribe that members must be ‘given reasonable opportunity to speak’ about matters and that the Council will ‘attempt to address issues or complaints’ raised at the meeting. The ANAO observed a CLC Council meeting on 1 to 3 November 2022 in which discussion largely centred on policy and legislative issues concerning CLC constituents and an explanation by CLC staff of work being undertaken in their business areas. The ANAO observed that CLC staff employed several techniques

⁴⁰ A meeting on 12 January 2022 was an out of session meeting that considered COVID-related issues.

to ensure members were fully informed of agenda items and could participate in discussion, including allocation of a full day for members to read and discuss the full pack of meeting papers in small groups on the first day, prior to formal discussion on subsequent days.

3.28 As noted in paragraph 2.8, the full Council delegates a wide range of substantive functions to the Executive Committee. The 2022 handbook states that the role of the Council is to check if CLC staff have properly consulted with the Traditional Owners; the right people have made the decisions; and the agreement is fair and reasonable. It further states that the full Council meets three times yearly to develop and review policy; set directions for the organisation; check the organisation is on track and being well managed; and advocate for the rights and interests of Aboriginal people and the CLC. The 2022 handbook does not clarify, for the benefit of Council members, that the full Council remains accountable for all the decisions made on its behalf by the Executive Committee.

3.29 The ANAO observed that in practice, resolutions in relation to land use under the ALRA and NTA are decided by the Executive Council, which provides brief reports to the Council (as part of the CEO's or Chair's reports). The minutes of Council meetings do not contain a report from the Executive Committee as a standing item, nor does the Council consider or review the decisions made on its behalf by the Executive Committee. Instead, Council meetings deal mainly with high level policy matters, including for example: confirming Council positions regarding water rights; potential amendments to the cultural heritage legislation; alcohol restrictions; the referendum for an amendment to the Constitution; and housing, roads and health issues impacting constituents such as dialysis access. Given the substantive nature of decisions being made by the Executive Committee, the brevity of its reporting to the full Council is not consistent with transparency or the accountability for decisions that are retained by the full Council.

Recommendation no. 3

3.30 The Central Land Council develop a mechanism to improve full Council visibility of decisions made on its behalf by the Executive Committee.

Central Land Council response: *Agreed.*

3.31 *The CLC agrees that Executive Committee reporting to the full Council regarding decisions made on its behalf can be improved and a consistent mechanism will be established and maintained. The CLC will develop a mechanism that does not review or ratify decisions by the Executive Committee, but is a process to inform the Council of decisions made by the Executive Committee.*

3.32 *As of the April 2023 Council meeting, the Chair's report to the Council regarding activity that occurred since the previous Council meeting included a list of decisions made by the Executive Committee on the Council's behalf. Regional member discussions cover the papers on the agenda, including the Chair's report. This reporting and discussion will be implemented as standard practice, with the CLC ensuring that documentation from the Executive Committee meetings is available to support the Executive Committee to respond to Council member requests for further detail on decisions made.*

Compiling and maintaining registers

3.33 The CLC complies with the ALRA (see Appendix 6) in maintaining a register of Council members; and maintaining a record of Land Trusts, the membership of each trust and the land to which each Trust relates.

3.34 The CLC method of choice allows for Council members to be either Aboriginal people living in the area of the Land Council, or whose names are set out in the register of traditional Aboriginal owners of Aboriginal Land in the area of the CLC. The CLC does not maintain a register of Traditional Owners, which is consistent with the non-mandatory nature of ALRA (section 24). To support the method of choice, the CLC instead holds a repository of genealogical and related anthropological information which it can access in order to confirm traditional ownership and connection to specific land within the CLC region.

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

The CLC's governance arrangements to exercise its statutory functions under the ALRA and the NTA are largely appropriate.

- Negotiating land use and access — There are established processes for negotiating and assisting with land use and access, although more could be done to monitor Part IV agreement terms and conditions. There is a backlog in processing Part IV agreements.
- Assisting with commercial and other activities — Mechanisms to assist with commercial activities are established and the CLC has a Community Development Program that is primarily funded by land use agreements and which is regularly evaluated. Procurement processes for the delivery of Community Development Program projects could be more transparent.
- Consulting with Aboriginal people and obtaining consent — Processes for consulting with and obtaining informed consent from Traditional Owners and Native Title holders are fit for purpose. Complaints handling processes (which were the subject of a 2021 external review recommendation) are developing.
- Distributing royalties and payments — Distribution processes are well established and comply with the requirements of the ALRA and NTA. Transparent accounting of the distributions from the Land Use Trust Account to the CLC for Community Development Program projects can be improved. The existing mechanisms to reconcile the distributions made to or for the benefit of Traditional Owners against the distributions specified in the land use agreements could be enhanced.

Negotiating and assisting

Negotiating Aboriginal land use and access

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

Section 19 agreements

3.36 There were 480 active s19 agreements as at October 2022. The CLC has a documented process for establishing and monitoring s19 agreements. It maintains a database of s19 agreements, their duration and term, and the permitted land use under the agreement. The CLC monitors the renewal and completion dates of s19 agreements via the database.

Part IV agreements

3.37 Part IV agreements relate to exploring for the purpose of mining and mining Aboriginal land. Agreements are established with mining companies. There are approximately 100 active Part IV agreements in the CLC region. The CLC has a documented process for establishing Part IV agreements.

3.38 There is some monitoring of Part IV agreements by the CLC. However, the quality and completeness of information to facilitate monitoring that is available to the CLC varies (including on-site observations, searches of the public record, published financial reports, documents provided by the mining company and information provided by Traditional Owners who live and work near the sites). An agreement clause requiring mining companies to provide detailed activity reports for the previous twelve-month period is a standard provision within Part IV agreements. An internal audit in November 2022 noted that the CLC had no internal control mechanisms in place to ensure that progress reports due from mining companies were requested or received. There is no systematic process for the CLC to comprehensively monitor mining activity or compliance with all the terms and conditions across all agreements. The CLC advised the ANAO that staff levels limited the extent to which Part IV agreements could be monitored, and that while some agreements provided for the CLC to audit mining activity, this was not typically done.

Recommendation no. 4

3.39 The Central Land Council strengthen monitoring against Part IV agreements to detect and address any non-compliance with agreement conditions.

Central Land Council response: *Agreed.*

3.40 *The Minerals and Energy section regularly undertake monitoring through established processes and mechanisms. Mechanisms for monitoring include reviewing the proponent's activities reports, facilitating liaison committees with traditional owners and companies, reviewing the proponent's fulfilment of obligations at cessation, monitoring financial obligations, conducting work area clearances which is part of ensuring the protection of sacred sites and also provide traditional owners an opportunity to learn and know more about what is occurring and planned to occur on their land, and conducting in-field checks of the implementation of approved work programs with traditional owners.*

3.41 *The CLC wish to strengthen the monitoring of minerals and energy agreements. It is also acknowledged that due to peaks in demand driven by exploration and minerals activity, that the CLC's capacity to monitor compliance with all agreement conditions has been constrained. The CLC is taking steps to address this including through implementing a new exploration and mining agreements system, and in order to address capacity issues the CLC is seeking additional positions to meet the extensive demand, however achievement of this will be subject to ALRA s64(1) funding.*

3.42 Between July 2018 and June 2022 the CLC received 217 applications for Part IV agreements (Table 3.1). In that timeframe the CLC resolved 63 applications. A 2022 internal audit report identified that as at 30 June 2022 there were 206 active applications pending processing or resolution.

Table 3.1: Part IV applications, 2018–19 to 2021–22

Financial year	New applications	Consent meetings	Consent refused	Applications finalised, withdrawn or refused
2018–19	77	37	9	15
2019–20	46	3	0	16
2020–21	35	9	2	20
2021–22	59	20	6	12

Source: ANAO analysis of CLC Annual Report 2021–22 and internal audit report: *Mineral and Energy Unit*, November 2022.

3.43 CLC staff advised the ANAO that limited staff resources with the required expertise impacts on the CLC's ability to meet the demand arising from applications for Part IV agreements, and that delays in processing applications can be caused by the applicant, project complexity and remoteness, among other factors.

Permits

3.44 Under ALRA section 70, unless a person holds a lease or a license, they cannot enter or remain on Aboriginal land, or use a road on Aboriginal land, without a permit.⁴¹

3.45 Several categories of permit exist: entry permits; transit permits; mining permits; several types of media permits; and special purpose permits for research, tourism and community and ecological projects.⁴² There were 5395 permits issued in 2021–22 (Table 3.2). The CLC does not generally charge for permits, except permits requiring rehabilitation to the land or extensive negotiations.

Table 3.2: Number of permit types, 2021–22

Permit type	Number of permits	Number of individuals covered by the permits
Entry	2628	6940
Transit	2587	Number unavailable
Mining	171	1671
Media and special purpose (research, tourism and projects)	9	17
Total	5395	8628^a

Note a: Total of individuals covered excludes transit permits.

Source: ANAO adaptation of table in CLC Annual Report 2021–22.

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

42 Central Land Council, *Permits* [Internet], available from <https://www.clc.org.au/permits/#apply-for-entry-permit> [accessed 31 January 2023].

3.46 The CLC has an online permit application system. The CLC does not report on its timeliness in processing permit applications or on backlog and advised the ANAO that staff prioritise urgent applications and those with shorter lead times. The CLC stated in its 2021–22 Annual Report that there had been an ‘increase in work-related permit applications’, and a subsequent ‘increased workload for the permit officer’. In response to this increased demand, in 2021–22 the CLC issued nine organisation-wide permits covering multiple individuals.

Native title agreements

3.47 As part of its functions prescribed under the NTA, the CLC represents native title claimants to make applications to the Federal Court for determinations of native title. A search of the National Native Title Register as at May 2023 for the Southern Northern Territory (the CLC region) returned 34 determinations for native title.

3.48 The NTA does not require Native Title Representative Bodies (NTRBs) such as the CLC to administer the financial and compliance activities of Prescribed Bodies Corporate (PBC) formed by native title holders after the Federal Court makes a native title determination. However, the CLC has established a PBC support unit to assist new and emerging PBCs with complex legislation and other challenges. The CLC advised the ANAO that its objective is to enhance the capability of PBCs to become self-sufficient.

3.49 When a native title interest has been registered with the National Native Title Tribunal, the CLC is responsible for assisting PBCs or native title holders in response to ‘future acts’ and for supporting negotiation of agreements made under the NTA.⁴³ The CLC has documented procedures for when an exploration or mining company expresses interest in mining an area that is subject to a native title claim or determination.

3.50 Under the NTA (section 203DF) the Minister may appoint a person to investigate an NTRB’s performance of its functions and exercise of its powers. In 2020 the National Indigenous Australians Agency (NIAA) commissioned the Nous Group to undertake a review of the performance of CLC’s functions as an NTRB between 1 July 2016 and 30 June 2019. Nous Group findings (March 2021) included the following.

- Overall, the CLC had been able to achieve native title outcomes for its clients.
- The CLC progressed small, localised claims, resulting in claims that were generally smaller than those progressed in other NTRB areas. This approach had proven effective in achieving native title outcomes.
- The CLC had a clear and documented policy in place for assessing and prioritising native title claims.
- The CLC had a strong focus on dealing respectfully, transparently and in a culturally appropriate manner with clients through its regional ‘on the ground’ model.
- The CLC’s native title responsibilities were managed effectively. Its policies and procedures provided the Council, Executive Committee and staff with structure and clarity

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

over their roles, responsibilities and decision-making authority. The management of native title finances was undertaken within a sound overall financial management approach.

- The CLC had not received any formal complaints from its constituents in relation to native title. Informal feedback was tracked and used to improve performance on an office-by-office basis. Nous suggested that the CLC create a consistent approach to tracking feedback and implement an easy to access online complaints mechanism.
- The CLC's strategic planning for post-determination was relatively under-developed and the organisation did not have a formal post-determination strategy for its native title functions.⁴⁴

3.51 Nous Group made six recommendations to the CLC in relation to the regular monitoring of client satisfaction; making its internal review process available online; more clearly communicating its prioritisation process and 'key decision-making factors' for claims assessment; creating an online complaints and feedback channel and recording informal complaints and feedback; considering the appropriate role of the PBC support unit; and ensuring that strategic planning consider the role of the CLC in a post-determination native title environment. Although the CLC did not specifically indicate whether it agreed or disagreed with each of the six recommendations, its responses outlined planned or ongoing activities to address the recommendations.

Assisting with commercial activities

3.52 Under the ALRA, the Land Councils are to assist Aboriginal people in the area of the Land Council to carry out commercial activities in a manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit; and may provide administrative or other assistance to an Aboriginal corporation that received an amount of money from the Council.

3.53 In 1985 and 2009 respectively, two companies were formed to assist Aboriginal people in the CLC region with commercial activities.

- Centrecorp Aboriginal Investment Corporation Pty Ltd (Centrecorp) — As part of a 1985 negotiated lease of land to accommodate a gas pipeline, the CLC had rights to purchase shares in N.T. Gas Pty Ltd. Because the ALRA (subsection 23(1)) prevents a Land Council from deriving a financial benefit from its activities, Centrecorp was established to hold the N.T. Gas Pty Ltd shares.⁴⁵ Centrecorp has interests in a range of commercial activities within and outside of the CLC region, facilitates the provision of services to CLC constituents via the Centrecorp Foundation and supports various investments and joint ventures with Aboriginal people.
- Centrefarm⁴⁶ — Centrefarm was 'established as a developer of viable commercial economies on Aboriginal lands for the benefit of Traditional Owners and communities'.⁴⁷ The Aboriginal Land Economic Development Agency (ALEDA) was incorporated in 2018.

44 Nous Group, *Review of Performance as a Native Title Representative Body: Central Land Council*, Nous, 2021, [Internet], available from <https://www.niaa.gov.au/sites/default/files/publications/11-clc-public-summary-report.pdf> [accessed 25 March 2023].

45 Centrecorp is registered under the Corporations Act, is regulated by Australian Securities and Investments Commission and is 100 per cent owned by Aboriginal organisations.

46 Centrefarm is registered as a not-for-profit organisation with the Australian Charities and Not-for-profits Commission.

47 Centrefarm, *Joint Land Council Economic Development Strategy* [Internet], Centrefarm, available from <https://centrefarm.com/joint-land-council-economic-development-strategy/> [accessed 17 February 2023].

ALEDA is described by Centrefarm as a ‘core feature’ of the Joint Land Council Economic Development Strategy, which was developed by Centrefarm in association with the Northern Land Council and the CLC.⁴⁸ The CLC was provided \$2.05 million from the Aboriginals Benefit Account during 2019–20 and 2021–22 for the specific purpose of the distribution of the funds to Centrefarm for the expansion of ALEDA.⁴⁹

3.54 In response to CLC constituents identifying a need for support for their participation in economic activities, the CLC established two internal units to assist with commercial activities.

- Economic Participation Unit (EPU) — The EPU was established in 2019. The EPU’s objective is to support CLC constituents to access training, employment and enterprise opportunities. The EPU also works with the applicants of development proposals on Aboriginal land to find opportunities for Aboriginal employment and training and business contracting.
- Aboriginal Associations Management Centre (AAMC) — The AAMC is a discrete unit within CLC which provides administrative services on a cost-recovery basis to entities that receive regular distributions from Part IV agreements.⁵⁰ The AAMC also facilitates distributions from s19 agreements, which provide income streams to Indigenous groups, such as from grazing licenses and gravel pits. The AAMC-administered corporations include 34 Aboriginal corporations (regulated by the Office of the Registrar of Indigenous Corporations), two Australian Securities and Investments Commission regulated corporations and two charitable trusts. The AAMC also has responsibility for managing the compliance activities of 75 Aboriginal corporations and six native title associations whose compliance obligations had previously been supported by other CLC units.⁵¹ The AAMC’s activities are split into two main functions — to manage the books and records of the Aboriginal corporations who are the beneficiaries of disbursements and to run meetings with Traditional Owners to assist them as members and directors of Aboriginal corporations.

3.55 In 2020–21 and 2021–22 the CLC received, on behalf of its constituents, \$36.7 million in funding from the NT Indigenous Economic Stimulus Package (see paragraph 1.26).⁵² The CLC disclosed in its 2021–22 Annual Report that the focus of the EPU had been to allocate stimulus funding. The CLC developed an ‘Economic Stimulus Funding Guide’ (Stimulus Guide) that outlines the procedures and documents involved in assessing applications for stimulus funding and

48 Centrefarm, *The Aboriginal Land Economic Development Agency* [Internet], Centrefarm, available from <https://centrefarm.com/joint-land-council-economic-development-strategy/> [accessed 12 February 2023].

49 While Centrecorp is partially owned by CLC and Centrefarm is a subsidiary of Centrecorp, there is no operating relationship between the CLC, Centrecorp or Centrefarm. The Centrecorp constitution and corporate structure prevent the distribution of funds from Centrecorp to the CLC. The CLC advised the ANAO that no funds, benefits or liabilities are exchanged between the CLC and Centrecorp. The CLC does not request or receive reports or assurances from Centrecorp or Centrefarm that outline the extent to which CLC constituents are supported or their economic aspirations facilitated. The delivery of benefits to CLC constituents by Centrecorp and Centrefarm is not monitored by CLC.

50 Office of the Registrar of Indigenous Corporations, *More than a helping hand* [Internet], available from <https://www.oric.gov.au/publications/spotlight/more-helping-hand> [accessed 9 February 2023].

51 These 81 bodies mostly have small or non-existent revenue streams making cost recovery by AAMC unfeasible. Consequently, specific funding for AAMC activities to support this compliance work has been provided by the National Indigenous Australians Agency from the Aboriginals Benefit Account.

52 Australian Government, *\$100 Million Stimulus for Indigenous Businesses and Jobs in the NT* [Internet], 2020, available from <https://www.indigenous.gov.au/news-and-media/announcements/100-million-stimulus-indigenous-businesses-and-jobs-nt> [accessed 12 February 2023].

developing a contract and payment schedule for successful applicants. The Stimulus Guide documents the approval process and is consistent with an implementation plan submitted to the NIAA on 21 January 2021 and subsequently approved by the NIAA. The implementation plan stated that projects receiving stimulus funding had been identified through ‘existing and ongoing engagement and relationships with constituent communities and local Aboriginal businesses ...’.

3.56 The ANAO sampled 21 stimulus funded projects⁵³, including four for which the CLC was the project proponent (three with a project partner) on behalf of a community project, and found that all 21 sampled projects were assessed against the criteria specified in the Stimulus Guide; and received endorsement by the General Manager, and were approved by the CEO or their delegate, as required under the implementation plan. Risk was discussed in relation to all non-exempted medium-large size projects, as required under the implementation plan.⁵⁴

3.57 The implementation plan did not set out a required date for disbursement of the stimulus funds, however it noted that the CLC expected that the funds would be ‘spent’ by ‘mid-2022’. CLC’s 2021–22 financial statements disclosed that as at 30 June 2022, \$20.5 million (56 per cent) of the NT Indigenous Economic Stimulus Package funding had been contractually committed and \$4 million had been released. As at September 2022 the CLC had approved 63 applications (valued at \$30.9 million; 84 per cent) for funding.

Assisting with community development

3.58 Since 2005 the CLC has coordinated a Community Development Program which applies Aboriginal funds to social, cultural and economic development projects.⁵⁵ In 2009 the CLC developed a Community Development Framework, which was updated in 2021 (CD Framework). The CD Framework identifies four strategies that guide the CLC’s involvement in community development: governance support; planning and project management; partnerships and networks; and lobbying and advocacy.

3.59 In its 2021–22 Annual Report, the CLC describes the process for the delivery of Community Development Program projects. The Annual Report sets out that the CLC’s Community Development Unit collaborates with Aboriginal groups to prioritise, plan and develop projects that are to benefit the Aboriginal community or Traditional Owners. In 2022 an internal audit identified that, consistent with the CLC’s Community Development processes, Traditional Owners made decisions over projects and working groups were established to identify community interests, establish project scope and select projects. The internal audit also found that CLC staff assisted in developing proposals, reported to working group members, and sought feedback on project outcomes.

3.60 The 2021–22 Annual Report indicates that, in consultation with Aboriginal groups, partner organisations are identified that have the capacity to deliver the projects. The CLC’s CEO signs off on the project consultation process, proposal details and funding. The CLC then negotiates funding agreements with the provider of goods and services (the delivery partner) and manages the projects. There are no documented guidelines or framework for the identification and procurement

53 Ten were the projects with the highest amount of funding and 11 were randomly selected from remaining projects.

54 Some medium sized projects, such as for remote outstations, were not required to address risks in the application process.

55 Project funding sources include s19, Part IV and native title agreements that specify monies to be put toward a Community Development Program project.

of delivery partners, which the 2022 internal audit found to be an ‘informal process’ that carried governance risks. The same section of the Annual Report discloses that in 2021–22, 217 new projects valued at \$21.6 million were commenced.

Recommendation no. 5

3.61 The Central Land Council strengthen the procurement components of the Community Development Program by documenting specific procurement procedures.

Central Land Council response: *Agreed.*

3.62 *The CLC agree that the documentation of Community Development Program procurement procedures needs to be strengthened, and have commenced this initiative. The Community Development Unit is developing a central implementation guide for Community Development staff which will collate the existing guidelines and processes into streamlined procedures and reference relevant policies for each step of the Community Development Planning for Action River which is outlined in the CLC Community Development Framework.*

3.63 *Procurement occurs at step 5 of the Community Development Planning for Action River, and it is the Aboriginal governance groups who determine the project partners that they wish to work with through their local knowledge and lived experience. Some Aboriginal governance groups have established specific procedures for the selection of project partners. For example, the Granites Mine Affected Area Aboriginal Corporation requires a community meeting to approve any project partner as an ‘Eligible Community Organisation’. If groups are not able to identify project partners they may request support from CLC staff. In these instances, CLC staff comply with the CLC Procurement Policy. This includes (a) if the identified project fits within the scope of the CLC Procurement Panel then the panel is used and staff obtain three quotes from these contractors for consideration by the Aboriginal governance group, and (b) the CLC policy allows exceptions for sole acceptable suppliers, which can be required for unique, remote or culturally appropriate projects such as traditional owner cultural mapping projects. Accordingly, this section of the implementation guide will outline the procedures and policy relating to the CLC staff role in supporting the Aboriginal decision-making group in their project partner identification and selection.*

3.64 The Community Development Program has been monitored and evaluated by La Trobe University (commissioned by the CLC) since 2011. The 2020–21 La Trobe University review found the Community Development Program was delivering on its key objectives to maximize opportunities and generate outcomes which benefit Aboriginal people; and there was continued growth in funding allocated and number of projects funded. A March 2018 internal review had noted a lack of standardised procedures for project evaluation and monitoring, and the 2020–21 La Trobe University review noted that the CLC had received NIAA funding to develop a new monitoring and evaluation strategy and create a monitoring and evaluation coordinator position. The La Trobe University review identified gaps in outcome reporting; challenges in balancing immediate and longer-term needs; and a shortage of quality delivery partners; as some challenges to be addressed as a priority. The recommendations included that the CLC:

- develop more tailored project monitoring, evaluation and learning strategies;

- form partnerships with all levels of government to trial new ways of working to address a decline in government funding of Community Development projects; and
- use examples of successful Aboriginal corporations who have run their own Community Development Program projects as a template for Aboriginal groups unable to attract quality project partners.

Assisting with the protection of sacred sites

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

3.66 In fulfilling its statutory responsibilities under the ALRA, the CLC issues Sacred Site Clearance Certificates (CLC Certificates). CLC Certificates are requested in relation to: exploration and mining; construction projects such as buildings and roads; Telstra telecommunication construction; work by the CLC's ranger groups that involves traditional burning of vegetation, feral animal control, and fencing; and miscellaneous activities such as military exercises, pipelines, or cabling projects. The CLC Certificates set out conditions in relation to working near sacred sites to protect the sites.

3.67 The CLC website identifies the procedure to obtain clearance for work to be carried out on Aboriginal and non-Aboriginal land. For work clearances on Aboriginal land, the CLC website states that the CLC can issue a CLC Certificate. For work on non-Aboriginal land, the CLC directs applicants to the Aboriginal Areas Protection Authority (AAPA) to obtain an Authority Certificate.⁵⁶ The CLC has documented its work procedures around the protection of sacred sites in a guide developed and updated by the CLC's Anthropology Unit. The Anthropology Unit researches and produces reports at the request of other sections within the CLC, including Work Area Clearance Reports. The Work Area Clearance Report contains advice necessary to produce a CLC Certificate. The CLC's Anthropology Unit maintains a sacred site database.

Consulting and obtaining consent

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

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

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

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

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

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

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

3.70 The parts of the CLC involved in consultation include the Professional Services Division (comprising the Legal, Anthropology, Native Title and Mining and Energy units) and the Regional Services Unit. A key function of the Regional Services Unit is to manage the logistics of, and effectively facilitate, consultation and consent meetings.

3.71 The resourcing and processes established by the CLC to consult with Aboriginal people and obtain consent from Traditional Owners are fit for purpose and allow the CLC to meet the dual requirements of the ALRA and NTA.

- Officials from the Professional Services Division are assigned to each of the nine CLC regions.
- The Native Title Unit consists of 26 employees — 10 operate centrally under the Native Title Manager and 16 are deployed through other CLC business units across the CLC regions.
- NTA and ALRA requirements are addressed in staff guidelines, including in the procedures guiding the work of the Professional Services Division and the conduct of meetings. The aim is to facilitate informed decision-making by the relevant Traditional Owners or native title holders.
- Resources have been developed to improve understanding of the rights, opportunities and impacts relating to Aboriginal Land and registered native title claims and determinations. The CLC has developed booklets explaining native title, Prescribed Body Corporates and the ALRA. The CLC has developed resources in various local languages.
- The Mining Meeting Procedure establishes a process for CLC anthropologists, mining officers and lawyers to receive instructions from Traditional Owners after considering proposals by mining companies.

3.72 The ANAO observed a meeting on 26 October 2022, which was held for the purpose of making a decision regarding several proposed mineral exploration activities. The meeting was conducted in a manner that was fully aligned with CLC Mining Meeting Procedure and included the identification of relevant attendees and decision makers, discussion of information presented by

the applicant and a decision made by the attendees.⁵⁹ Meeting records demonstrate that Traditional Owners were mostly adequately briefed on the benefits, risks and costs of the proposals.

- Traditional Owners were provided explanations about the environmental process and impact of the proposed exploration. Maps were distributed and explained to Traditional Owners, who had the opportunity to discuss and ask questions about the affected area.
- Traditional Owners were informed that if consent was given for exploration activity, and the exploration led to mining activity, they would be able to negotiate terms of a mining agreement but would not be able to subsequently withdraw their consent for mining activity.
- CLC staff explained concepts and at times corrected things said by the mining company.

Figure 3.2: Mining exploration consent meeting, October 2022



Source: ANAO with participant consent.

3.73 The outcome of the 26 October 2022 meeting was that consent for mining exploration on two areas of land was conditionally granted by meeting attendees. The ANAO did not observe or monitor the subsequent implementation of the decisions or related negotiations between the CLC, Traditional Owners and the applicant.

Disputes and complaints

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

⁵⁹ Based on a review of other meeting records and discussions with participants, nothing came to the attention of the ANAO to suggest that the 26 October 2022 meeting was run differently to other exploration consent meetings held by the CLC.

⁶⁰ *Aboriginal Land Rights Act (Northern Territory) 1976* (Cth) section 25.

communicating outcomes; and feeding back systemic issues.⁶¹ Under the NTA, NTRB functions include to promote agreement and mediate disputes between NTRB constituents in relation to the making of native title applications, future acts, native title agreements and rights of access.

3.75 The CLC advised the ANAO that external complaints and issues are responded to by various teams across the organisation including the regional offices, although since February 2023 oversight of this function has been centralised. Email records demonstrate that the CLC has received, triaged and managed external and internal complaints. The CLC has partly implemented the 2021 Nous Group recommendation (see paragraph 3.51) that the ‘CLC could make providing feedback and complaints more accessible online’; and ‘should also consistently record informal complaints or feedback made to regional offices to support continuous improvement.’⁶²

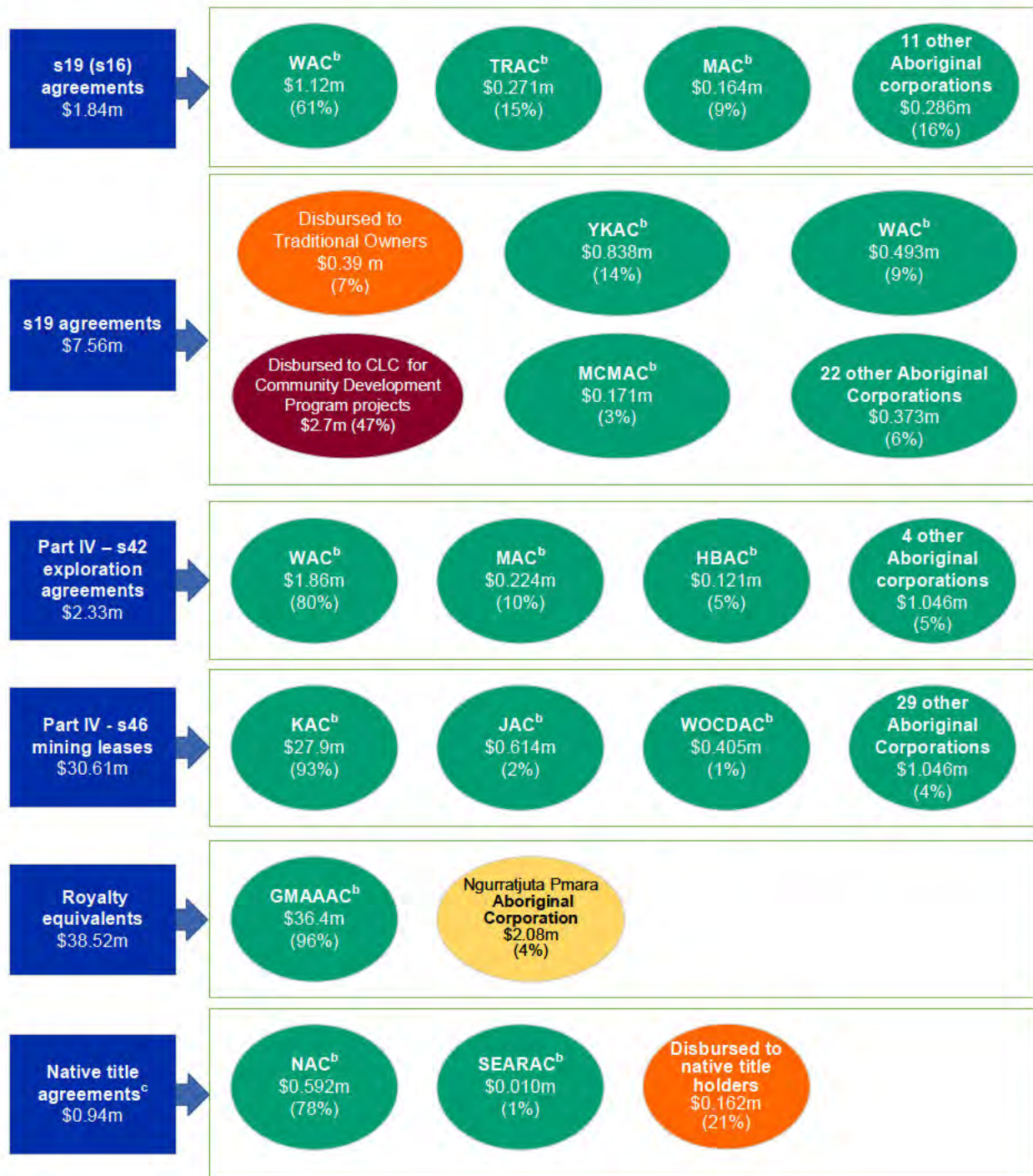
- The CLC developed a Dispute Management Framework in 2015 that distinguishes between disputes about land, resources, family matters and disputes between individuals. The Dispute Management Framework outlines the CLC’s approach to external disputes including relating to land and traditional ownership.
- The CLC has a Complaints Policy dated May 2023 which outlines staff responsibilities with respect to complaints received from external parties. The Strategy and Performance Manager is responsible for ensuring a complaint register is maintained and that monitoring is undertaken.
- The CLC added a dedicated complaints form for external stakeholders to its website in November 2022. Prior to 2022 the CLC had a combined feedback and complaints form on its website. There is no evidence that the CLC has a systematic way of recording informal complaints or feedback made to regional offices to support continuous improvement.
- The management of complaints made to or about the CLC’s staff or performance is not covered by the Dispute Management Framework. The CLC’s Human Resources area manages and monitors internal complaints in a centralised process, as documented in a Grievance Handling Policy. The audit has not examined the resolution of internal complaints.

Distributing royalties and other payments

3.76 The CLC receives monies from the agreement types set out in Table 1.1 into the Land Use Trust Account (LUTA) on behalf of Aboriginal people and corporations. Figure 3.1 describes how the payments received in 2021–22 by the CLC in respect of the use or occupation of Aboriginal land in the CLC region were distributed. In 2021–22 the LUTA received \$82.8 million, and distributions from the LUTA were \$80.2 million. The LUTA had an opening value for the year of \$35.0 million and a closing balance of \$35.6 million.

61 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* [Internet], 1 January 2023, available from https://www.ombudsman.gov.au/publications-resources-and-faqs?form=simple&profile=default&num_ranks=&query=%21showall&collection=comomb-publications&f.Tab%7CFUN7lh9eghnqfzocchoegs0qpg=Better+practice+guides [accessed 5 February 2023].

62 Nous Group, *Review of Performance as a Native Title Representative Body: Central Land Council* [Internet], National Indigenous Australians Agency, 2021, available from <https://www.niaa.gov.au/sites/default/files/publications/11-clc-public-summary-report.pdf> [accessed 15 March 2023].

Figure 3.3: Distribution of rents, royalties and other payments, 2021–22^a

Key

- Payments received by the CLC (Land Use Trust Account)
- Aboriginal corporations administered by AAMC (top recipients 2021-22)
- Aboriginal corporations not administered by AAMC (top recipients 2021-22)
- Payments distributed to individual Traditional Owners and native title holders
- Payments disbursed from Land Use Trust Account to CLC

Note a: Payments received may vary from payments distributed given that payments received in one financial year may have been paid in the following financial year.

Note b: GMAAAC — Granite Mine Affected Area Aboriginal Corporation; HBAC — Haasts Bluff Aboriginal Corporation; KAC — Kurra Aboriginal Corporation; JAC — Janganpa Aboriginal Corporation; MCMAC — Mistake Creek Malgin Aboriginal Corporation; MAC — Mamangirri Aboriginal Corporation; NAC — Ngampelerre Aboriginal Corporation; SEARAC — South East Arrente Region Aboriginal Corporation; TRAC — Tennant Region Aboriginal Corporation; YKAC — Yangkuntjatjarra Kutu Aboriginal Corporation; WAC — Warlpiri Aboriginal Corporation; and WOCDAC — Western Outstation City Development Aboriginal Corporation.

Note c: Some other monies, totaling approximately \$1 million, received by CLC are not depicted in this figure.

Source: ANAO analysis of CLC documentation.

3.77 There is a two-stage process for the distribution of the majority of funds received by the CLC from s19, Part IV and native title agreements. The two-stage approach facilitates compliance with ALRA and NTA requirements on the timeliness of distributions.

- Stage 1: Distribution from LUTA — Transaction processing is guided by a Land Use Trust Procedure Manual. The distribution instructions are established at the time the Executive Committee ratifies or confirms the relevant land use agreement. The transfer of funds is made from the LUTA to the bank accounts of recipients based on the information provided by the CLC Legal Unit and following a resolution of the Executive Committee. The LUTA team retain this information in a spreadsheet and rely on it to raise invoices and calculate the distribution amounts to recipients. Once the funds are received by the Aboriginal corporation or other beneficiary organisation, they are administered by the AAMC (see paragraph 3.54) under a service agreement. Some distributions are made from the LUTA directly to the CLC to fund Community Development Program projects, as authorised by the Executive Committee, or directly to individuals. Where payment is to an individual, the Executive Committee resolution contains a direction to hold a distribution meeting and for the money to be distributed in accordance with instructions from senior Traditional Owners of the area.
- Stage 2: Distribution from Aboriginal corporations administered by AAMC — The second stage of the distribution process is administered by AAMC by facilitating a distribution meeting of the respective Aboriginal corporation at which a formal decision is recorded confirming specific distribution instructions to the end recipient. End recipients are typically individuals, families (via a nominated family member) or another agreed purpose such as a funeral fund scheme. AAMC records the distribution resolution and relevant bank account details and facilitates the funds transfers in line with the intermediary organisation's instructions. To recover the cost of its administration services, the AAMC charges whichever is lower of either a fixed fee capped at \$150,000 (GST exclusive) per entity per annum, or five per cent of the funds redistributed.

3.78 ALRA (subsection 35(4)) prescribes that when a Land Council receives payment in respect of Aboriginal land, that money can be paid directly to or for the benefit of the traditional Aboriginal owners of the land. As noted at paragraph 3.58, the CLC's Community Development Unit administers and manages projects that are funded with Aboriginal funds, including funds provided directly from the LUTA. A monthly payment is made from the LUTA to the CLC to cover project costs. During 2021–22, \$2.7 million was transferred from the LUTA to the CLC for Community Development Program projects.

3.79 The various CLC units which calculate, receipt and distribute funds have their own controls and processes. Each step leading up to the final distribution is reliant on the accuracy of the preceding step. The CLC does not conduct a systematic reconciliation of the final distributions against the beneficiaries' entitlements under various agreements. The funds transferred from the LUTA to

the CLC for Community Development projects are not separately disclosed in the accounts. The accounts of Aboriginal corporations administered by AAMC are audited by PricewaterhouseCoopers.

Opportunity for improvement

3.80 The Central Land Council could:

- strengthen the existing controls and processes by implementing a mechanism to reconcile distributions with beneficiary entitlements under agreements across the multiple CLC teams; and
- facilitate a transparent accounting of resources transferred from the LUTA to projects managed directly by the CLC.

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

Areas examined

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

Conclusion

The CLC's arrangements to promote the proper use and management of resources are largely appropriate, except for arrangements to identify and manage fraud risks and conflicts of interest. A largely fit for purpose policy and risk management framework is in place. Public reporting in the form of the corporate plan and annual report are largely consistent with legislative requirements. Significant attention is paid to performance measurement. Audit and Risk Committee member composition and rotation is consistent with its Charter, although the Audit Committee could improve its reporting and consideration of performance measures. The main deficiencies in the CLC's arrangements to promote the proper use and management of resources are in relation to measures to support the integrity of operations: the system of fraud control is not fully effective and conflict of interest management is developing.

Areas for improvement

The ANAO made six recommendations aimed at improving risk management; reviewing its policy suite; establishing and implementing an appropriate fraud control framework; improving conflict of interest management; and ensuring Audit and Risk Committee performance is scrutinised and reviewed by the accountable authority. The ANAO also suggested that the CLC consider updating its Risk Management Policy; developing outcome, efficiency and timeliness performance measures; and annually reviewing the Audit and Risk Committee Charter, which could include a member rotation policy.

4.1 Under the PGPA Act, Commonwealth entities are accountable to the Parliament and the public for the proper use and management of public resources to deliver programs and services and achieve outcomes. Effective management of risk, fraud and probity; a robust policy framework; a corporate plan and annual report, including performance statements; and an audit committee are key mechanisms under the PGPA Act to implement this duty.⁶³

63 *Public Governance, Performance and Accountability Act 2013* (Cth): section 15 (duty to govern), section 16 (duty to establish systems for risk and control), section 35 (corporate plan), section 39 (performance statements) and section 46 (annual report); and PGPA Rule 2014: section 10 (preventing, detecting and dealing with fraud), and Part 2-2, Division 2 (duty to disclose interests). Subsection 12(2) of the PGPA Rule specifies that the duty to disclose interests does not apply to a member of a Land Council, if the interest arises because the official is a Traditional Owner or an Aboriginal person who has an entitlement, in accordance with Aboriginal tradition, to enter and use or occupy the land.

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

The CLC Risk Management Plan is largely aligned with the Commonwealth Risk Management Policy. Approximately one-third of management level staff have received non-mandatory training in risk management. CLC commissioned a review of its risk management processes in 2022. The CLC has an extensive policy framework. Some policies could be more detailed and require endorsement at an appropriate level, and some key governance policies do not exist.

Risk oversight and management

4.2 The PGPA Act (section 16) requires accountable authorities of Commonwealth entities to establish and maintain appropriate systems and internal controls for the oversight and management of risk. The Commonwealth Risk Management Policy supports the PGPA Act.⁶⁴ As a corporate Commonwealth entity, the CLC is not required to comply with the Commonwealth Risk Management Policy, however the Policy states that corporate Commonwealth agencies ‘should align their risk management frameworks and systems with this policy as a matter of good practice’.⁶⁵

4.3 The Commonwealth Risk Management Policy specifies that entities should establish a risk management policy. The policy should define the entity’s approach to the management of risk and how this approach supports its strategic plans and objectives; establish a risk appetite and tolerance; and contain an outline of key accountabilities and responsibilities for managing risk.

4.4 The CLC has a ‘Risk Management Plan 2020–2023’ (Risk Management Plan), dated December 2020, which serves as its risk management policy. The Risk Management Plan states that it is distinct from, and not to be substituted for, the CLC Risk Management Framework. The Risk Management Framework is also cited in other CLC governance documents. There is no evidence that the ‘Risk Management Framework’ exists.

4.5 The December 2020 Risk Management Plan states that it was endorsed by the Executive Committee of the Council on 11 December 2013, and subsequently revised in 2015, 2016, 2018, 2019 and 2020. There is no evidence that the revisions were endorsed by the Executive Committee or the accountable authority. The Risk Management Plan notes that it will be reviewed annually, with the next review due in 2021. The Risk Management Plan has not been reviewed since December 2020.

4.6 The Risk Management Plan largely complies with Commonwealth Risk Management Policy requirements. The Risk Management Plan provides generic guidance on the management of risk

64 Department of Finance, *Commonwealth Risk Management Policy*, 1 July 2014.

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

and defines the CLC's approach to managing risk. It establishes the method used to establish the risk appetite and provides a risk appetite statement, which is that:

CLC senior management has a conservative approach to risk events and a willingness to avoid major or extreme risk events that would place the CLC under adverse economic or political circumstances.

4.7 A key artefact appended to the Risk Management Plan is the CLC Risk Profile, which identifies and assesses risks. Key accountabilities and responsibilities for managing risk are not outlined in the Risk Management Plan, although the Risk Profile assigns risk owners for specific risks. The Risk Management Plan requires that risks are monitored on an ongoing basis, and at a minimum bi-annually, and that certain events should trigger a review of the Risk Profile, including:

- material changes to CLC (new systems, such as change of accounting system, processes, activities);
- material organisational restructure;
- material control breakdowns that are identified through either internal/external assurance reviews or significant loss events; or
- lessons learned from a material external event or scenario analysis.

Opportunity for Improvement

4.8 The CLC could update its Risk Management Plan to outline key accountabilities and responsibilities for managing risk.

4.9 The Risk Profile was not updated between 2020 and July 2022, despite significant events such as the COVID-19 pandemic, although some work was done in 2021 to support the development of the Corporate Plan (which mentions the pandemic as a risk for which the level of assurance was inadequate). A Corporate Risk Profile was developed in July 2022 and was prepared by the CLC and the internal audit provider, PricewaterhouseCoopers (PwC) (see paragraph 4.59), with information provided by CLC staff. The Corporate Risk Profile identifies nine enterprise risks. A single risk owner is identified for each risk. The Corporate Risk Profile identifies risk 'drivers' and controls however does not identify which risks are outside the CLC risk tolerance or additional treatments.

4.10 There was no indication that the accountable authority had reviewed or endorsed the 2020 Risk Profile. The 2022 Risk Profile was endorsed by the CEO in May 2023.

4.11 During 2022 CLC facilitated certificate level risk management training for management level staff and advised the ANAO that 13 (out of 35) management level staff completed the certificate. CLC risk management training is not mandatory.

4.12 In July 2022 PwC developed a 'Risk Management Roadmap' for the CLC. The Risk Management Roadmap recommends six 'milestones' needed to embed risk management within CLC: finalise and execute an internal audit plan; dedicate a resource responsible for implementing the risk management framework; identify the gaps in risk management documentation; review organisational capabilities and resources; establish a formal documented operational risk management process; and implement risk management training. CLC engaged PwC in August 2022 to progress the first of these recommendations: the internal audit work plan.

Recommendation no. 6

4.13 The Central Land Council:

- (a) review its Risk Management Plan in line with its commitment to conduct an annual review and in doing so remove references to obsolete frameworks or policies; and
- (b) ensure the Risk Management Plan and the risk profile are endorsed by the accountable authority of the Central Land Council.

Central Land Council response: *Agreed.*

4.14 *The CLC will conduct a review of its Risk Management Plan in 2023/24, and is seeking to resource the work of risk management coordination in order to ensure the ongoing maintenance of current and effective risk management systems.*

4.15 *The CLC will ensure that the Risk Management Plan is endorsed by the accountable authority in accordance with its PGPA responsibility to ensure that there is an appropriate system of risk oversight and management. The Risk Profile will be endorsed in accordance with the Risk Management Plan.*

Policy framework

4.16 Policies and procedures are an important part of an entity's system of internal controls. The CLC has a range of policies and procedures across the various functions of the organisation. There is no central repository or index which identifies the set of policies formally endorsed by the Council or accountable authority, and the respective review dates. The CLC created, for the purposes of the ANAO performance audit, a list of policies that contains links to 80 policies. The 80 policies are all accessible to staff on the CLC's internal system.

4.17 The ANAO selected eight governance policies for deeper examination. Table 4.1 provides an overview of ANAO's assessment of these policies, focusing on whether the policies are sufficiently detailed and clear and are consistent with the PGPA Act's requirements for proper use of resources. Of the sample of eight CLC governance policies, one was not endorsed. The remainder were signed by the CLC CEO (five policies) or a CLC Director (two policies). The ANAO notes that the CLC does not have an asset management, credit card use or gifts and benefits policy, which would be considered core governance areas requiring a policy.

Table 4.1: Selected CLC governance policies^a

Title	Clear and detailed ^b	Consistent with the PGPA Act
Code of Conduct for Council Members		
Induction Policy		
Information Management Policy		
Leave Policy		

Title	Clear and detailed ^b	Consistent with the PGPA Act
Motor Vehicle Use and Safe Driving Policy	◆	◆
Private and Confidential Information Policy	◆	N/A
Procurement Policy	◆	◆
Travel Policy	◆	◆

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

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

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

Source: ANAO analysis.

4.18 The examined policies are mostly clear and detailed, and consistent with the PGPA Act. Exceptions are described below.

- Code of Conduct for Council Members — The Code of Conduct provides that for less serious offences, members may be given a warning and more serious or repeated breaches will be dealt with by the Executive Committee. The Code of Conduct does not define what constitutes a ‘less’ or ‘more’ serious offence potentially leading to inconsistent application.
- Induction Policy — The Induction Policy provides that employees must sign ‘a specified form’ stating that they have participated in the required inductions. The name of the specified form, or a link to the form, is not provided.
- Information Management Policy — The Information Management Policy, dated 2016 provides that it was ‘scheduled for a comprehensive review by 2020’. The policy was reviewed in May 2023. The policy is not endorsed.

4.19 In addition to corporate governance policies, the ANAO examined operational policies. Three of the five key operational policies being used by staff were in draft format. The ANAO assessed three key operational policies: Legal (draft), Anthropology (draft) and the Aboriginal Association Management Centre Guidelines (AAMC; see paragraph 3.54). The assessed policies were largely fit for purpose in terms of providing clarity, instruction and context to staff. The policies reference the primary legislative requirements, however the policies do not always reference all the current relevant legislation. For example, the Anthropology Policy references the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) and the *Native Title Act 1993* (NTA), but not the PGPA Act, even though the commitment of funds (a PGPA Act function) is addressed in the document. A recent review of the Mineral and Energy Unit noted that: there was a large number of procedure documents that staff were required to follow, most of which were updated within the last two to three years; however, one key manual was out of date and referred to a superseded (2006) version of the ALRA.

Recommendation no. 7

4.20 The Central Land Council conduct a review of its policy suite to ensure that important governance elements and functions have an associated policy, that key policies are endorsed and appropriately reviewed, and that content is complete and accurate.

Central Land Council response: *Agreed.*

4.21 *The CLC will progress this suggested improvement, and has established a central accessible 'policies' repository. The CLC will conduct a review and ensure that all relevant policies are endorsed, appropriately reviewed, and stored in the central repository, and develop a mechanism to alert responsible managers regarding upcoming review dates for policies.*

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

The CLC is not actively implementing its Fraud and Corruption Plan. There are no regular fraud risk assessments. There is no general register of Council member interests, however Council meeting rules and a Code of Conduct contain provisions for dealing with conflicts during meetings. These provisions are weakened by a lack of consistency in how conflicts are meant to be managed and a lack of transparency in meeting minutes as to how conflicts are managed in practice. There is also a lack of transparency over how potential employee conflicts are managed.

Fraud control

4.22 Under section 27 of the PGPA Act and under section 10 of the PGPA Rule, an official of a Commonwealth entity must not improperly use his or her position to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person, and the accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity. Requirements for fraud control by Commonwealth entities are contained in the 2017 *Commonwealth Fraud Control Framework*, which consists of three tiered documents — the fraud rule, fraud policy and fraud guidance.⁶⁶ As a corporate Commonwealth entity, the CLC must comply with the fraud rule, which ensures a minimum standard for managing the risk and incident of fraud. While Land Councils are not bound by the fraud policy or fraud guidance, the government 'considers both documents as better practice for corporate Commonwealth entities and expects that these entities will follow the fraud guidance and fraud policy where appropriate in meeting the requirements of the fraud rule'.⁶⁷

4.23 Although the CLC has mechanisms for preventing, detecting and recording fraud, the CLC's fraud control arrangements fall short of the minimum requirements established in the fraud rule (see Appendix 7). The CLC's Fraud Policy requires: fraud risk assessments to be conducted; and then, in the event a fraud risk is identified, a specific plan to be developed to manage that identified risk. The CLC advised the ANAO that no fraud risk assessments had been conducted since at least 2018.

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

67 *ibid.*, p. 4.

As no fraud risk assessments have been conducted, there is no fraud control plan that deals with identified risks, as required under the Commonwealth fraud rule.

4.24 The CLC did not state in its annual reports for 2020–21 and 2021–22 whether there were any instances of fraudulent activity identified in the reporting periods. This audit did not examine potential instances of fraud.

Recommendation no. 8

4.25 The Central Land Council:

- (a) conduct fraud risk assessments regularly, in accordance with its Fraud Policy; and
- (b) implement a fraud control plan to manage fraud risks identified during the assessments.

4.26 **Central Land Council response:** *Agreed. The CLC will progress this recommendation. In addition to the current ad hoc testing conducted by the Finance section, the CLC will ensure that fraud risk assessments are conducted in accordance with its Fraud Policy, and implement a fraud control plan to manage fraud risks that are identified during these assessments.*

Conflict of interest management

4.27 The Australian Commission for Law Enforcement Integrity's guide on conflict of interest management states:

Agencies should provide clear and consistent guidance to employees on how to identify, declare and manage conflicts of interest. Agency executives and management should regularly communicate about the conflict of interest framework and how it is implemented.⁶⁸

Employees

4.28 The Code of Conduct for employees states that if the employee cannot do their job 'fairly and impartially' they have a conflict of interest. They are instructed to inform their manager immediately and to seek approval from the CEO to continue with the activity.

4.29 The CLC has a 'secondary employment register' to record CLC employees' secondary employment arrangements, potential conflicts of interest, and the actions agreed by the CEO to manage any conflicts. There were seven individuals listed in the register (which is dated 2021) as at March 2023. Two conflicts were declared, both raised with the CEO in May 2021; the register does not record the CEO's decision regarding the materiality of the conflict or a management plan. Although this register was provided to the ANAO as evidence of a central register for employee declarations of conflicts of interest, the register is not fit for purpose since it is limited to those who have secondary employment arrangements and it is incomplete. There is no further evidence that conflicted CLC employees inform their managers and seek approval from the CEO to continue with their work activity, as required under the Code of Conduct.

4.30 The CLC has a Conflict of Interest in the Workplace Policy dated May 2023 which outlines the requirements for staff, including that management plans be established where required. The

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

policy requires the Human Resource Manager or delegate to maintain a register of all reported conflicts of interest.

Council members

4.31 The Code of Conduct for Council Members contains more expansive instructions regarding the declaration of interests. It reflects that the PGPA Act places a duty on officials of the Commonwealth to disclose details of material interests and clarifies that this duty does not apply to a member of a Land Council, if the interest arises because the official is a Traditional Owner or an Aboriginal person who has an entitlement, in accordance with Aboriginal tradition, to enter and use or occupy the land. The Code of Conduct for Council Members urges Council members to declare and manage conflicts.

4.32 Section 29AA of the ALRA requires that each member of a Land Council make written declaration of their direct or indirect pecuniary interests, in a register of interests kept by the Council which is required to be done in accordance with a determination made by the Minister for Indigenous Australians (the Minister). The CLC has not implemented a conflict of interest register for Council members on the basis that no ministerial determination had been made. The other three Northern Territory Land Councils have registers. The CLC advised the ANAO in May 2023 that it intends to implement a register.

4.33 The ALRA does not include provisions for the management of conflict of interest during the conduct of meetings. The CLC has established provisions through Council and Executive Committee meeting rules and a Code of Conduct for Council Members.

- Council Meeting rules — Meeting rules establish that members who have a conflict of interest in relation to a matter being discussed must: declare it, remove themselves if requested by the Chair, and not vote on the matter. The Council may pass a resolution allowing a member to participate in the consideration of (but not vote on) a matter for which a conflict has been declared.
- Executive Committee Rules — Meeting rules require that Executive Committee members who have a conflict of interest in relation to a matter being discussed must declare that conflict of interest before consideration of the matter and must remove themselves from the meeting while the matter is discussed. Members who have a conflict of interest in relation to a matter being discussed may not participate in the discussion and voting on that particular matter. The Council may pass a resolution allowing a member to participate in consideration of, but not vote on, a matter where a conflict of interest has been declared.
- Code of Conduct for Council Members — The Code of Conduct for Council Members requires that the member must 'absent themselves from the meeting while discussion takes place'. The Code of Conduct states that a member need not disclose a conflict of interest which relates to land over which the member is an owner or native title holder. This is consistent with subsection 12(2) of the PGPA Rule.

4.34 The Rules for Council Meetings and the Code of Conduct for Council Members were updated in June 2021. There is an inconsistency between the two documents over whether a member with a declared conflict must leave the discussion or is only required to do so if the Chair so requires.

4.35 The Council Meeting Rules (see paragraph 3.26) do not require that the CLC record in meeting minutes or elsewhere the details identifying the member who declares a conflict, the nature of the interest or whether the conflicted party left the room. The lack of information does not support transparency over conflicts of interest.

4.36 ANAO examination of the meeting minutes found that a conflict was declared and recorded in the minutes at one Council meeting and one Executive Committee meeting. The minutes of the Council meeting do not record if the Chair requested that the member absent themselves from the meeting or what actions were subsequently taken. The ANAO is therefore unable to assess whether meeting rules were followed in relation to conflict of interest management in full Council meetings. The minutes of the Executive Committee record that the conflicted member abstained from voting.

Recommendation no. 9

4.37 The Central Land Council:

- (a) make the requirements for managing conflicts of interest in Council and Executive Committee meetings consistent across governance documents; and
- (b) implement a fit for purpose conflict of interest declaration and management process that is aligned to the Code of Conduct for employees.

Central Land Council response: *Agreed.*

4.38 *The CLC agree that the Rules for Council Meetings and Code of Conduct for Council members should be updated to be consistent in their requirements for managing conflicts of interest. This will be progressed and addressed as part of the broader review and update of the Council meeting rules and code of conduct.*

4.39 *In addition to requirements in the CLC employee Code of Conduct and in employee contracts, the CLC established an employee conflict of interest declaration and management policy in May 2023. The implementation of this policy will support the CLC to ensure robust administration of its management of employee conflict of interest matters.*

4.40 The CLC's policies do not promote the consideration and management of interests that could be perceived by external parties or stakeholders as potential conflicts. For example, the CLC is the founding and largest shareholder of Centrecorp, a commercial entity (see paragraph 3.53). Under the NT Indigenous Economic Stimulus Package (see paragraph 1.26), the CLC allocated \$3.6 million to organisations that Centrecorp fully or partly owns. Although the CLC cannot benefit from the operations of Centrecorp under Centrecorp's constitution, this could create a perception of conflicted interests. PwC, which is contracted to provide CLC's internal audit function (including over AAMC) is also contracted by CLC to be the external auditor of the organisations for which AAMC provides administration and accounting services. The second matter was raised at a CLC Audit and Risk Committee meeting in December 2022 and PwC undertook that it would consider its management of multiple roles to manage independence. Following this issue being raised during the audit process, PwC and CLC agreed that internal audit work relating to the AAMC was to be

excluded from PwC's internal audit services scope of work.⁶⁹ The CLC could do more, through robust conflict of interest policies and procedures, to minimise the risk of perception of conflicts of interest.

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

The CLC 2021–2025 Corporate Plan and Annual Report complied with PGPA Rule requirements except that they do not contain accountable authority certification that the annual performance statements accurately present CLC's performance in the reporting period. Performance measures are clearly defined, with appropriate targets. Performance measures predominantly measure activities or outputs, with little performance information provided in relation to outcomes and the achievement of purpose. There is a clear line of sight between performance measures outlined in the corporate plan and performance results in the annual report. The CLC accountable authority and Council were engaged in the production of the corporate plan.

Corporate plan

4.41 The ANAO assessed the CLC's compliance with requirements for its 2021–2025 Corporate Plan as set out in the PGPA Rule and Finance guidance (Appendix 8).⁷⁰ In summary the 2021–2025 CLC Corporate Plan met the requirements for content relating to its reporting period; introduction; explanation of entity purpose and key activities to achieve that purpose; as well as requirements relating to timeliness of publication. The remainder of this section discusses deficiencies in the 2021–2025 Corporate Plan in relation to the presentation of the operating context and performance reporting.

Operating Context

4.42 Item 4 of subsection 16E(2) of the PGPA Rule 2014 requires the corporate plan to set out (among other things): the environment in which the entity will operate; the strategies and plans the entity will implement to have the capability it needs to undertake its key activities and achieve its purposes; a summary of the risk oversight and management systems of the entity; and the key risks that the entity will manage and how those risks will be managed.

4.43 The 2021–2025 Corporate Plan provides the reader with a clear understanding of the entity's environment, the strategies and plans that will be implemented to maintain or improve capability, and stakeholders the CLC engages with to reach its purpose. The 2021–2025 Corporate Plan outlines the key risks facing the CLC but does not convey to the reader how the CLC plans to manage those risks, other than a reference to updating the Risk Management Plan.

69 PwC advised (see Appendix 1) that 'at the time of entering into the Outsourced Internal Audit Services agreement with the Central Land Council in August 2022, the parties orally agreed that PwC would not undertake an internal audit over AAMC, as a planned safeguard to manage any actual or perceived independence risks.' However, during the December 2022 meeting of the CLC Audit and Risk Committee, the ANAO observed, and the minutes of the meeting reflect, that the internal audit work program for PwC still included a proposed review of the AAMC.

70 Central Land Council, *Central Land Council Corporate Plan 2022–2025* [Internet], available from <https://www.clc.org.au/all-publications/?type=corporate-plan&topic=> [accessed 14 February 2023].

Performance

4.44 The 2021–2025 Corporate Plan separates performance measures into ‘metric’ and ‘non-metric’ performance measures. The ‘metric’ measures address established outputs that the CLC is confidently able to measure. The ‘non-metric’ measures are ‘initiatives’ that the CLC plans to complete during the term of the plan. The 2021–2025 Corporate Plan also states that qualitative case studies will be published in the annual report, to reflect some work of the CLC which is not easily quantified, and the 2021–22 Annual Report includes links to case studies. Each metric performance measure is mapped to a ‘Strategic goal’, ‘Performance Criteria’, ‘[Key Performance Indicator] Number’, and ‘Strategy reference’. Actual performance results for each measure for the prior five reporting periods are provided, as well as a 2021–22 target and ‘Target Forecast’ for the next three reporting periods.

4.45 All of the metric measures have clear targets which allow for measurement of performance in achieving activities and outputs over time. For example, the CLC measures:

- the number of ‘land management committee’ meetings and consultative forums with ‘effective’ Traditional Owner representation (target of 60 per annum)⁷¹; and
- the number of ‘distribution committee’ meetings held regarding land use income (target of 85 in 2022–23).⁷²

4.46 The annual performance statements do not have efficiency, timeliness or outcome measures.

Opportunity for improvement

4.47 The CLC could enhance its performance reporting by including measures of efficiency, timeliness and outcomes.

Annual report

4.48 The CLC’s 2021–22 Annual Report was largely compliant with PGPA and ALRA requirements, except for section 16F, as set out in Appendix 8.

4.49 Subsection 46(1) of the PGPA Act requires that ‘an entity’s annual report must be given to the responsible minister by the 15th day of the fourth month after the end of the reporting period’ (15 October for Land Councils).⁷³ The CLC met the 15 October timeframe between 2018–19 and 2021–22.

71 The ‘land management committees’ referenced in the Corporate Plan refers to meetings about land management in which the CLC have facilitated the Traditional Owners’ participation. They are not committees or sub-committees of the Council.

72 The ‘distribution committees’ referenced in the Corporate Plan represent groups within corporations that deal with income associated with a particular area of land and are not committees of the Council.

73 The *PGPA Amendment Act 2014* introduced this requirement to ensure ‘sufficient time for the Minister to consider and then table the annual report before the end of the fourth month after the end of a reporting period’.

Annual performance statements

The 'clear-read' principle

4.50 A clear line of sight between an entity's planning documents (corporate plan) and its key reporting document (annual report) is known as the 'clear-read' principle.⁷⁴ There is a clear line of sight between the 2021–2025 Corporate Plan and the 2021–22 Annual Report. The structure and wording of the performance measures in the two documents are identical and the targets remained consistent.

PGPA Rule section 16F requirements

4.51 The annual performance statements of an entity, published in the annual report, must provide information about the entity's performance in achieving its purposes and comply with any requirements prescribed under section 16F of the PGPA Rule. The CLC's 2021–22 Annual Report contains a statement that the performance statements are prepared for paragraph 39(1)(a) of the PGPA Act and a statement specifying the reporting period for which the performance statements are prepared (2021–22). The 2021–22 Annual Report does not contain a statement that, in the opinion of the CLC accountable authority, the performance statements accurately present CLC's performance in the reporting period.

Development of the corporate plan and annual report

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

Involvement of the Council

4.53 The CLC engaged the full Council and the Executive Committee in the development of the 2021–2025 Corporate Plan.

- At the April 2021 full Council meeting, members were separated into the nine regions they represent to be informed on and provide feedback on the draft corporate plan. This included a presentation of the draft corporate plan with visual and audio aids, including some content in Aboriginal languages for some of the CLC regions. CLC staff received feedback from the members, with discussion focusing on the members' views on the seven CLC goals expressed in the corporate plan.
- The CLC advised that a similar exercise was conducted at the May and June 2021 Executive Committee meetings. The CLC CEO attended the May 2021 workshop and led some discussions.

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

- At the August 2021 full Council meeting, CLC staff reiterated to members the purpose of the corporate plan, summarised feedback received from previous sessions and explained the changes that had been made as a result of that feedback.

4.54 The 2021–2025 Corporate Plan reflects the priorities and feedback from the Council obtained at these sessions. The CLC also incorporated feedback from members as to how information should be visually presented and worded. Specific actions were also added to the 2021–2025 Corporate Plan to address issues raised by the Executive Committee.

4.55 The CLC engaged with the National Indigenous Australians Agency (NIAA) in preparing its corporate plans and annual reports and provided drafts of these documents to NIAA for review. The NIAA assisted the CLC to meet relevant requirements for the production of these documents and provided comments on drafts to improve their content and presentation.

Performance Statements Assurance

4.56 The metric measures are extracted from a performance ‘dashboard’. The dashboard contains 37 spreadsheets with around 700 business information and performance measures across the different business areas of the CLC. Metrics are updated half-yearly, with data provided by the respective business unit manager. A Planning and Performance Officer collates the data in the dashboard and is responsible for putting relevant metrics into the annual report. The dashboards allow for a visual representation of information and data, facilitating the monitoring and presentation of trends. The CLC has used the dashboard system since 2016.

4.57 The dashboard provides the accountable authority with visibility over the CLC’s performance. The CLC advised the ANAO that the Planning and Performance Officer reviews the data for reasonableness, however the data entered by business unit managers is not independently verified. The ANAO has confirmed that the metric measures reported in the performance statements align with those in the dashboard.

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

The CLC has a developing internal audit function. The Audit and Risk Committee member composition and rotation is consistent with the Charter. However, Audit and Risk Committee members do not comply with Charter requirements to annually declare material personal interests. CLC’s Audit and Risk Committee could improve its reporting to the accountable authority. The Audit and Risk Committee has not documented a substantive review of the CLC’s performance reporting.

Internal audit function

4.58 An internal audit function may be established, and is an important mechanism in relation to the accountable authority’s responsibility under section 16 of the PGPA Act to establish a system of internal control.⁷⁵ The CLC maintained an internal audit function between 2016 and 2020. Audits and reviews conducted over the period 2018 to 2020, which were provided to the Audit and Risk

⁷⁵ Department of Finance, *Resource Management Guide 206 - Model Accountable Authority Instructions for Corporate Commonwealth Entities*, Finance, 2021, p.14.

Committee (ARC), covered inventories, cyber resilience, procurement and payables, the ranger training program and Community Development Unit (see paragraph 3.59) activities.

4.59 In March 2021 the CLC commissioned a review of its internal audit function by PwC. Arrangements for an outsourced internal audit provider were finalised with PwC in August 2022.

4.60 Internal audits in 2022–23 included the operations of the Minerals and Energy Unit and Community Development Unit, the payroll function and information security. The CLC has established a two-year internal audit plan.

Establishment and composition of the Audit and Risk Committee

4.61 Appendix 9 summarises the ANAO’s assessment of the effectiveness of the CLC ARC Charter and composition against the PGPA Rule requirements and Department of Finance (Finance) guidance.

Charter

4.62 An ARC Charter was approved by the CEO on 5 May 2023 replacing the previous Audit Committee Charter dated 30 June 2020. The Charter contains the relevant requirements as set out in the PGPA Rule and associated Finance guidance. The 2020 and 2023 Charters provide that the ARC will review the Charter annually and that any substantive changes to the Charter will be recommended by the ARC and approved by the accountable authority.

Opportunity for Improvement

4.63 The Audit and Risk Committee should review its Charter annually, in line with requirements established in the Charter.

Member characteristics

Skills and experience

4.64 The CLC ARC Charter requires the ARC to comprise a minimum of three independent members, with the ARC Chair appointed by the accountable authority. In 2021–22, the ARC comprised a Chair and three other members.

4.65 The ARC Charter does not include any requirements relating to the specific skills and experience of members. Of the four ARC members as at February 2023, two members are chartered accountants, one member is a lawyer with experience and knowledge of central Australia and the Chair is a former CEO of a not-for-profit entity that provides technology and technical training to Indigenous people living in remote communities.

Independence

4.66 As noted in the 2018 *Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule*, '[t]he independence of audit committees from the day-to-day activities of management is critical to the contribution that they can make to good

governance in an entity'.⁷⁶ None of the four ARC members are Council members or employees of the CLC.

4.67 The CLC's ARC Charter requires members to provide written declarations, once each year through the Chair to the accountable authority, declaring any material personal interests they may have in relation to their responsibilities and to declare any material personal interests at the beginning of each meeting that may apply to specific matters on the meeting agenda. As at January 2023 there was no record of any written annual declarations being made by CLC ARC members in the previous 12 months. A declaration of member interests is a standing item on the agenda at each ARC meeting. The minutes for CLC ARC meetings held in 2021–22 recorded one declaration of interest by members.

Recommendation no. 10

4.68 The Central Land Council accountable authority ensure that Audit and Risk Committee members make an annual declaration of material personal interests.

Central Land Council response: *Agreed.*

4.69 *The CLC will action this recommendation and implement the following improvement immediately: An annual declaration of material personal interests will be obtained from Audit and Risk Committee members. The CLC notes that this will be in addition to the CLC's current practice which includes the CLC requiring new members of the Audit and Risk Committee to complete a written declaration, with this statement updated as the member's personal circumstances change.*

Remuneration

4.70 Finance guidance does not establish a standard for Audit Committee remuneration and indicates that the remuneration should be commensurate with the importance of responsibilities and the commitment required.⁷⁷

4.71 CLC ARC members are paid a set sitting fee for meetings attended (with the Chair paid a higher fee), and additional amounts for travel depending on the number of hours. The CLC increased its sitting fees paid to members in 2021–22, from \$1000 per meeting for all members to \$1500 for the Chair and \$1250 for other members. This was the first increase in fees paid since the CLC's ARC was established and was in response to advice from the CLC's contracted internal audit partner. The CLC 2021–22 Annual Report noted that the ARC met five times and members were paid a total of

76 E Alexander and D Thodey, *Independent Review into the operation of the Public Governance Performance and Accountability Act and Rule* [Internet] Department of Finance, 2018, p. 27, available from [PGPA Independent Review - Final Report.pdf \(finance.gov.au\)](#) [accessed 12 January 2023].

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

\$25,250 with individual members receiving between \$6050 and \$6700 depending on the number of meetings they attended.⁷⁸ Total remuneration for the Chair was \$6700.⁷⁹

Rotation

4.72 The 2018 *Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule* recommended that accountable authorities ‘establish an audit committee membership rotation policy, with maximum appointment terms to ensure regular rotation of committee membership’.⁸⁰ Finance guidance indicates that the Finance Secretary wrote to all accountable authorities in August 2019 drawing their attention to this recommendation.

4.73 The CLC’s ARC Charter includes a term limit of three years for each member and an appointment may be extended on each occasion for a further two years. The Charter is silent on the reappointment of ARC members but includes a requirement that membership be reviewed periodically (at least every three years) ‘with the aim of ensuring an appropriate balance between continuity of membership, the contribution of fresh perspectives and a suitable mix of qualifications, knowledge, skills and experience’.

Opportunity for improvement

4.74 The CLC could include in its Audit and Risk Committee Charter a member rotation policy that specifies the maximum number of appointment terms.

4.75 The ARC Chair was first appointed in 2010 and in November 2021 was reappointed until 31 December 2023. The other members were appointed in 2010 (current term expires September 2023), 2016–17 (current term expires May 2024) and 2021–22 (current term expires June 2024), respectively.

4.76 In November 2021 the CLC CEO requested the ARC seek out a further member of the ARC who is based in Alice Springs. As at May 2023 no additional member had yet been appointed to the CLC ARC.

Effectiveness of Audit and Risk Committee operations

4.77 Appendix 9 presents the ANAO’s assessment of the effectiveness of the CLC ARC’s operations against the PGPA Rule requirements and Finance guidance.

78 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to each of the Audit Committee members (excluding the Chair): Tiwi Land Council — between \$1672 and \$2090 (five meetings); Anindilyakwa Land Council— between \$334 and \$1336 (three meetings); and Northern Land Council—between \$156 and \$496 (four meetings). The remuneration described here does not include the remuneration related to being a Council member.

79 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to the Audit Committee Chairs (excluding travel and other expenses): Anindilyakwa Land Council — \$58,352 (three meetings); Northern Land Council — \$3048 (four meetings); and Tiwi Land Council — \$2780 (five meetings).

80 E Alexander and D Thodey, *Independent Review into the operation of the Public Governance Performance and Accountability Act and Rule* [Internet] Department of Finance, 2018, p. 29, available from https://www.finance.gov.au/sites/default/files/2019-08/PGPA_Independent_Review_-_Final_Report.pdf [accessed 12 January 2023]. While the PGPA Rule 2014 does not mandate minimum or maximum periods of appointment for audit committee members, it states that the rotation of audit committee members allows for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.

Mandatory functions

4.78 The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's financial reporting, performance reporting, system of risk oversight and management and system of internal control. The CLC Audit Committee's execution of its mandatory functions is partly compliant with requirements. The CLC Audit Committee's review of performance reporting, including the annual performance statements required under the PGPA Act, was conducted as part of the preparation of the Corporate Plan and Annual Report. There is no evidence of substantive consideration of the appropriateness or completeness of the performance measures by the CLC ARC in 2021–22.

Audit and Risk Committee reporting

4.79 The ARC has mandatory and recommended requirements in relation to reporting in the annual report, and to the Land Council. The ARC's reporting requirements were partly met.

- Charter and committee members — The CLC's 2021–22 Annual Report included a direct electronic link to the ARC Charter, and information about the committee's members including name, qualifications and remuneration. Specific information about the number of meetings attended by each member was not reported, although minutes for the five committee meetings held during 2021–22 record that all members attended all meetings.
- Written statement — The CLC ARC Charter requires the ARC to report at least once annually to the accountable authority as to whether all functions/responsibilities outlined in the Charter have been carried out. In 2021–22, while the CLC advised the ANAO that the ARC verbally reported to the CEO, the ARC did not provide a written statement to the accountable authority of its view on the appropriateness of the organisation's financial reporting; performance reporting; system of risk oversight and management; and system of internal control.
- Assessment of ARC performance — The ARC Charter includes a provision that the Chair of the ARC will initiate a self-assessment of the performance of the ARC annually. A written record of a review of the ARC's performance by the accountable authority was not made in 2021–22.

Recommendation no. 11

4.80 The accountable authority of the Central Land Council:

- (a) amend the Audit and Risk Committee Charter to require the Audit and Risk Committee to provide a written statement to the accountable authority, at least annually, about the appropriateness of the Central Land Council's financial and performance reporting; systems of risk oversight and management; and system of internal control; and
- (b) annually assess the performance of the Audit and Risk Committee to confirm that it is effectively undertaking all mandatory functions.

Central Land Council response: *Disagreed to (a); Agreed to (b).*

4.81 *The CLC disagree with part (a) 'Recommendation', and understand this recommendation regarding a written statement about appropriateness to be interpreted as a matter of "assurance" regarding the appropriateness of the reporting and systems. The CLC note that the matter of written statements is derived from the Finance guide on better practice developed for a broad range of organisations, and is not mandatory.*

4.82 *In the accountable authority's role to determine the appropriate Charter and requirements for its Audit and Risk Committee, including the most appropriate better practice that applies to the context of its organisation, the CLC accountable authority have considered the most fit for purpose reporting for the Audit and Risk Committee.*

4.83 *The accountable authority does not assess that the suggested written annual statements of assurance would be able to be delivered by the Audit and Risk Committee which meets four times per annum, nor that the significant resourcing required for such assurance would be an effective use of resources. In order to deliver such statements, this would place a significant resource burden on both the Audit and Risk Committee, the resourcing required to conduct such audits, as well as staff participation in annual audits of each of these areas so that the committee could be positioned to provide this assurance.*

4.84 *The accountable authority of the CLC will implement the following improvements:*

- *with the review of the Audit and Risk Committee (ARC) Charter in 2023, the Charter will provide clear guidance on the accountable authority's reporting requirements of the ARC, with fit for purpose reporting requirements designed to deliver accessible advice to the Chair (elected by the 90 member Council) and the CEO in assisting them to be informed and meet their duties and obligations.*
- *this will incorporate the requirement for the ARC to provide a written report at least annually to the accountable authority. The written report will require an outline of the work conducted by the ARC against its charter, and their resulting material recommendations to the accountable authority (this may include any material exceptions escalated to the accountable authority during the year).*
- *The Charter will also note the accountable authority's support of the ARC's engagement with the Executive Committee.*



Grant Hehir
Auditor-General

Canberra ACT
7 June 2023

Appendices

Appendix 1 Entity responses



CENTRAL LAND COUNCIL

15 May 2023

Central Land Council

27 Stuart Highway

Alice Springs NT 0870

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office

Dear Mr Hehir

The Central Land Council (CLC) welcomes the opportunity to participate in this performance audit by the Australian National Audit Office (ANAO), and the opportunity to respond to the draft performance audit report provided on 17 April 2023. The CLC notes that this response is prepared in advance of the ANAO's finalisation of the report contents.

The Central Land Council was established by the *Aboriginal Land Rights (Northern Territory) Act 1976*, and is guided by the strong governance of its council of 90 Aboriginal people elected by their communities to represent them. The CLC is committed to effectively fulfilling its statutory functions and has been representing, protecting and advocating for Aboriginal peoples' rights and interests since its establishment. The CLC is committed in principle and practice to accountability and transparency, and seeks to model this throughout its work and particularly for its Aboriginal constituents.

Overall, the CLC agrees with the ANAO's recommendations, with some clarifications on scope or implementation which are included in the CLC's response to the recommendations. The CLC has reported on actions already undertaken or planned in order to address the recommendations. In addition, the CLC has also actioned several suggested opportunities for improvement.

The CLC consider this a worthwhile exercise to support it in its continuous improvement in ensuring that its governance arrangements support it in the delivery of positive outcomes for Aboriginal people across our region.

Yours sincerely

Lesley Turner
Chief Executive Officer
Central Land Council



Mr Grant Hehir
 Australian National Audit Office
 38 Sydney Ave
 FORREST ACT 2603

16 May 2023

Dear Mr Hehir,

Thank you for your letter received on 18 April 2023 providing an extract of the proposed ANAO audit report on the Governance of the Central Land Council (Report) to PwC for comment.

In section 4.37 of this Report, PwC is referenced as it relates to the Internal Audit Services provided to the Central Land Council.

At the time of entering into the Outsourced Internal Audit Services agreement with the Central Land Council in August 2022, the parties orally agreed that PwC would not undertake an internal audit over AAMC, as a planned safeguard to manage any actual or perceived independence risks. In March 2023, PwC again confirmed, in writing, that it did not feel able to undertake an internal audit over AAMC irrespective of any safeguards that may be employed. We refer to correspondence with the Audit and Risk Committee Chair and the General Manager dated 6 March 2023 in this regard.

We would request that the ANAO give consideration to whether these factual matters are relevant for inclusion in the audit report.

Thank you for the opportunity to comment.

Yours sincerely,

Katherine Cobb
 PwC Partner - Internal Audit

PricewaterhouseCoopers, ABN 52 780 433 757
 Level 11, 70 Franklin Street, ADELAIDE SA 5000, GPO Box 418, ADELAIDE SA 5001
 T: +61 8 8218 7000, F: +61 8 8218 7999, www.pwc.com.au

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ANAO comment on the PricewaterhouseCoopers response

See paragraph 4.40 including related footnote.

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2022–23 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

Report paragraph no.	Actions observed during the course of the audit
2.11	The accountable authority of the Central Land Council (CLC) established procurement and expenditure Accountable Authority Instructions (AAIs) under section 20A of the PGPA Act in July 2022.
3.18	<i>Governance at the Central Land Council - your guide to being a council member</i> was re-published in 2022.
3.20	A training provider was contracted in April 2022 to provide mentoring and support for the Chair and Deputy Chair.
4.9	The CLC created a Corporate Risk Profile in July 2022.
4.12	The CLC engaged PriceWaterhouseCoopers (PwC) to prepare a Risk Management Road Map in 2022.
4.12	The CLC engaged PwC in August 2022 to prepare an internal audit work plan.
4.46	The addition of a legend for the non-metric performance measure table in the 2022–2025 Corporate Plan provides more clarity to the reader about these measures.

Report paragraph no.	Actions observed during the course of the audit
4.59	The CLC commenced a review of its internal audit function in March 2021 and arrangements for an outsourced internal audit function (PwC) were finalised in August 2022.
3.75	The CLC established a dedicated web form for external complaints in November 2022
3.75	In May 2023 the CLC finalised an improved Complaints Management Policy to better align with the Ombudsman's better practice guidance for managing complaints. The CLC developed a Complaints Policy which was endorsed by the CEO in May 2023.
3.75	The CLC centralised elements of its complaints handling in February 2023.
3.24	The CLC included a statement in the April 2023 <i>Council News</i> , which is available on the CLC website, that the Council rules and minutes are available to constituents on request.
4.10	The CLC Risk Profile was reviewed by the Audit and Risk Committee in March 2023 and endorsed by the CEO in May 2023.
4.30	The CLC has established Conflict of Interest in the Workplace Policy in May 2023
4.62	The CLC Audit and Risk Committee Charter was approved by the CEO on 5 May 2023 replacing the previous Audit Committee Charter dated 30 June 2020.

Appendix 3 Powers, functions and duties of the Land Councils

Land Councils' powers

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

Land Councils' functions

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

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

Land Councils' duties

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

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

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

Appendix 4 Decision-making authority

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

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

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

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

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

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

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

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

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

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

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

Appendix 5 Delegation of ALRA powers and functions

1. Under section 28, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes that the Land Council may delegate its functions and powers, with some exceptions: to the Chair or another member of the Council; or to a member of staff.⁸¹
2. Under subsection 28(2) and section 29A, the Council may also appoint one or more committees of its members to assist it in relation to the performance of any of its functions or the exercise of any of its powers, also with some exceptions.⁸²

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

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

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

- 81 The ALRA used to enable the delegation of all or some of the Land Councils' functions or powers to an Aboriginal corporation under section 28A. This was repealed on 13 December 2021.
- 82 Subsection 27(1) of ALRA also gives the Land Council the power to delegate a function conferred on the Land Council by another Act, provided that the delegation was necessary or convenient. For there to be an authorised delegation it must meet the requirement of conducting 'more effective administration'. The other Act has the capacity to exclude or limit the delegation of the function it confers on the Land Council. *Northern Land Council v Quall* [2020] HCA 33, 7 October 2020.

Appendix 6 Requirements for governance arrangements

Appointment of key governance positions

1. The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes how Council and Land Trust⁸³ members, including the Chair and Deputy Chair of the Council must be appointed.

- Land Trust members — ALRA (section 7) establishes that, unless the Minister for Indigenous Australians (the Minister) determines otherwise, the membership of Land Trusts will consist of a Chair and three other members, appointed by the Minister upon receiving from the Land Council nominations of Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register. Trust members are appointed for a maximum of five years and are eligible for re-appointment. It does not specify a method to nominate Land Trust members.
- Council members — ALRA (section 29) establishes Council members' eligibility criteria and that Council members shall be Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register, chosen by Aboriginal people living in the area of the Land Council in accordance with a 'method of choice'. The method of choice is to be approved by the Minister. Section 29 also establishes that a Land Council may, with the approval of the Minister, co-opt a maximum of five Aboriginal people living in the area of the Land Council as additional members of the Council. A range of disqualifying events apply to candidates for election or to elected members.⁸⁴
- Chair and Deputy Chair — ALRA (section 30) establishes that the Land Council shall elect two members of that Council as the Chair and the deputy Chair for a period of three years. The Chair and Deputy Chair are eligible for re-election.
- Land Council staff — ALRA (subsections 27(1) and 27(2)) establish that Land Councils have the power to employ staff and to determine the terms and conditions of the employment of Land Council staff. It is implied that this includes the Chief Executive Officer (CEO) of the Land Council.

Establishment of committees

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

Establishment of Council and Committee meeting rules

3. In relation to Council meetings, ALRA (section 31) establishes that:

83 Under the ALRA section 4, Aboriginal Land Trusts are established by the Minister responsible for the administration of the ALRA to hold title and exercise their powers as owners of the land for the benefit of Aboriginal people.

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

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

Compiling and maintaining registers


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




Appendix 7 Compliance with the Commonwealth fraud rule

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

Table A.5: Central Land Council's (CLC) compliance with the Commonwealth fraud rule

Requirement		Rating
(a) Conduct fraud risk assessments regularly	<p>The CLC 'Fraud and Corruption Policy and Procedure' (Fraud Policy) requires that the CLC:</p> <ul style="list-style-type: none"> • undertake a fraud risk assessment at least once every two years, and in doing so apply a methodology consistent with the Australian/New Zealand standard AS/NZ ISO 31000-2009 (Risk Management) and Australian standard AS 8001-2008 (Fraud and Corruption Control); and • on completion of fraud risk assessment(s), to develop (or update) and implement a fraud control plan to manage any identified fraud risk. <p>The CLC advised the ANAO that no fraud risk assessments had been conducted since at least 2018.</p>	■
(b) Develop and implement a fraud control plan that deals with identified risks	<p>The CLC has a Fraud Policy dated June 2021 and endorsed by the Chief Executive Officer. The CLC Fraud Policy is aimed at Council members and CLC employees. The Fraud Policy requires fraud risk assessments to be conducted, and then, in the event a fraud risk is identified, for a specific plan to be developed to manage that identified risk. As no fraud risk assessments have been conducted, there is no fraud control plan that deals with identified risks, as required under the Commonwealth fraud rule.</p>	■
(c) Have an appropriate mechanism for preventing fraud, including making employees aware of what constitutes fraud	<p>There is a 'CLC Fraud Strategy Statement' (Statement) which was last updated in February 2021. The Statement provides a definition of fraud, provides example of fraud, and lists some of the consequences of fraud. The Statement reflects that the CLC is committed to preventing and controlling fraud and expects all individuals and organisations it engages with, either as staff, contractors or partners, to act with integrity and honesty. The CLC Fraud Policy emphasises the requirement for all instances of suspected fraud to be reported. Since 2021 new starters are required to complete the Commonwealth's fraud awareness training and the induction processes had been updated to include mandatory fraud awareness certification.</p>	◆
(d) and (e) Have an appropriate mechanism for detecting and investigating fraud, including a confidential reporting process	<p>The CLC Fraud Policy established a mechanism for fraud to be investigated, and if appropriate, to be referred to authorities such as the police. The CLC Fraud Statement and Fraud Policy include contact details for reporting instances of suspected fraud, reinforce the importance of reporting, and explain confidentiality protections (whistle-blower provisions).</p>	◆

Requirement		Rating
(f) Have an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud	The CLC has a register which records instances of reported or suspected fraud events, the steps taken to investigate and the recommendation or outcome.	

Key:  Fully compliant  Partly compliant  Not compliant

Source: ANAO analysis of CLC Fraud Control Policy and other records.

Appendix 8 Compliance with corporate plan, annual report and performance statements

Corporate Plan

1. Section 35 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires the accountable authority of a Commonwealth entity to prepare a corporate plan in accordance with any prescribed rules and give the corporate plan to the responsible Minister and Finance Minister.

2. Section 16E of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) sets out the relevant requirements for corporate plans which includes the period it is to cover, mandated topics, and presentation and publication requirements. The Department of Finance (Finance) also prepares guidance to assist entities to prepare their corporate plan.⁸⁵

Table A.6: Compliance of Central Land Council's (CLC's) 2021–2025 Corporate Plan with PGPA Rule 16E requirements

PGPA Rule 16E	Requirement	Compliance assessment
Reporting period	Was a corporate plan prepared and did it cover the reporting period for which the plan is prepared and at least the following three reporting periods?	◆
1. Introduction	Did the corporate plan include the mandated statements about the report preparation, the reporting period for which it is prepared and the reporting periods covered?	◆
2. Purposes	Does the corporate plan reflect the purpose of the CLC as included in the <i>Aboriginal Land Rights Act 1976</i> (ALRA) in a clear and concise way?	◆
3. Key activities	Does the corporate plan identify the key activities the CLC will undertake in order to achieve its purposes?	◆
4. Operating context	Does the corporate plan include discussion of the CLC's operating context in relation to the environment, capabilities, risk oversight, cooperation and subsidiaries, for the entire period covered by the plan?	▲
5. Performance	Does the corporate plan set out details of how the CLC's performance in achieving its purposes will be measured and assessed through: a) performance measures which meet the requirements of the PGPA Rule; and b) targets for each performance measure where it is reasonably practicable to set a target?	▲
Publication timeliness	Was the corporate plan ^a published on the entity's website by 31 August?	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Note a: Central Land Council, *Central Land Council Corporate Plan 2021–2025*, available from <https://www.clc.org.au/central-land-council-corporate-plan-2021-2025/> [accessed 6 February 2023].

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

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

Annual report

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

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

Table A.7: Compliance of Central Land Council's (CLC's) 2021–22 Annual Report with PGPA Act, PGPA Rule and ALRA requirements

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

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Note a: Central Land Council, *Central Land Council 2021–22 Annual Report*, available from <https://www.clc.org.au/clc-annual-report-2021-22/> [accessed 6 February 2023].

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

Annual performance statements

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

6. This audit examined whether, at a high level, the measures and targets provide meaningful performance information. It did not assess whether the Land Council's performance statements met the requirements of the PGPA Rule, and in particular draws no conclusions about reliability, verifiability, potential bias or measurability over time. The Auditor-General's functions include

auditing the annual performance statements of Australian Government entities in accordance with the PGPA Act as set out in section 15 of the *Auditor-General Act 1997*. These audits apply a comprehensive methodology to the assessment of selected entities' performance statements. See Auditor-General Report No.23 2021–22, *Audit of the Annual Performance Statements of Australian Government Entities – Pilot program 2020–21*.

Table A.8: Compliance of Central Land Council's 2021–22 Annual Performance Statements with PGPA Rule requirements

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

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

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

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

Appendix 9 Compliance with Audit Committee requirements and guidance

1. The purpose of an audit committee is to provide independent advice and assurance to the entity's accountable authority. Section 45 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) states that the accountable authority of a Commonwealth entity must ensure that the entity has an audit committee. The *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) states that the accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee for the entity, and that these must include reviewing the appropriateness of the accountable authority's financial and performance reporting; system of risk oversight and management; and system of internal control for the entity.⁸⁶ The PGPA rule also states that the audit committee of a corporate Commonwealth entity must consist of at least three persons who are not employees of the entity and who have appropriate qualifications, knowledge, skills and experience.

2. In September 2021, the Department of Finance released a guide (Finance guidance) for corporate Commonwealth entities on the role of audit committees.⁸⁷ The Finance guidance sets out the better practice principles for the establishment and operation of a corporate Commonwealth entity audit committee, to help ensure that the committee provides independent advice and assurance to the entity's accountable authority. The Finance guidance states that:

Audit committees are integral to good corporate governance. They provide advice to accountable authorities, assist them to meet their duties and obligations, and support the development of key practice and capacity within corporate Commonwealth entities.⁸⁸

Table A.9: Effectiveness of Central Land Council Audit and Risk Committee Charter and member composition

Requirement/ Guidance	Detail	Compliance assessment
Charter		
Mandatory inclusions <i>PGPA Rule subsections 17(1) and 17(2)</i>	The accountable authority must, by written charter, determine the functions of the audit committee for the entity, which must include the review of the entity's financial reporting; performance reporting; system of risk oversight and management; and system of internal control.	◆

⁸⁶ *Public Governance, Performance and Accountability Rule 2014* (Cth) section 17.

⁸⁷ Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, Finance, 2021.

⁸⁸ Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, Finance, 2021, p. 5.

Requirement/ Guidance	Detail	Compliance assessment
Other functions and matters <i>Finance guidance, p. 10</i>	The charter may also cover other functions and matters including: membership and tenure of the audit committee, administrative arrangements for the conduct of the audit committee, requirement to disclose conflict of interest and assessment of the audit committee performance.	◆
Member characteristics		
Skills and experience <i>PGPA Rule subsection 17(3)</i>	The audit committee must consist of at least three persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions. The members of the audit committee must be persons who are not employees of the entity.	◆
Independence <i>Finance guidance, section 2.1</i>	To effectively deliver its function, the audit committee needs to be independent from management.	◆
Remuneration <i>Finance guidance, section 2.4</i>	The remuneration of audit committee members should be commensurate with the importance of their responsibilities and the commitment required.	◆
Rotation <i>Finance guidance, section 2.5</i>	It is important to rotate the audit committee members to allow for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.	◆








Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant




Source: ANAO analysis.

3. Finance guidance states that the audit committee 'should inherently have sound knowledge of the entity's operating context ... In order to understand and review the entity's processes and systems the committee also actively pursues information from relevant areas of the entity'.⁸⁹

⁸⁹ Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, Finance, 2021.

Table A.10: Effectiveness of the Central Land Council Audit Committee operations

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

Key:  Fully compliant  Partly compliant  Not compliant

Source: ANAO analysis based on analysis of Audit and Risk Committee meeting minutes and papers for 2021–2022.



CENTRAL LAND COUNCIL

Matthew Palmer
[REDACTED]

5 June 2024

Dear Chair,

I need to meet with you urgently to talk about the attached letter. Could you please come to the CLC office at 11am on Tuesday, 11 June 2024.

The letter is about traditional ownership of the Middleton Ponds area on the Urrampinyi Itjiltjarri Aboriginal Land Trust. It looks like it was signed by you as the CLC Chair. The CLC needs to ask you some questions about it. Those questions are about whether you signed it and, if you did, why you signed it.

Your answers are relevant to whether the letter might be a breach of the *Public Governance Performance and Accountability Act*, the *Aboriginal Land Rights (Northern Territory) Act*, traditional decision making and CLC governance. Depending on your answers, I may need to talk about this with the CLC Executive, a Minister, or both. A thorough investigation might also be needed.

In our meeting, I will also need to reinforce the discussion CLC's principal legal officer Kate O'Brien had with you on 27 May 2024 about not using your position to access information that is outside your role as Chair.

You are welcome to bring a support person to the meeting if you want to.

I also want to make you aware that the CLC is appearing before a Senate estimates committee in Canberra this Friday 7 June. The CLC's witnesses must answer questions asked by the Senators. As we have discussed, serious allegations of misconduct have been made about the accountable authority at the Anindilyakwa Land Council. It is possible that the CLC will be asked questions about the CLC's accountable authority. The CLC wants to make sure that you:

1. are treated fairly, and
2. know about this in advance, in case questions are asked of CLC witnesses which have to be answered.

I am travelling on Thursday and will call your mobile on Friday morning to talk through this letter with you.

Your sincerely

Les Turner
Chief Executive Officer

08th April 2024

I, Matthew Palmer

Currently the chairman of Central Land Council (CLC), hereby confirm my acknowledgement, that Mr Joseph McCormack (Breaden) is the Senior Custodian and Traditional Owner of Iljtjari / Middleton Ponds (ALT) Aboriginal Land Trust.

Mr Joseph McCormack (Breaden), will have full responsibility for the land, make decisions to maintain and care of places of cultural significance.

Mr Joseph McCormack (Breaden) acknowledges to act in the best interest and to work on the land as he sees fit and that it will benefit the land and other members of the Breaden family.

Matthew Palmer
Signature:

9/5/2024
Date:

Matthew Palmer
Name:

Joseph McCormack
Signature:

9/5/2024
Date:

JOSEPH MCCORMACK
Name: