

The Senate

Finance and Public Administration
References Committee

Relationship between the Central Land Council
and Centrecorp Aboriginal Investment
Corporation Pty Ltd

November 2009

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PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3530
Fax: 02 6277 5809
E-mail: fpa.sen@aph.gov.au
Internet: www.aph.gov.au/senate_fpa

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Abbreviations

ABA	Aboriginals Benefit Account
ABTA	Aboriginals Benefit Trust Account
ADC	Aboriginal Development Commission
ALR Act	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
CAACT	Central Australian Aboriginal Charitable Trust
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CACT	Central Aboriginal Charitable Trust
CAIC	Central Aboriginal Investment Corporation
CDC	Aboriginal and Torres Strait Islander Commercial Development Corporation
Centrecorp	Centrecorp Aboriginal Investment Corporation Pty Ltd
CLC	Central Land Council
Finance	Department of Finance and Deregulation
IBA	Indigenous Business Australia
OEA	Office of Evaluation and Audit (Indigenous Programs), Department of Finance and Deregulation

Chapter 1

The terms of the inquiry

Background to the inquiry

1.1 On 14 May 2009, the Senate referred to the Finance and Public Administration References Committee for inquiry and report, the relationship between the Central Land Council (CLC) and Centrecorp Aboriginal Investment Corporation Pty Ltd (Centrecorp). The Senate originally asked the committee to report on the inquiry by 11 August 2009, but extended the reporting date on several occasions at the request of the committee. On 8 September 2009, the Senate resolved that the committee's report be tabled by 26 November 2009.

1.2 Under the terms of reference, the committee must inquire and report upon:

- (i) the financial and management relationship between the Central Land Council and Centrecorp, including (without limitation) any equitable relationship between those entities,
- (ii) whether taxpayers' funds have been paid or transferred to Centrecorp and how those monies have been treated in the accounts of the Central Land Council and Centrecorp,
- (iii) the nature and extent of Centrecorp's business activities,
- (iv) Centrecorp's sources of revenue,
- (v) the beneficiaries of Centrecorp business and any additional revenue it receives,
- (vi) the nature and extent of Centrecorp disbursements to any charitable trusts or like entities,
- (vii) the extent to which any Centrecorp beneficiaries and the Central Land Council are informed of Centrecorp's business activities,
- (viii) how Aboriginal Australians living in the Central Australia region benefit from Centrecorp's business and charitable operations, and
- (ix) all other matters considered necessary by the committee.

1.3 The Senate stated that the committee must hear evidence *inter alia* from:

- (i) the Central Land Council,
- (ii) the Auditor-General, and
- (iii) Centrecorp.

Conduct of the inquiry

1.4 The inquiry was advertised in *The Australian*, the *Centralian Advocate* and the *Alice Springs News* as well as through the Internet. The committee invited submissions from the Commonwealth Government and interested organisations and individuals.

1.5 The committee received seven submissions and one supplementary submission. A list of the individuals and organisations that made public submissions to the inquiry is at Appendix 1, and a list of other information authorised for publication is at Appendix 2.

1.6 The committee also requested and received a large quantity of financial documentation from the CLC, Centrecorp and Yeperenye Pty Ltd. On the basis of the information contained in those documents, the committee decided that on balance it was not necessary to hold public hearings for the inquiry. In the interests of greater transparency and public disclosure, the committee decided to publish this material in a redacted form, which is available at: www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm.

Acknowledgement

1.7 The committee thanks those organisations and individuals who made submissions and assisted with this inquiry.

Structure of the report

1.8 Chapter 2 of this report outlines the background to the inquiry, and briefly outlines the operation of each of the CLC and Centrecorp.

1.9 Chapter 3 considers the financial and other management information provided by each organisation, and assesses this information under the heads of each term of reference for the inquiry. The committee concludes that the documents provided by the CLC, Centrecorp and related entities do not, on their face, disclose any inappropriate behaviour on the part of either organisation, or indicate an improper relationship between the two organisations.

1.10 However, the committee remains concerned about the transparency of both organisations, and Centrecorp in particular, due to their reluctance to disclose basic financial and management information to the committee. The committee reiterates the transparency concerns identified in the two Office of Evaluation and Audit (OEA) reports of January and November 2008,¹ and notes that while Centrecorp claims to

1 Department of Finance and Deregulation, Office of Evaluation and Audit (Indigenous Programs), *Performance Audit of the Northern Territory Land Councils*, January 2008, pp 8 and 37; and Department of Finance and Deregulation Office of Evaluation and Audit (Indigenous Programs), *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, pp 11, 42–44.

have addressed some of the issues identified by the OEA, it failed to provide any evidence to substantiate these claims.

Chapter 2

The Central Land Council and Centrecorp: background to the inquiry

2.1 This chapter outlines the origins, governance structures, operations and funding sources of the Central Land Council (CLC), Centrecorp Aboriginal Investment Corporation Pty Ltd (Centrecorp) and associated entities. It then sets out the issues that have been raised about the two entities which led to this inquiry, serving as an introduction to the issues examined in chapter 3.

Central Land Council

2.2 The CLC was established in 1974, along with the Northern Land Council, in response to a recommendation of the Woodward Royal Commission. The Commission, which was charged with investigating how land rights for Aboriginal people might be achieved in the Northern Territory, recommended the establishment of the two councils.¹

Functions

2.3 The functions of these land councils are set out in subsection 23(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALR Act). The CLC summarises its functions as:

[S]upporting traditional owners in achievement and continuing administration of:

- land acquisition;
- native title;
- commercial agreements with parties interested in the use of Aboriginal land and the management of income arising from land use agreements;
- working with traditional owners to manage their land and resources, protect sacred sites, progress economic and community development and take up related employment opportunities; and
- representing the interests and aspirations of Aboriginal people in Central Australia in regard to land.²

2.4 From a practical perspective, this role includes:

- the issuing of permits to visitors to, and workers on, Aboriginal land;

1 CLC, *Annual Report 2007–08*, p. 5. The CLC is now one of four councils in the Northern Territory, which also include: the Northern Land Council; the Tiwi Land Council; and the Anindilyakwa Land Council.

2 CLC, *Annual Report 2007–08*, p. 13.

- providing assessments and advice to traditional land owners about the potential environmental and cultural impacts of development proposals;
- supporting various community-based land management programs including supporting rangers and assisting with the development of land management and monitoring programs;
- assisting Aboriginal people to pursue land claims, including arranging legal assistance for claimants;
- negotiating on behalf of Aboriginal people with respect to commercial proposals to use Aboriginal land;
- negotiating employment, education and training opportunities for Aboriginal people;
- negotiating and managing mining agreements on Aboriginal land;
- supporting Aboriginal people in commercial activities, including through the development of infrastructure, business development training, business plans and capacities in those commercial activities;
- producing educational material about issues of importance to Aboriginal people;
- consulting with traditional owners and Aboriginal people on significant legislative and policy matters and bringing those views to the attention of government and other stakeholders;
- assists communities in managing rent and royalties for community development projects;
- providing administrative assistance to and oversight of various trusts and associations which receive and distribute royalties; and
- assisting native title holders to make applications, negotiate agreements about future developments and resolve disputes between groups.³

Restrictions on financial activities

2.5 In relation to commercial undertakings, paragraph 23(1)(ea) of the ALR Act states that one of the functions of land councils is:

...to assist Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities), *in any manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit.*⁴

3 CLC, *Annual Report 2007–08*.

4 Paragraph 23(1)(ea) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, emphasis added.

2.6 As a result of this restriction on incurring liability and receiving financial benefits, and in order to fulfil their obligations under paragraph 23(1)(ea), each of the four Northern Territory land councils has 'initiated the establishment of a commercial development body to assist Aborigines in its region'.⁵ In the case of the CLC, that commercial body is Centrecorp.

Funding

2.7 The CLC's total revenue in 2007–08 was \$21 911 011.⁶ Table 1 sets out the sources of that revenue, the two largest of which are discussed below.

Table 1—Central Land Council Revenue Sources, 2007–08

Revenue Source	Revenue received (\$) (to nearest dollar)	Percentage of CLC funding
Aboriginals Benefit Account	9 859 955	45
Native Title Representative Body funding	3 505 762	16
Special Purpose Program Agreements (primarily related to land management)	2 629 321	12
Cost recoveries	2 629 321	12
Special – Building Project	2 410 211	11
Other income	876 440	4
Total	21 911 011	100

Central Land Council, *Annual Report 2007–08*, p. 13.

Aboriginals Benefit Account

2.8 The Aboriginals Benefit Account (ABA) is established by Part VI of the ALR Act. The ABA is a significant revenue source for the CLC, providing approximately half of its annual income in 2007–08. The ABA, which prior to 1999 was called the Aborigines (Benefits from Mining) Trust Fund, was set up to receive and distribute the statutory royalties on minerals produced on Aboriginal reserves for the benefit of

5 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 5*, pp 1–2. The Northern Land Council's primary commercial entities are the Aboriginal Investment Group and the Larrakia Development Corporation Pty Ltd. The Anindilyakwa Land Council's primary commercial entity is Groote Eylandt and Bickerton Island Enterprises Pty Ltd. The Tiwi Land Council's primary commercial entity is Pirtubula Pty Ltd.

6 CLC, *Annual Report 2007–08*, p. 111.

Northern Territory Aboriginal people.⁷ The ABA is a Special Account for the purposes of the *Financial Management and Accountability Act 1997* administered by the Department of Families, Housing, Community Services and Indigenous Affairs.

2.9 In its January 2008 report on its audit of the four Northern Territory land councils, the Department of Finance's Office of Evaluation and Audit (Indigenous Programs) (OEA) summarised the way the ABA operates:

The ABA is primarily funded by a special appropriation equal to royalty payments received by the Australian and Northern Territory Government from mining projects on Aboriginal land. Amounts are debited from the ABA and payments made to the Land Councils under section 64 of the ALRA.⁸

2.10 Under subsection 64(4) of the ALR Act, the Minister for Families, Housing, Community Services and Indigenous Affairs may direct that amounts be paid, or applied to or for, the benefit of Aboriginals living in the Northern Territory. In performing this function, the Minister is advised by the ABA Advisory Committee, the chair of which is appointed by the Minister and the members of which are elected by the four Northern Territory land councils.⁹

2.11 The OEA explained that:

The Government's policy on the ABA is to ensure the ABA is viable over the long term and funding is well targeted to achieve outcomes, particularly economic development. The ABA makes payments:

- to Land Councils for meeting their administrative expenses
- to Land Councils for distribution to incorporated Aboriginal Associations, communities or groups affected by mining operations
- as the responsible Minister directs for the benefit of Northern Territory (NT) Aboriginal persons for acquisition of leases and making of loans.¹⁰

2.12 Originally, under the ALR Act, the administrative costs of land councils were set to 40 per cent of mining royalty payments received by the ABA. In practice, this arrangement did not work, because of the fluctuating annual payments to the ABA. This resulted in the Minister annually approving additional payments to land councils.¹¹

7 Australian National Audit Office, *Northern Territory Land Councils and the Aboriginals Benefit Account*, Audit Report No. 28, 2002–03, p. 11.

8 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 17.

9 Department of Families, Housing, Community Services and Indigenous Affairs website, 'Aboriginals Benefit Account (NT Only)', at www.fahcsia.gov.au/sa/indigenous/progserv/money/Pages/aboriginals_benefit_account.aspx (accessed 28 August 2009).

10 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 17.

11 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 43.

2.13 In 2006, amendments to the ALR Act mean that the Minister now approves an annual budget allocation to the land councils from the ABA. Land councils now have to present a budget proposal each year, and a case for funding individual programs. The OEA found that this process 'provides assurance that the Land Council budgets are aligned to and consistent with the objectives of the ALR Act'.¹²

2.14 However, the OEA's report also made various recommendations as to how the land councils' budget process might be improved to ensure greater certainty of the major source of their annual funding.¹³ The OEA's recommendations included the allocation of funding across multiple years, and to separate the core administrative operating costs from specific project activities undertaken or supported by the land councils.

2.15 The committee supports the implementation of this process and the OEA recommendations as they provide the CLC with greater budgetary certainty, given that its other sources of funding are potentially less predictable, and also provides greater budgetary discipline on the CLC's operations and activities.

Native Title representative body funding

2.16 In 2007–08, the CLC received approximately \$3.5 million in its capacity as a Native Title Representative Body.¹⁴ The CLC is a Native Title Representative Body under the *Native Title Act 1993*, and receives funding from the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs to enable it to perform this function.

2.17 In addition, under section 33A of the ALR Act, land councils are able to charge a fee for service, and recover some of their costs in that way. The OEA found that:

The majority of 'fee for service' operations relate to charges applied to mining companies and other organisations conducting, or wishing to conduct, activities on Aboriginal land. A smaller proportion relate to administrative services provided to Aboriginal Associations receiving royalty payments.¹⁵

Expenditure

2.18 As most of the CLC's functions involve administering and overseeing programs, representing Aboriginal interests and negotiation, the bulk of its

12 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 43

13 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, Recommendation 12, p. 44.

14 CLC, *Annual Report 2007–08*, p. 111.

15 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, Recommendation 12, p. 45.

expenditure is in administrative costs. In 2007–08, the CLC's total expenditure was \$17 858 995.¹⁶

2.19 Staffing accounts for approximately 55 per cent of the CLC's expenditure. Approximately 38 per cent is spent on 'suppliers' which includes the purchase of goods and services, lease payments and insurance premiums.¹⁷ The remainder, approximately 7 per cent, is accounted for by the depreciation of assets.

Accountability and Governance

2.20 The CLC is comprised of 94 delegates elected from 75 communities and outstations.¹⁸ Delegates elect a Chairman and Deputy Chairman under the supervision of the Australian Electoral Commission, for a four-year term.¹⁹ The current Chairman is Mr Lindsay Bookie. The CLC's organisational chart is at Appendix 3.

2.21 Part III of the ALR Act sets out the powers of land councils and the way in which the decision-making process works. Under section 31 of that Act, a council must make rules about the procedure at meetings, which must be approved by the Minister. The CLC provided the committee with extremely edited versions of its board meetings since 2002, stating that the omitted information was 'not within the [committee's] terms of reference'.²⁰ These are discussed in chapter 3, and are available on the committee's website.²¹

2.22 The CLC is a Commonwealth Statutory Authority within the terms of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The CLC is also a Native Title Representative Body under the *Native Title Act 1993*. Both acts prescribe various annual reporting requirements which the CLC must fulfil. The Australian National Audit Office (ANAO) performs annual audits of the CLC's financial statements. There is no suggestion in any of the OEA or ANAO audits of the CLC that these statutory requirements are not being fulfilled.

2.23 The CAC Act also prescribes that bodies covered by that Act which receive at least 50 per cent of their operating costs from the Commonwealth must implement the Commonwealth Fraud Control Guidelines. As the CLC does not receive more than 50 per cent of its funding from the Commonwealth, it is not required to implement those guidelines. However, the CLC's Annual Report 2007–08 lists the internal

16 CLC, *Annual Report 2007–08*, p. 111.

17 CLC, *Annual Report 2007–08*, pp 111 and 125.

18 CLC, *Annual Report 2007–08*, p. 101.

19 CLC website, www.clc.org.au/about_us/who_we_are%20.html (accessed 31 August 2009).

20 CLC, additional information, 17 August 2009, p. 2 at www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

21 www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

procedures that the organisation has in place to prevent and detect fraud and improper conduct.²²

2.24 In its audit of the four Northern Territory land councils in January 2008, the OEA raised concerns about the transparency of the relationship between all land councils and their respective commercial entities. The report stated that:

[T]he Office identified a number of improvements in corporate governance across the Land Councils that could be initiated. Notably, the Office found a lack of transparency surrounding Land Councils' dealings with external commercial entities they established to promote economic development, including Councillor appointments and positions within these entities.²³

2.25 Specifically, the OEA noted that land councils need to better manage:

[T]he issue of perceived and actual conflicts of interest between the broader social responsibilities of the Land Councils and the economic development agenda of the external commercial entities...²⁴

2.26 As a consequence, the OEA warned that:

If not addressed, perceived conflicts of interest with the external commercial entity represent a risk to the Land Council's reputation and may undermine its position within the Aboriginal community.²⁵

Centrecorp Aboriginal Investment Corporation Pty Ltd

2.27 Centrecorp is a private company which was registered on 10 January 1985. It was created following an agreement between the CLC and NT Gas Pty Ltd for the latter to lease a corridor of land to accommodate a gas pipeline. As land councils cannot incur financial liability or receive financial benefit, the CLC created Centrecorp to hold the shares in NT Gas that had been negotiated.²⁶

2.28 The CLC holds three of the five shares in Centrecorp. The Tangentyere Council Inc and Central Australian Aboriginal Congress each own one of the remaining shares.²⁷ The shareholders are precluded from receiving any income or benefit from their shareholding.²⁸

22 CLC, *Annual Report 2007–08*, pp 103–104.

23 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 8.

24 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 37.

25 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 37.

26 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 14.

27 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 14.

28 Under the Trust Deeds of the charitable trusts of which Centrecorp is a trustee. Centrecorp, *Submission 3*, pp 1–2.

2.29 Tangentyere Council is a service delivery agency for the 18 housing associations or 'town camps' in Alice Springs.²⁹

2.30 The Central Australian Aboriginal Congress delivers health services to the Aboriginal community by providing primary health care; educating Aboriginal health workers; assisting other Aboriginal communities to take control of their health issues; and advocating on behalf of the local Aboriginal community.³⁰

Objectives and goals

2.31 Centrecorp has two goals:

- To provide benevolent relief to young Aboriginal people of whose aspirations and capabilities are constrained by disadvantaged circumstances.
- To enhance the capacities of Aboriginal people to participate fully in vocational, professional, commercial, cultural and social life.³¹

2.32 Centrecorp's strategic objective is:

...to increase the asset base to enable the generation of income streams which can be used to fund charitable objectives relevant to Central Australian Aboriginal people.³²

2.33 The purpose of this is to raise funds for investment in resource development and tourism projects on Aboriginal land and to create 'longer term economic security for traditional owners'.³³

2.34 Centrecorp raises these funds through its two charitable trusts – the Central Australian Aboriginal Charitable Trust (CAACT) and the Central Aboriginal Charitable Trust (CACT).

2.35 In the first 21 years of Centrecorp's operation, it was focussed on growing the asset base held in the two trusts. Subsection 3(b) of the Centrecorp trust deed in relation to the CAACT states:

During the period of twenty one (21) years from the date hereof [6 March 1986] [Centrecorp] may accumulate such part of the income of the Trust fund and apply it as [Centrecorp] considers necessary to acquire

29 Tangentyere Council, *About Tangentyere Council*, www.tangentyere.org.au/about (accessed 20 May 2009).

30 Central Australian Aboriginal Congress Inc, *History of Congress*, www.caac.org.au/history.html (accessed 20 May 2009).

31 Centrecorp website, www.centrecorp.com.au/index-1.html (accessed 19 August 2009).

32 OEA *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 7.

33 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 14.

investments hereby authorised or to meet the obligations and liabilities of the Fund in respect of any such investments for the purpose of enabling the Fund to generate income to meet the charitable objects...³⁴

2.36 With 21 years having passed, Centrecorp is, according to its General Manager, now more focused on achieving its charitable objectives. Accordingly, its charitable donations have increased significantly in the past three years, from around \$50 000 per annum between 2000–01 and 2004–05 to over \$400 000 in 2007–08.³⁵ Centrecorp provided the committee with copies of the charitable donations made by its trusts. These documents are discussed in chapter 3, and are published on the committee's website.³⁶

Centrecorp structure

2.37 Through the mechanisms of its two trusts, Centrecorp invests in a range of businesses throughout Alice Springs and its surrounds, which are discussed in chapter 3. The OEA noted in its 2008 performance audit of Centrecorp, that Centrecorp's interest in these businesses is 'held through a complex arrangement of trusts and corporations'.³⁷ A diagram of these complex business arrangements between Centrecorp and its related entities and investments is at Appendix 4.

2.38 The OEA found that Centrecorp does not employ any staff, undertake any financial transactions or produce any financial statements.³⁸ The company operates as a trustee for two charitable trusts – the CAACT and the CACT – all activities and assets of which are applied solely in furtherance of the charitable objects of the trusts.³⁹

2.39 Although the CAACT and CACT are wholly controlled separate entities, they are referred to by Centrecorp Management and Directors as Centrecorp. Accordingly, this report also uses the term 'Centrecorp' to refer to the overall commercial interests of the two trusts.

34 Deed of Settlement of Trust: Centrecorp Aboriginal Investment Corporation Pty Ltd, Trustee of the Central Australian Aboriginal Charitable Trust, 6 March 1986, [CLC, answers to question on notice No 121, Supplementary Budget Estimates, 24 October 2008, pp 58–102, www.aph.gov.au/Senate/committee/clac_ctte/estimates/bud_0809/vol6_fahcsia.pdf (accessed 12 November 2009)].

35 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 7.

36 www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info.htm

37 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 15.

38 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 14.

39 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 14.

2.40 The CAACT is the primary Centrecorp trust and beneficiary of ownership in most Centrecorp businesses.⁴⁰ In line with the strategic objectives of Centrecorp, in terms of increasing the asset base, the trust deeds of the CAACT state that it:

...has been established to take advantage of investment and commercial opportunities that arise in Central Australia on or in relation to Aboriginal land or that relate to Aboriginal people, and to exploit those opportunities to generate assets and funds for charitable purposes to relieve the said unreasonable distress, disadvantage, dispossession and suffering.⁴¹

2.41 The CACT is the second Centrecorp trust and was originally established to access additional funding from the Aboriginal and Torres Strait Island Commission (ATSIC) for the purposes of purchasing shares in the Peter Kittle Motor Company.⁴²

2.42 Under the trust deeds of the CAACT and CACT, Centrecorp shareholders are precluded from receiving any benefit from the trusts. The trust deeds also provide that the trust funds shall only be applied in furtherance of the charitable objects of the trusts.⁴³

2.43 In addition to the two trusts, Centrecorp owns a 60 per cent share in Yeperenye Nominees Pty Ltd, the trustee of the Yeperenye Charitable Trust, which owns Yeperenye Pty Ltd, which in turn owns a large shopping centre in Alice Springs as well as various other commercial properties. That trust structure was created, and 60 per cent of the shares in Yeperenye Pty Ltd effectively transferred to Centrecorp on the abolition of ATSIC in 2005. The share transfer agreement requires that the profits of Yeperenye Charitable Trust be used for charitable purposes.⁴⁴

2.44 Yeperenye Pty Ltd provided the committee with financial statements for the past four financial years. Edited versions of these documents (with confidential and sensitive personal information deleted) are available on the committee's website.⁴⁵

40 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 17.

41 Deed of Settlement of Trust: Centrecorp Aboriginal Investment Corporation Pty Ltd, Trustee of the Central Australian Aboriginal Charitable Trust, 6 March 1986, [CLC, answers to question on notice No 121, Supplementary Budget Estimates, 24 October 2008, p. 83, www.aph.gov.au/Senate/committee/clac_ctte/estimates/bud_0809/vol6_fahcsia.pdf (accessed 12 November 2009)].

42 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 17.

43 CLC, answers to question on notice, Supplementary Estimates, 24 October 2008, pp 60–102, www.aph.gov.au/Senate/committee/clac_ctte/estimates/bud_0809/vol6_fahcsia.pdf (accessed 12 November 2009).

44 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 25.

45 www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

2.45 Centrecorp is also the trustee of the Central Railway Equity Benefit Trust, which holds an investment in the Alice Springs/Darwin railway operating company. Centrecorp received no benefit from the trust and according to the OEA 'is in the process of restructuring ownership to transfer the asset to appropriate Aboriginal bodies identified by the CLC'.⁴⁶

2.46 The Australian Taxation Office (ATO) has endorsed Centrecorp as a 'charitable institution', which means that Centrecorp is exempt from paying income tax. Centrecorp is also not required to provide tax returns unless specifically requested to do so by the ATO. Instead, it is expected to 'self assess' on a regular basis and inform the ATO of any changes to its status as a charitable institution.

Governance

2.47 The Centrecorp Board is comprised of four members, three of whom are directors of its three shareholders: Mr David Ross, the director of the CLC; Ms Stephanie Bell, the director of the Central Australian Aboriginal Congress Inc; and Mr William Tilmouth, the director of Tangentyere Council Inc. The other member is Mr Anthony Petrick, who is also an Executive Member of the CLC.

2.48 As a private company, Centrecorp is under no legal or constitutional requirement to provide the government with information about its activities or those of the CACT and CAACT.⁴⁷ However, as discussed below, the resulting absence of publicly available information about Centrecorp's operations appears to have generated a degree of uncertainty and doubt regarding Centrecorp's commercial dealings.

2.49 The committee notes that Centrecorp established a new donations body in July 2009, focused on supporting Indigenous youth: the Centrecorp Foundation. Centrecorp's website states that the Foundation is 'primarily focussed on the needs of young Aboriginal people in disadvantaged circumstances', and that it:

...encourages and supports a broad range of activities including participation in sporting, cultural, personal development, community service and social activities.⁴⁸

2.50 Centrecorp's website mentions that the Foundation's Board 'provides broad representation to identify, assess and decide on donations', and that it is 'primarily funded by Centrecorp'.⁴⁹

46 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 18.

47 OEA *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 36.

48 Centrecorp website, www.centrecorp.com.au/index-2.html (accessed 12 November 2009).

49 Centrecorp website, www.centrecorp.com.au/index-2.html (accessed 12 November 2009).

2.51 The OEA's audit of Centrecorp noted that, at the time, Centrecorp was proposing to establish a charitable foundation through which to channel charitable initiatives and donations. The OEA made favourable comments about the proposal, suggesting that:

[A]n independent charitable foundation would greatly simplify the governance arrangements in respect of the payment of charitable donations. This would enable Centrecorp to continue its focus on commercial activity whilst more effectively highlighting their success in delivering against charitable objectives.⁵⁰

2.52 The committee is somewhat surprised that Centrecorp did not mention the imminent establishment of the Foundation in its submission to the inquiry, given that the OEA was so positive about its potential in improving Centrecorp's governance. The committee reiterates the OEA's emphasis on the importance of the donations arm of Centrecorp being independent from its commercial arm, and hopes that the Foundation is run in such a way as to improve the transparency of Centrecorp's donation process.

2.53 Chapter 3 considers the donation process and its beneficiaries in more detail.

Background to issues examined in this inquiry

2.54 Over the past few years, a number of concerns have been raised in the media about Centrecorp's business operations, including its ownership, control, decision-making processes and beneficiaries.⁵¹

2.55 Some of the specific concerns raised by several journalists from the *Alice Springs News* and *The Age* are:

- that it lacks transparency;⁵²
- the amount of Directors' remuneration;⁵³
- that it does not donate enough to the Aboriginal community;⁵⁴
- the appropriateness of certain Centrecorp investments, namely the Milner Road Food town;⁵⁵ and

50 OEA *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 52.

51 See for example Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

52 Russel Skelton, 'The Double Standard of Centrecorp', *The Brisbane Times*, 29 March 2009; Erwin Chlanda, 'Centrecorp: Elders Fume', *Alice Springs News*, 4 May 2006.

53 Russel Skelton and Ben Schneiders, 'Overhaul Ordered for Centrecorp', *The Age*, 13 March 2009.

54 Ben Schneiders and Russel Skelton, 'Double Role for Aboriginal Company's Key Figure', *The Age*, 21 August 2007; Kieran Finane and Erwin Chlanda, 'Charitable Institution Centrecorp Tax Exempt?', *Alice Springs News*, 23 March 2006.

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- that many of the companies Centrecorp invests in, do not employ many or any Indigenous people.⁵⁶

2.56 With regard to these allegations, the CLC submitted that '[t]here have not been any corporate, financial or management problems to justify this excessive media interest.'⁵⁷

2.57 However, the concerns were obviously sufficient to warrant the OEA conducting two performance audits related to the CLC and Centrecorp. The first, which reported in January 2008, was an audit of all four of the Northern Territory land councils including CLC. The second audit, which reported in November 2008, was a performance audit of Centrecorp and was requested by the former Parliamentary Secretary to the Minister for Finance and Administration, Senator the Hon Richard Colbeck.⁵⁸

2.58 It was not the committee's intention to repeat the work done by the OEA in either of these audits, nor was it within the committee's capacity to undertake such an audit. However, the OEA's findings in its audit reports did inform the direction of certain aspects of the committee's inquiry, and the committee's terms of reference overlapped significantly with the issues examined by the OEA. Where relevant, the findings of the OEA in relation to the issues examined by this committee are relied upon and included in the committee's discussion of its findings in chapter 3.

55 Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

56 Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

57 CLC, *Submission 2*, p. 2.

58 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 2.

Chapter 3

Findings on Terms of Reference

3.1 The committee requested, and received a substantial quantity of material from the Central Land Council (CLC), Centrecorp and Yeperenye Pty Ltd. That material has all been placed on the committee's website, with personal and some confidential details removed.¹

3.2 Due to the huge quantity of documents, the committee was not able to undertake an in-depth examination of these detailed management and financial records of the CLC and Centrecorp. However, on an initial review of the essential elements of this material, the committee did not find any evidence of impropriety in the operation or management of either organisation, nor in the relationship between the organisations. Accordingly, the committee decided that it was unnecessary to further investigate by holding public hearings for the inquiry.

3.3 However, the committee has residual concerns about the lack of transparency in the operations of Centrecorp, and in the relationship between the CLC and Centrecorp. Although both organisations denied that there was any basis for concern, their reluctance to provide the committee with basic financial and management documents did not demonstrate that either organisation is committed to openness and accountability.

3.4 The committee also reiterates the transparency concerns identified in two recent Office of Evaluation and Audit (OEA) reports, only some of which appear to have been addressed.²

3.5 The committee's findings on each of its terms of reference, based on the documents provided, are set out below. The issues are not dealt with in the same order in which they appear in the terms of reference, but instead are set out in a way which deals logically with key themes, and avoids repetition.

1 www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

2 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, pp 11, 42–44; and OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, pp 8 and 37.

The relationship between the Central Land Council and Centrecorp³

Financial relationship

3.6 As noted in chapter 2, the CLC owns three out of the total five shares in Centrecorp.

3.7 Given that the CLC is a Commonwealth statutory authority with various reporting and transparency obligations, questions have been raised as to the relationship between the two entities and whether Centrecorp should improve its level of transparency and accountability.⁴

3.8 In 2006, the Australian National Audit Office (ANAO) undertook an internal review of the matter of consolidation of entities with the land councils. The ANAO submitted that the review 'was solely for the purposes of providing advice based on the Accounting Standards as to whether these types of entities should be consolidated in the financial statements of the Land Councils.'⁵

3.9 As a result of that review, the ANAO agreed to the current method of the CLC's accounting for its interest in Centrecorp (i.e. nominally valuing its three shares at \$1 per share). The ANAO submitted to this inquiry that:

The accounting treatment, was agreed to on the basis that the CLC does not have the power to govern the financial and operating policies of Centrecorp so as to obtain benefits from its activities and thus does not have control.⁶

3.10 The ANAO informed the committee that the basis of its ruling was Australian Accounting Standards Board Accounting Standard number 127 entitled *Consolidated and Separate Financial Statements*. Paragraph one of that Standard states that 'this Standard shall be applied in the preparation and presentation of consolidated financial statements for a group of entities under the control of a parent.'⁷ Paragraph four of the Standard defines control as 'the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities'.⁸

3 This section covers Terms of Reference (a) and (b)(i).

4 Russel Skelton, 'The Double Standard of Centrecorp', *The Brisbane Times*, 29 March 2009; Erwin Chlanda, 'Centrecorp: Elders Fume', *Alice Springs News*, 4 May 2006.

5 ANAO, *Submission 1*, p. 3.

6 ANAO, *Submission 1*, p. 3.

7 Australian Accounting Standards Board, Accounting Standard AASB 127, 'Consolidated and Separate Financial Statements, July 2004, *Submission 1*, p. 3, emphasis added by ANAO.

8 Australian Accounting Standards Board, Accounting Standard AASB 127, 'Consolidated and Separate Financial Statements, July 2004. The committee notes that the AASB 127 has been amended since July 2004, but that the quoted portions have not changed.

3.11 The ANAO submitted that because Centrecorp's trust deed 'specifically excludes CLC from receiving any benefit from the trust, CLC is not considered to have control over Centrecorp.'⁹

3.12 Based on the ANAO's advice, land councils do not report on the operations or financial statements of the external commercial entities in their annual reports, as according to the OEA, 'they do not consider the commercial entities to be related entities'.¹⁰

3.13 One of the implications of that advice is that '[a]s Centrecorp is not a controlled entity of the CLC, it is not audited by the ANAO.'¹¹

3.14 The OEA's 2008 audit of the Northern Territory land councils seems to support the ANAO's view, stating that Centrecorp is '[a]n external economic entity within the Central Land Council region facilitated and part-owned by the CLC.'¹²

3.15 The CLC, Centrecorp and the Department of Families, Housing, Community Services and Indigenous Affairs, have each made statements to the effect that no financial impropriety has occurred in the relationship between the CLC and Centrecorp.¹³

3.16 In an answer to a question on notice at the October 2008 Supplementary Estimates, the CLC assured the Senate Community Affairs Committee that '[n]o transfer payments have been made from the CLC to Centrecorp or from Centrecorp to the CLC.'¹⁴

3.17 Centrecorp reiterated the assurance to this committee: '[t]he Central Land Council has never sought, nor received benefit from the Charitable Trusts or any related entity.'¹⁵ In relation to each of its trusts, Centrecorp submitted that:

No grants, loans or payments have been made to any director, officer or employee of the Central Land Council except where persons in those

9 ANAO, *Submission 1*, p. 3.

10 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 37.

11 ANAO, Answer to question on notice, Additional Estimates, February 2009, Question F57, www.aph.gov.au/Senate/committee/fapa_ctte/estimates/add_0809/finance/answers/F57-ANAO.pdf.

12 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 4.

13 CLC, *Submission 2*, p. 5; Centrecorp, *Submission 3*, p. 2; Mr Roche, Branch Manager, Portfolio Governance, Department of Families, Housing, Community Services and Indigenous Affairs, *Estimates Hansard*, Senate Community Affairs Committee, 24 October 2008, pp 29–30.

14 CLC, answer to question on notice, Supplementary Budget Estimates, 24 October 2008, Question 125.

15 Centrecorp, *Submission 3*, p. 2.

positions are also directors or officers of Centrecorp in which case the payments are detailed [herein].¹⁶

3.18 The CLC has also objected strongly to the media's allegations that it has an improper financial relationship with Centrecorp, submitting that:

Embedded in this repeated allegation is the necessary inference that the CLC as:

- A Commonwealth statutory authority;
- That is governed by a representative council of 90 Aboriginal people from throughout central Australia;
- That is independently audited annually by the Commonwealth's Australian National Audit Office;
- That is subject to the Commonwealth Authorities and Companies Act;
- That is subject to the Commonwealth Financial Management Act;
- Whose budget is approved annually by the Commonwealth Minister;
- That lodges its annual report with the Minister; and
- The Minister tables the annual report in Parliament every year;

has, in spite of all of that scrutiny and all of those controls, year after year somehow concealed a series of unlawful actions involving the wrongful transfer to Centrecorp ... of large amounts of compensation funds received on behalf of traditional landowners.

Setting the proposition out in this way demonstrates how ridiculous the allegations are.¹⁷

Committee view

3.19 Due to the fact that the CLC and Centrecorp are treated as separate financial entities for the purposes of Australian Government financial reporting, and because Centrecorp is under no obligation to report to the Australian Government, the committee found it difficult to make its own assessment of the propriety of the financial relationship between the CLC and Centrecorp.

3.20 Centrecorp provided the committee with highly edited versions of its financial reports, with large quantities of data removed on the alleged grounds that the information is 'commercial-in-confidence' or that it was beyond the scope of the inquiry. The documents provided by Centrecorp are available on the committee's website.¹⁸

16 Centrecorp, additional information, 24 August 2009, pp 3, 6 and 10, at www.apf.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

17 CLC, *Submission 3*, p. 4.

18 www.apf.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

3.21 On the basis of the limited financial information provided, the committee was unable to find any evidence to contradict the CLC's statement in its submission that '[t]here is no financial relationship between the CLC and Centrecorp' beyond the CLC's 60 per cent shareholding. The documents did not on their face disclose any payments between the two entities.

Management relationship

3.22 In its January 2008 audit of four Northern Territory land councils including the CLC, the OEA noted of the relationship between the land councils and their respective commercial entities:

In many instances, the Land Council retains a shareholding in the entity and a certain number of positions on the governing committee of the entity (as per the entity's rules of association).¹⁹

3.23 This is true of the CLC and Centrecorp, with the former holding two of the four current board positions.

3.24 The OEA's useful diagram showing the relationship between Centrecorp and the CLC is at Appendix 5.

3.25 In response to questions at Senate Estimates in October 2008 suggesting that the CLC had a 'controlling interest' in Centrecorp on the basis of its ownership of three of the five shares of Centrecorp, Mr David Ross stated:

...there is no financial impediment on either side of the Central Land Council. We are not at risk one way or another. There are three \$1 shareholdings and that is the end of it. There is no more involvement by the Central Land Council in the day-to-day activity of Centrecorp...²⁰

3.26 Similarly, Centrecorp submitted that 'the Constitution of Centrecorp does not provide for any relationship between the number of shares held and any concomitant right to appoint directors.'²¹

3.27 These statements are based on Centrecorp's trust deeds, regarding which Centrecorp submitted:

[i]t follows that neither the Trustee, nor any shareholder of the Trustee may obtain benefit from the Trust(s) nor incur any liability in performing their duties as a Trustee. In other words, Centrecorp's shareholders, including the Central Land Council, can never be paid any capital or income from either

19 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 36.

20 Mr David Ross, CLC, *Estimates Hansard*, Senate Standing Committee on Community Affairs, 24 October 2008, p. 34.

21 Centrecorp, *Submission 3*, p. 2.

CAACT and [sic] CACT by way of remuneration or otherwise either directly or indirectly under any circumstances.²²

3.28 Centrecorp's trust deed expressly states that:

Notwithstanding anything declared or implied in the Deed of Trust:

- (a) the Trust Fund and the income thereof shall henceforth be possessed and enjoyed to the entire exclusion of every member of the excluded class and of any member of the excluded class whether by contract or otherwise;
- (b) no part of the capital or income of the Trust Fund shall be paid or lent to or applied whether by remuneration or otherwise howsoever for the benefit either directly or indirectly of any member of the excluded class in any manner or any circumstance whatsoever;
- (c) no power conferred upon the Trustee by this Deed or by virtue of anything done pursuant to this Deed or by law shall be capable of being exercised and no provision herein contained shall operate in any manner that any member of the excluded class will or may become entitled either directly or indirectly to any benefit in any manner or in any circumstance whatsoever.²³

3.29 The term 'excluded class' in the above excerpt of the Trust Deed, is defined in the deed to include:

- the Organisations (i.e. Centrecorp's existing shareholders);
- the Shareholders;
- any notional shareholder of the Trustee;
- any person claiming under or in right of the Organisations or the Shareholders or of any notional shareholder of the Trustee.²⁴

3.30 Accordingly, Centrecorp has concluded that there is 'no management relationship' or 'equitable relationship' between the CLC and Centrecorp, and that '[t]he activities of Centrecorp as a trustee of CAACT and CACT are entirely autonomous.'²⁵

3.31 It should be noted however, while not disputing the veracity of that statement, the OEA audit recommended that Centrecorp 'develop clear rules and procedures for the declaration and management of potential conflicts of interest' on its board, in order

22 Centrecorp, *Submission 3*, p. 2.

23 Centrecorp, *Submission 3*, p. 1.

24 CLC, answers to questions on notice, Supplementary Budget Estimates, 24 October 2008, QON no 121, p. 59,
www.aph.gov.au/Senate/committee/clac_cte/estimates/bud_0809/vol6_fahcsia.pdf.

25 Centrecorp, *Submission 3*, p. 2.

to ensure that the CLC, or any other shareholder, did not improperly influence the management of Centrecorp's trusts.²⁶

3.32 The committee notes that the OEA was unable to make any findings with regard to the Board's management of Centrecorp, and the level of influence that those Board members who are also directors and members of the CLC have, as Centrecorp refused to provide the OEA with minutes of board meetings, claiming that those documents are 'commercial-in-confidence'.²⁷

Committee view

3.33 Like the OEA, the committee is not in a position to draw firm conclusions on the management relationship between the CLC and Centrecorp, and specifically on the question of the level of influence the CLC has on the management and distribution of Centrecorp's trusts.

3.34 The committee notes the findings of the OEA in its January 2008 report on the four Northern Territory land councils, that:

Notably, the [OEA] found a lack of transparency surrounding Land Councils' dealings with external commercial entities they established to promote economic development, including Councillor appointments and positions within these entities.²⁸

3.35 While both the CLC and Centrecorp have repeatedly stated that no management relationship exists between the two entities, neither organisation has shown evidence of procedures in place to prevent such a relationship from developing.

3.36 The committee suggests that, should the CLC and Centrecorp wish to avoid continued speculation on the appropriateness of their management and financial relationship, both organisations should be more forthcoming and transparent about those arrangements. The committee found it difficult to identify any evidence provided to this inquiry, other than assertions by the CLC and Centrecorp, of the management of, and interaction between, the two organisations.

26 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 39.

27 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 39.

28 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 8.

Centrecorp's business activities and revenue

*Business activities*²⁹

3.37 Centrecorp invests in a wide range of business activities, including a supermarket, hardware retailer, tourist resort and car retailer. The business ventures in which Centrecorp invests, include:

- NT Gas Pty Ltd – Centrecorp owns 1.5 per cent interest.
- Big O Pty Ltd – a hardware retailer in Alice Springs – Centrecorp owns 50 per cent interest.
- Magnetic Pty Ltd – a corporation established by Centrecorp to acquire shares in an LJ Hooker real estate franchise. Magnetic (through another trust) owns 50 per cent of the LJ Hooker Joint venture.³⁰
- Tancor Nominees Pty Ltd – which is the trustee of Tancor Supermarket Trust, which trades as Milner Road Food Town. Centrecorp has a 50 per cent share.
- Kings Canyon Nominees Pty Ltd – a trustee for the Kings Canyon (Watarrka) Resort Trust which trades as the Kings Canyon Resort. Centrecorp owns a 32.67 per cent interest in the resort.
- Aboriginal Property Nominees Pty Ltd – a trustee for the Central Australian Aboriginal Property Trust. Centrecorp owns 4.94 per cent of the units in the trust through the CAACT (2.01 per cent) and CACT (2.93 per cent).
- CAAMV Pty Ltd – a trustee of the CAAMV Unit Trust which holds 50 per cent of Alice Car Centre Pty Ltd which trades as Peter Kittle Motor Company.
- Yeperenye Nominees Pty Ltd – Centrecorp owns a 60 per cent interest. Yeperenye Nominees is trustee for Yeperenye Charitable Trust which owns Yeperenye Pty Ltd which in turn owns Yeperenye Shopping Centre.
- Central Railway Equity Benefit Trust – and the associated company (Central Railway Aboriginal Investment Pty Ltd) is an investment held in the Alice Springs/Darwin railway operating company, on trust by Centrecorp for the traditional owners. Centrecorp receives no benefit from holding this investment and is currently restructuring ownership to transfer the asset to appropriate Aboriginal bodies identified by the CLC.
- Centrefarm Management Pty Ltd – a wholly owned Centrecorp corporation established to provide corporate and management services to horticulture projects on Aboriginal land.³¹

29 This section covers Term of Reference (b)(iii).

30 Centrecorp holds two shares or 66.7 per cent and Mr Bob Kennedy (Centrecorp General Manager) holds one share (33.3 per cent) in Magnetic as bare trustee for Centrecorp because two shareholders are required. According to the OEA, Mr Kennedy does not receive any benefit from holding this share. OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 17.

*Sources of revenue*³²

3.38 Centrecorp receives its income from two main sources:

- returns on investments; and
- loans and grants from Australian Government bodies.

3.39 In terms of the financial performance and position of Centrecorp, the OEA noted that Centrecorp does not produce 'group accounts' and for this reason, it was not possible to identify the exact current value of its various investments. However, the OEA stated:

...review of audited financial statements for those entities that have been in receipt of Government support has revealed that Centrecorp has been successful in growing the value of its asset base in the years since Australian Government benefits were provided.³³

3.40 Press reports have speculated that Centrecorp's assets are between \$60 million and \$100 million.³⁴

3.41 The dividends received by Centrecorp and the value of shares owned by Centrecorp are recorded in the financial statements of the two charitable trusts, the CACT and CAACT, except its investment in Yeperenye Pty Ltd.

3.42 Centrecorp provided the committee with audited copies of the financial statements of its two trusts. These statements were edited by Centrecorp, purportedly to exclude '[f]igures for those investments acquired with private funds, including external partners and operating in competitive environments', which Centrecorp claims are 'commercial-in-confidence'.³⁵

3.43 All of the statements have been externally audited by Deloitte Touche Tohmatsu, and have received unqualified audit opinions.

31 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, pp 17–19.

32 This section covers Term of Reference (b)(iv).

33 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 6.

34 Erwin Chlanda, 'Bush Tribes own Centrecorp Millions', *Alice Springs News*, 30 August 2007; Ben Schneiders and Russell Skelton, 'Centrecorp rethinks its spending priorities', *The Age*, 25 August 2007.

35 Centrecorp, additional information, 24 August 2009, p. 1.
www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm.

3.44 The OEA review of the financial statements of the two Centrecorp trusts established that the primary source of income for both is dividends and distributions generated from their investment in commercial activities.

3.45 The total income and net profit generated by both trusts between the financial years ending 2002 to 2008 is as set out at Table 2.

Table 2—Income and financial performance of CAACT and CACT (\$)

Year	CAACT total income	CAACT net profit/(loss)	CACT total income	CACT net profit/(loss)	Consolidated net profit/(loss)
2001–02	1 030 869	663 886	1 146 159	1 126 236	1 790 122
2002–03	517 895	154 149	468 747	452 427	606 576
2003–04	876 115	573 193	216 891	205 770	778 963
2004–05	801 988	317 793	396 520	382 655	700 448
2005–06	508 471	(1 018 994)	356 590	338 650	(680 344)
2006–07	574 370	84 831	565 377	422 127	506 958
2007–08	2 159 218	1 338 536	1 291 650	(489 972)	848 564

OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 31; Centrecorp, additional information, 21 August 2009 (received 24 August 2009).

3.46 Centrecorp also provided the committee with details of its assets. The net asset position of CAACT and CACT, detailed in Table 3 below, demonstrates that the financial position of both trusts is strong and has generally improved over the years.

Table 3—Financial position of CAACT and CACT (\$)

Year	CAACT net asset position	CACT net asset position	Consolidated net asset position
2001–02	5 274 610	3 710 272	8 984 882
2002–01	5 428 759	4 162 699	9 591 458
2003–04	6 002 051	4 752 124	10 371 520
2004–05	6 319 844	5 090 774	11 071 968
2005–06	5 300 850	5 090 774	10 391 624
2006–07	5 385 681	5 512 902	10 898 582
2007–08	5 943 217	5 022 929	10 966 146

OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 32; Centrecorp, additional information, 21 August 2009 (received 24 August 2009).

Grants and loans from the Australian Government³⁶

3.47 Centrecorp received significant levels of funding from the Australian Government from 1990 to 2005 through a range of benefits including loans, share transfers and grants totalling \$25 102 311.³⁷ The support focused on assistance in the acquisition of three investments; that of Kings Canyon Resort, Yeperenye Pty Ltd, and the Peter Kittle Motor Company.³⁸ The OEA has detailed the benefits to Centrecorp as follows:

36 This section covers Term of Reference (b)(ii).

37 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 22.

38 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 21.

Table 4—Summary of Australian Government benefits provided to Centrecorp

Year	Type of Benefit	Source of Benefit	Entity receiving Benefit	Purpose	Amount (\$)
1990	Loan	ATSIC	Centrecorp	Purchase of shares in Kings Canyon Resort	800 000
1991	Loan	ATSIC	Centrecorp as trustee of CACT	Purchase of shares in Peter Kittle Motor Company	190 000
1991	Grant	ATSIC	Centrecorp as trustee of CACT	Consultant fees associated with purchase of shares in Peter Kittle Motor Company	160 000
1992	Grant	ABTA	Centrecorp as trustee of CACT	Purchase of shares in Peter Kittle Motor Company	310 000
1994	Grant	ATSIC	Centrecorp as trustee of CACT	Consultant fees associated with purchase of shares in Peter Kittle Motor Company	30 000
1995	Grant	ATSIC	Centrecorp	Purchase of shares in Kings Canyon Resort	200 000
1997	Grant	ATSIC	Centrecorp as trustee of CACT	Purchase of shares in Peter Kittle Motor Company	800 000
1998	Loan	ATSIC	Centrecorp	Purchase of shares in Kings Canyon Resort	3799 508
2005	Share Transfer	IBA	Yeperenye Nominees Pty Ltd	Transfer of 60 per cent share in Yeperenye Pty Ltd (valued at \$32 688 005)	19 612 803
TOTAL AUSTRALIAN GOVERNMENT BENEFITS					25 102 311

OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 22.

3.48 Centrecorp did not provide the committee with information breaking down certain aspects of its business and financial transactions which it claimed to be commercial-in-confidence. It excluded any material relating to 'investments acquired with private funds, involving external partners, and operating in competitive markets'.³⁹ For this reason, much of the material provided by Centrecorp and published by the committee contains blank sections or entire blank pages where information has been removed by Centrecorp.

3.49 However, Centrecorp did provide some information relating to the success of those businesses in which Centrecorp had acquired its interest with Australian Government assistance. Centrecorp submitted that:

[The Australian Government] support assisted towards the acquisition of two investments viz; units in Kings Canyon Resort Trust and CAAMV Unit Trusts [which is the part owner of the Alice Car Centre] both investments being partnered with the then Aboriginal and Torres Strait Islander Commercial Development Corporation, now Indigenous Business Australia (IBA).

39 Centrecorp, additional information, 24 August 2009, pp 1, 4 and 8.

www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

In the accounts of CAACT and CACT the funds are capitalised as part of the asset cost in the respective balance sheets.⁴⁰

3.50 In its submission to the committee, Centrecorp set out details of the dividend payments of those Centrecorp investments which were in receipt of government funding:

Table 5—Financial performance and dividend payments of relevant Centrecorp businesses (\$)

Year	Kings Canyon Resort Trust Net profit (loss)	Dividend received by Centrecorp (CAACT)	Yeperenye Pty Ltd Net profit/(loss)	Dividend received by Centrecorp	Alice Car Centre Ltd Net profit/(loss)	Dividend received by Centrecorp (CACT)
2001–02	2 299 513	506 393	643 454	-	873 792	786 623
2002–03	(160, 325)	163 353	749 139	-	1 162 198	327 746
2003–04	1 817 311	294 036	(247 191)	-	1 370 918	136 280
2004–05	397 026	156 981	2 990 683	-	1 531 266	237 743
2005–06	(2 976 059)	-	1 598 369	-	1 535 837	194 183
2006–07	1 031 665	-	1 006 707	-	1 770 073	358 954

Centrecorp, *Submission 3*, p. 7.

3.51 In its audit of Centrecorp, the OEA found that:

Review of the direct benefits provided in respect of Kings Canyon Resort, Yeperenye Nominees and Peter Kittle Motor Company investments did not identify any instances where Australian Government funding was used for purposes other than those specified in the relevant funding agreement.⁴¹

3.52 The OEA report examined the performance of those assets acquired by Centrecorp using government funds.⁴² The OEA 'did not identify any instances where Australian Government funding was used for purposes other than those specified in the relevant funding agreement'.⁴³

40 Centrecorp, *Submission 3*, p. 4.

41 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 6.

42 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, pp 23–28.

43 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 6.

Benefits to Indigenous Australians and Donations⁴⁴

3.53 Centrecorp's Memorandum of Association states that its purpose is to:

...undertake and implement activities which further the economic and social developments of Aboriginals and which are conducive to the advancement of Aboriginals.⁴⁵

3.54 The main way in which Centrecorp seeks to achieve this aim is through making charitable donations from the income from its investments. The donations of each of the Centrecorp trusts over the past five years are set out in Table 6.

3.55 The OEA established through discussions with Centrecorp management that the priorities for charitable donations included that of education, sport, health and employment initiatives in the form of special projects or one-off initiatives.⁴⁶

Table 6—Donations by Centrecorp trusts, 2004–08 (\$)

Year	CAACT donations	CACT donations	Yeperenye Pty Ltd donations	Total
2003–04	22 027	-	-	22 027
2004–05	73 136	-	-	73 136
2005–06	124 105	-	26 077	150 182
2006–07	99 085	135 511	65 870	300 466
2007–08	234 668	105 000	108 353	448 021

Centrecorp, additional information, 21 August 2009 (received 24 August 2009). Note: figures are rounded to nearest dollar.

How donation decisions are made

3.56 Of the management of donations, the OEA noted:

Although Centrecorp has established some basic procedures for the administration of donations, there are no common procedural guidelines in place across the network of organisations to guide those responsible for making donations on the types of activities to be supported (in line with the Charitable Objects of the Charitable Trust), the reporting arrangements to

44 This section covers Terms of Reference (b)(v)(vi) and (viii).

45 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 49.

46 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 50.

be employed and process to be followed where a potential conflict of interest is found to exist.⁴⁷

3.57 Centrecorp informed the committee that its website sets out the process for applying for a donation.⁴⁸ The website gives an indication as to the factors that the Board of Directors of the Centrecorp Foundation consider when assessing whether or not to make a donation, and provides helpful advice as to what should be included in a request.

3.58 Requests for donations must be made in writing, and should include:

- details of the application
- contact details
- details of the proposed activity
- benefits to be obtained from the proposed activity
- a budget showing the full cost of the proposed activity
- any proposed contribution by the applicant towards the cost
- any proposed fund raising activity
- any approaches to other sources of funding
- any other material relevant to the request
- the amount requested of the Centrecorp Foundation.⁴⁹

3.59 Centrecorp accepts applications at any time, from individuals or organisations.

3.60 The factors that the Board of Directors considers in making decisions about donations are listed as:

- Is the request aligned with the overarching purpose of the Foundation (as outlined in the vision statement)?
- Are there any alternative funding sources available to the applicant?
- Is the purpose more appropriate to Government responsibility?
- Is there potential for the applicant to raise the funds themselves?
- What are the amounts of previous assistance granted from the Centrecorp Trust, the Foundation or other sources?
- What is the ability of the applicant to administrate the funds donated and the project being undertaken?
- Will the funds demonstrably be used for the purpose granted?⁵⁰

47 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 50.

48 Centrecorp, *Submission 3*, p. 10.

49 Centrecorp website, www.centrecorp.com.au/index-3.html (accessed 12 November 2009).

3.61 While the committee notes that the above information on Centrecorp's website appears to be an improvement from the information that was available at the time of the OEA's report, in the committee's view the publicly available information about Centrecorp's donation process remains insufficient to demonstrate that the process is transparent and accountable. For example, there is no indication of the prioritisation of grants, no appeal mechanism set out, and the details of all successful grants are not published.

3.62 Accordingly, the committee is still inclined to agree with the OEA's assessment that more transparency and/or accountability in the donation process is desirable.

Benefits to Indigenous Australians

3.63 In terms of how its donations have benefited Indigenous Australians in Central Australia, Centrecorp submitted:

The local Aboriginal Community in particular, is well cognisant of Centrecorp and its philanthropic worth to the community. Over the most recent years, Centrecorp has responded to over 300 requests for support, most coming from organizations with multiple Aboriginal membership.⁵¹

(...)

The Charitable Trusts received requests from, and make donations to, a broad representation of the Aboriginal Community of Central Australia, including welfare organisations, a renal service, a hospital volunteer group, local schools, interstate schools and colleges, a school mentoring program, sporting groups, an employment taskforce (including local, NT and Australian Government agencies), outstation communities, cultural and arts groups, families and individuals.⁵²

3.64 Centrecorp provided the committee with a list of the charitable donations made by each of its trusts since 2002. Those documents, with the names of individuals and Indigenous organisations removed, have been published on the committee's website.⁵³

3.65 Centrecorp submitted that its donations have, since 2000, totalled nearly \$1 million, and may be classified as follows:⁵⁴

Education	\$400 183
-----------	-----------

50 Centrecorp website, www.centrecorp.com.au/index-3.html (accessed 12 November 2009).

51 Centrecorp, *Submission 3*, p. 11.

52 Centrecorp, *Submission 3*, p. 8. Note that the order of the quotes at notes 50 and 51 have been reversed from how they appeared in Centrecorp's submission.

53 www.aph.gov.au/Senate/committee/fapa_ctte/central_land_council/additional_info/index.htm

54 Centrecorp, *Submission 3*, p. 9.

Sport	\$179 957
Health & Welfare	\$135 397
Employment	\$128 087
Cultural & Art	\$111 443

3.66 The committee's analysis of the trusts' donations confirms this broad breakdown.

3.67 Centrecorp's submission sets out a number of examples of the donations it has made. For example Centrecorp stated that it sponsors numerous Aboriginal youth sport teams, donates to 'every secondary and most primary schools [in the region]' and sponsors disadvantaged Aboriginal student excursions. Centrecorp also sponsors over 30 Indigenous students to attend interstate elite private schools. Centrecorp's submission gives a number of other examples of programs that it has supported.⁵⁵

3.68 The CLC submitted that, in addition to donations, Centrecorp's success has other benefits for Aboriginal people:

...by pursuing the objects of the Trust to support Aboriginal people in central Australia in areas of education, health, personal development – particularly through sport, and in other ways consistent with the trust deeds, over time it will assist Aboriginal people to participate more fully in employment and economic activities, and ameliorate disadvantages due to poor health, remoteness and so on.

As an Aboriginal controlled entity, Centrecorp sets a very good example to the Aboriginal people of what can be achieved by long term commitment to clear goals, sound governance and management, and financial probity.

For many Aboriginal people in central Australia 'investment' for the future is a difficult concept. Centrecorp also provides an outstanding example of 'investment' as an instrument for economic and social improvement.⁵⁶

3.69 However, it has been suggested by the media that some of Centrecorp's investments are inappropriate because they 'stray from the objectives of [Centrecorp's] charitable charter and are of little or no benefit to the indigenous people who are meant to benefit from them'.⁵⁷ Specifically, Centrecorp's investment in Milner Road Food Town, which operates a liquor outlet has been criticised, as has the fact that '[m]any of its operating companies appear to employ few indigenous people'.⁵⁸

3.70 The OEA's report on Centrecorp sets out the total number of Indigenous staff employed in each of Centrecorp's investments, and Centrecorp's comments thereon.

55 Centrecorp, *Submission 3*, p. 11.

56 CLC, *Submission 2*, p. 7.

57 Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

58 Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

The OEA's Centrecorp report states that 20 of the total 241 staff employed by Centrecorp related entities are indigenous employees; an indigenous employment rate of 8.3 per cent.⁵⁹

Information provided to shareholders and beneficiaries about Centrecorp⁶⁰

3.71 Centrecorp informed the OEA that it provides copies of annual financial statements of its trusts to each of its directors, who are representatives of its three shareholders. However, OEA was also informed that the directors do not provide these to Centrecorp shareholders and that no other formal report is provided to Centrecorp's shareholders, nor is there any requirement for such a report to be so provided.⁶¹

3.72 Whilst acknowledging this, the OEA found that as Centrecorp has received substantial financial support from the Australian Government over time, it should 'take steps to significantly improve the transparency of its operations'.⁶² In this regard, the OEA stated:

The absence of any form of public reporting by Centrecorp, which was established for the benefit of Central Australian Aboriginal people demonstrates a lack of transparency. It also provides further weight to claims made in the media as the beneficiaries of Centrecorp do not have access to any other information.⁶³

3.73 The OEA went on to recommend that:

...Centrecorp should consider how it might increase transparency through the provision of more public and stakeholder information.⁶⁴

3.74 There been some complaints reported in the media regarding the lack of information that Centrecorp gives to the traditional owners whose money it is investing.⁶⁵ Mr Chlanda, the Managing Editor of the *Alice Springs News*, submitted that Indigenous people:

...are incensed that they are being kept in the dark by the organisation supposedly acting in their interest, that they don't know the value of the

59 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 47. The report states that the employment figures were correct as at the date of filedwork (conducted between 26–28 September 2007 and between 21–24 April 2008).

60 This section covers Term of Reference (b)(vii).

61 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 42.

62 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 8.

63 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 42.

64 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 43.

65 Russel Skelton and Ben Schneiders, 'Charity Comes Under Scrutiny', *The Age*, 20 August 2007.

assets, and that they have no say in the distribution of the dividends – a miniscule amount to date and arranged by unknown people.⁶⁶

3.75 Centrecorp informed the committee that its publication, *Centrecorp, Building for the Future*, 'has been widely distributed to Indigenous organisations',⁶⁷ including beneficiaries of the donations program. The publication includes 'details of the shareholding, the year in which it was acquired and a description of each of [the] businesses in which equity is held'.⁶⁸

3.76 In addition Centrecorp advised that 'a detailed set of audited annual financial statements is provided to the Central Land Council'.⁶⁹

3.77 The committee has not received the information provided by Centrecorp to its shareholders and beneficiaries and therefore makes no independent finding as to its adequacy. The committee did not consider it necessary to inquire further into the issue, given the OEA's previous consideration, coupled with the fact that none of Centrecorp's shareholders, or current or potential beneficiaries submitted concerns to the committee.

3.78 However, the committee notes that during the course of this inquiry, Centrecorp was not forthcoming with documents and information requested by the committee. The committee requested various, fairly standard financial documents from Centrecorp on 18 June 2009. It did not receive the requested documents until 24 August 2009, and only after significant prompting. Furthermore, the documents that were provided by Centrecorp were heavily edited, with Centrecorp claiming that the omitted information was 'commercial-in-confidence'.

3.79 The committee notes its disappointment in the fact that Centrecorp was not more transparent and helpful in its dealings with the committee.

66 Mr Erwin Chlanda, *Submission 6*, p. 1.

67 Centrecorp, *Submission 3*, p. 10.

68 Centrecorp, *Submission 3*, p. 10.

69 Centrecorp, *Submission 3*, p. 10.

Conclusion

3.80 In conclusion, on a prima facie examination of the heavily edited documents provided to the committee by the CLC, Centrecorp and Yeperenye, the committee found no indication of: the existence of an improper relationship between the entities; any impropriety in Centrecorp's use of, or accounting for, government funds; any improper conduct in Centrecorp's donations; nor anything to suggest that Centrecorp is acting other than in accordance with its charitable charter.

3.81 However, the committee notes its concerns about Centrecorp's transparency, arising from its reluctance to provide the committee with basic financial information about its operations and investments.

3.82 The committee found the CLC to be equally reticent in providing information about its dealings with Centrecorp. The committee requested a range of basic documents from the CLC on 18 June 2009, and did not receive the requested documents until 17 August 2009, again with substantial prompting. The documents that were received by the committee were heavily edited, with many simply being blank pages (as all the information, other than headings, had been removed).

3.83 The committee notes that while both organisations have repeatedly disputed the media's allegations of improper conduct, their evasive attitude towards this committee does nothing to assist their case.

Senator Cory Bernardi

Chair

Government and Australian Greens Senators' Dissenting Report

Government and Australian Greens Senators have serious concerns about the reasons for this inquiry, the manner in which it was run, and its findings. The entire inquiry has suffered from a number of profound flaws.

A flawed reference

The report states that the reason for the reference of this issue to the committee was that 'a number of concerns have been raised in the media about Centrecorp's business operations...'.¹

The Government and Australian Greens Senators emphasise that the allegations about Centrecorp's operation have been raised by three journalists, writing for two papers: Erwin Chlanda from the *Alice Springs News*; and Russel Skelton and Ben Schneiders from *The Age*. Those journalists made submissions to the inquiry, and it is clear from those submissions that significant personal hostility exists between the journalists against the Central Land Council and Centrecorp.² Accordingly, Government and Australian Green Senators question the impartiality and integrity of the allegations made against the Central Land Council and Centrecorp.

Government and Australian Green Senators further note that the criticisms and allegations made by the journalists have not been repeated by any stakeholders or beneficiaries of either the CLC or Centrecorp. Nor has any other evidence been presented to the committee to corroborate them. Despite the inquiry being advertised in the Australian, the Centralian Advocate and the Alice Springs News, as well as the Internet, the committee received only six public submissions and one supplementary submission. In light of these facts, Government and Australian Green Senators cannot see how the criticisms of Centrecorp and the CLC can be sustained.

In addition, there have been at least three audits of various aspects of the CLC and Centrecorp by the Australian National Audit Office (ANAO) and the Department of Finance and Deregulation, Office of Evaluation and Audit (Indigenous Programs) (OEA) in the past five years.³ None of those audits have found any evidence that either the CLC or Centrecorp is operating other than in strict accordance with their

1 Paragraph 2.54.

2 Ben Schneiders and Russel Skelton, *Submission 4*; Erwin Chlanda, *Submission 6*; see also attachments 2 and 3 to CLC, *Submission 2*, pp 10–29.

3 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008; OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008; ANAO, *Northern Territory Land Councils and the Aboriginals Benefit Account*, Audit Report No. 28, 2002–03.

legal obligations. Attempts by Opposition Senators to qualify, for political reasons, the findings of the three audits are disingenuous and with no foundation.

These audits included a very thorough audit of Centrecorp by the OEA, which reported as recently as November 2008. With all the financial and audit expertise available to the OEA, it did not uncover any legal obligation which had been breached by Centrecorp or the CLC, either individually or in their relationship with one another.

Accordingly, Government and Australian Greens Senators saw no reason for, or benefit of, the reference of this issue to the committee. Neither the Government nor the Australian Greens supported the reference when it was originally moved in the Senate by the Opposition back in May 2009. The Government and Australian Greens Senators saw it as an unproductive use of the committee's time and resources to inquire into the financial and management operations of an organisation so recently audited by experts, particularly when the committee lacks the necessary audit expertise. The inquiry simply placed unnecessary burdens on the CLC and Centrecorp, for no public benefit.

A flawed inquiry process

Government and Australian Greens Senators on the committee have serious concerns with the way in which this inquiry was run.

The Coalition majority of the committee deferred, on two occasions, public hearings and then decided not to hold public hearings for this inquiry, on the basis that 'it was unnecessary to further investigate [the CLC and Centrecorp]⁴ because 'the committee did not find any evidence of impropriety in the operation or management of either organisation'.⁵ Government and Australian Greens Senators objected to this course of action but the Coalition majority were unyielding.

Yet, the Coalition majority made a number of serious but unfounded criticisms of the CLC and Centrecorp in its report, and the lack of a public hearing denied either organisation the opportunity to respond. This constituted a deliberate attempt to avoid providing the CLC or Centrecorp with the opportunity to defend themselves against what could only be described as politically motivated attacks and criticism.

Government and Australian Greens Senators are of the view that if the committee wishes to make public criticisms of any organisation in a report, in the interests of fairness and justice it should give those organisations the opportunity to respond to those criticisms.

Furthermore, the majority report criticised both the CLC and Centrecorp for being unhelpful because of their alleged 'reluctance to provide the committee with basic financial information about [Centrecorp's] operations', and the editing of documents

4 Paragraph 3.2.

5 Paragraph 3.2.

by both organisations.⁶ Government and Australian Greens Senators firmly reject these statements.

Government and Australian Greens Senators note the comments contained in the majority report regarding the CLC's extensive public reporting obligations:

The CLC is a Commonwealth Statutory Authority within the terms of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The CLC is also a Native Title Representative Body under the *Native Title Act 1993*. Both acts prescribe various annual reporting requirements which the CLC must fulfil. The Australian National Audit Office (ANAO) performs annual audits of the CLC's financial statements. There is no suggestion in any of the OEA or ANAO audits of the CLC that these statutory requirements are not being fulfilled.⁷

The committee wrote to both organisations on 18 June 2009 requesting an array of financial and management documents, many of which were not, and usually would not be placed, in the public domain. The committee requested the documents by 26 June 2009, giving the CLC and Centrecorp only six working days in which to collate the documents and edit any commercially sensitive, personal, or unnecessary information from them.

Centrecorp responded to the request the following day, suggesting that the committee obtain the documents from the ANAO. On 27 June, Centrecorp sent the committee a further letter requesting clarification of the terms of the committee's request. In total, the committee sent Centrecorp four letters regarding its request for documents during June and July 2009.

The CLC provided the committee with 1602 pages of documents in response to the committee's request on 17 August 2009. Centrecorp provided the committee with 264 pages of documents in response to its request on 24 August 2009.⁸

Government and Australian Greens Senators do not consider it unreasonable for the CLC and Centrecorp to have taken two months to provide the committee with that quantity of documents, particularly given that the scope of the committee's request to Centrecorp was not clarified until a month prior to Centrecorp providing the requested documents.

Government and Australian Greens Senators also do not believe the CLC and Centrecorp's editing of those documents was unreasonable. The CLC have a right to

6 Paragraph 3.3.

7 Paragraph 2.22.

8 The committee also requested documents from Yeperenye Pty Ltd, on 27 July 2009, which provided the committee with 100 pages of documents on 16 October 2009, however, the committee majority does not criticise Yeperenye, so no comments in relation to Yeperenye are necessary here.

remove information which was: 'not within the committee's terms of reference',⁹ predominantly portions of minutes from board meetings which do not relate to Centrecorp; or 'subject to privilege, confidentiality, commercial-in-confidence or privacy considerations'.¹⁰ Centrecorp removed commercial-in-confidence information.¹¹

Given that Centrecorp is not required to provide any financial or other information to government, Government and Australian Greens Senators consider their cooperation in providing 264 pages of documents which were not commercial-in-confidence commendable. It is unreasonable for the Coalition members of the committee to expect a private company, who are subjected to a politically motivated attack, to provide commercially sensitive information to a Senate committee.

Additionally, the committee's behaviour towards Centrecorp and the CLC can hardly be described as cooperative. The committee organised and then cancelled public hearings in Alice Springs on two occasions, placing a substantial imposition on both organisations which had ensured the availability of senior executives and directors on those dates.

In light of these facts, the Government and Australian Greens Senators on the committee consider the criticisms of Centrecorp and the CLC made in the majority report to be entirely unfounded.

Flawed conclusions

The report is entirely contradictory in its findings and conclusions. On one hand it says there is no evidence of 'wrong doing' in quite a number of places, but then attempts to leave the impression that CLC and Centrecorp have not been cooperative and there are still concerns. Given the lack of evidence before the committee on these issues, Government and Australian Greens Senators reject these suggestions outright.

Government and Australian Greens Senators endorse the majority report finding that '...the committee did not find any evidence of impropriety in the operation or management of either organisation, nor in the relationship between the organisations.'¹² This statement is supported by several other sections in the report which demonstrate that there is no case for Centrecorp and the CLC to answer. The following quotes provide examples:

...The committee concludes that the documents provided by the CLC, Centrecorp and related entities do not, on their face, disclose any

9 CLC, additional information, 17 August 2009, p. 2.

10 CLC, additional information, 17 August 2009, p. 2.

11 Centrecorp, additional information, 24 August 2009, pp 1–11.

12 Paragraph 3.2.

inappropriate behaviour on the part of either organisation, or indicate an improper relationship between the two organisations.¹³

The committee has not received the information provided by Centrecorp to its shareholders and beneficiaries and therefore makes no independent finding as to its adequacy. The committee did not consider it necessary to inquire further into the issue, given the OEA's previous consideration, coupled with the fact that none of Centrecorp's shareholders, or current or potential beneficiaries submitted concerns to the committee.¹⁴

...the committee found no indication of: the existence of an improper relationship between the entities; any impropriety in Centrecorp's use of, or accounting for, government funds; any improper conduct in Centrecorp's donations; nor anything to suggest that Centrecorp is acting other than in accordance with its charitable charter.¹⁵

Government and Australian Greens Senators also acknowledge the OEA's findings that there is room for improvement in the transparency of Centrecorp's operations.¹⁶ In this vein, Government and Australian Greens Senators welcome the recent establishment of the Centrecorp Foundation which addresses one of the OEA's key concerns regarding the administration and payment of donations.¹⁷ The Foundation is a new donations body established by Centrecorp that is 'primarily focussed on the needs of young Aboriginal people in disadvantaged circumstances'.¹⁸ The Foundation is a significant step towards implementing the OEA's findings about the governance and transparency of Centrecorp's donation policy, and the Government and Australian Greens Senators commend Centrecorp for this initiative.

Government and Australian Greens Senators emphasise the fact that Centrecorp is a private organisation that operates solely for the furtherance of charitable objectives. Centrecorp has provided donations totalling \$448 021 to the Central Australian Indigenous community over the past five years, and also provides other significant benefits to that community. Centrecorp has been very successful in building up assets to increase its income, which ultimately increases the benefits available to Indigenous people. The accumulation of assets for charitable purposes was exactly what Centrecorp was established to do, and is exactly what it has done.

There has been no attempt by Opposition Senators to effectively address the terms of reference and the Central Land Council and Centrecorp have been denied natural

13 Paragraph 1.9.

14 Paragraph 3.77.

15 Paragraph 3.80.

16 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, p. 8.

17 OEA, *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, p. 11, recommendation 7.

18 www.centrecorp.com.au/index-2.html

justice as a result of the cancellation of public hearings and what seems to be the prejudice against these bodies by Coalition Senators involved in the inquiry.

This has been a flawed reference, a flawed process, and a politically motivated attempt to discredit the Central Land Council and Centrecorp and, as a result the conclusions of the majority report are fundamentally flawed.

Senator Doug Cameron

Senator Trish Crossin

Senator Rachel Siewert

Deputy Chair

Appendix 1

Submissions Received

Submission Number	Submitter
1	Australian National Audit Office
2	Central Land Council
2A	Supplementary Submission – Central Land Council
3	Centrecorp
4	Ben Schneiders and Russell Skelton (<i>The Age</i> journalists)
5	Department of Families, Housing, Community Services and Indigenous Affairs
6	Mr Erwin Chlanda
7	Confidential Submission

Appendix 2

Additional Information Received

Centrecorp Aboriginal Investment Corporation Pty Ltd

- 1 Correspondence to Secretary
- 2 Central Australian Aboriginal Charitable Trust
Special purpose financial report for the financial year ended 30 June 2008
Special purpose financial report for the financial year ended 30 June 2007
Special purpose financial report for the financial year ended 30 June 2006
Special purpose financial report for the financial year ended 30 June 2005
Special purpose financial report for the financial year ended 30 June 2004
Special purpose financial report for the financial year ended 30 June 2003
- 3 Independent Auditor's Report
- 4 Aggregate of Director's Remuneration 2003–2008
- 5 Donations
- 6 Central Aboriginal Charitable Trust
Special purpose financial report for the year ended 30 June 2008
Special purpose financial report for the year ended 30 June 2007
Special purpose financial report for the year ended 30 June 2006
Special purpose financial report for the year ended 30 June 2005
Special purpose financial report for the year ended 30 June 2004
Special purpose financial report for the year ended 30 June 2003
- 7 Independent Audit Report
- 8 Donations
- 9 CAAMV Unit Trust
Special purpose financial report for the year ended 30 June 2008

Special purpose financial report for the year ended 30 June 2007

Special purpose financial report for the year ended 30 June 2006

Special purpose financial report for the year ended 30 June 2005

Special purpose financial report for the year ended 30 June 2004

Special purpose financial report for the year ended 30 June 2003

10 Independent Audit Report

Central Land Council

11 Letter to Secretary

12 Requested Documents 2003–2008

Annual Income and expense report; Balance sheet; Profit and loss account; Audit report

Annual reports from 2005-2008 are available from the Central Land Council's [website](http://www.clc.org.au/about_us/annual_report/annual_report.html)

http://www.clc.org.au/about_us/annual_report/annual_report.html

13 Board Minutes: Central Land Council minutes of meetings 1 July 2002–2009

List of Board minutes

15 August 2002

23 September 2002

15 October 2002

11 December 2002

19 February 2003

25–26 March 2003

29 April 2003

16 May 2003

17–18 June 2003

21 August 2003

12 September 2003

29 September 2003

14 November 2003

16 December 2003

25 February 2004

6 April 2004

14 April 2004

26 May 2004

30 June 2004

20–22 July 2004
19 August 2004
7 October 2004
10 November 2004
9 December 2004
24 February 2005
30 March 2005
10–11 May 2005
21 June 2005
27–28 July 2005
16–17 August 2005
13 September 2005
25 October 2005
22–23 November 2005
16 February 2006
4 April 2006
9 May 2006
6 June 2006
15 June 2006
27 July 2006
16–17 August 2006
10 October 2006
14–15 November 2006
6 December 2006
8 March 2007
3 April 2007
18, 19 and 20 April 2007
23 May 2007
18 July 2007
31 July 2007
20 September 2007
30 October 2007
13 November 2007
5 December 2007
28 February 2008
29–30 April 2008
29 May 2008
10 July 2008
19–20 August 2008
15 October 2008
25 November 2008
26 November 2008
19 December 2008
18 February 2008
1 April 2009
26 May 2009

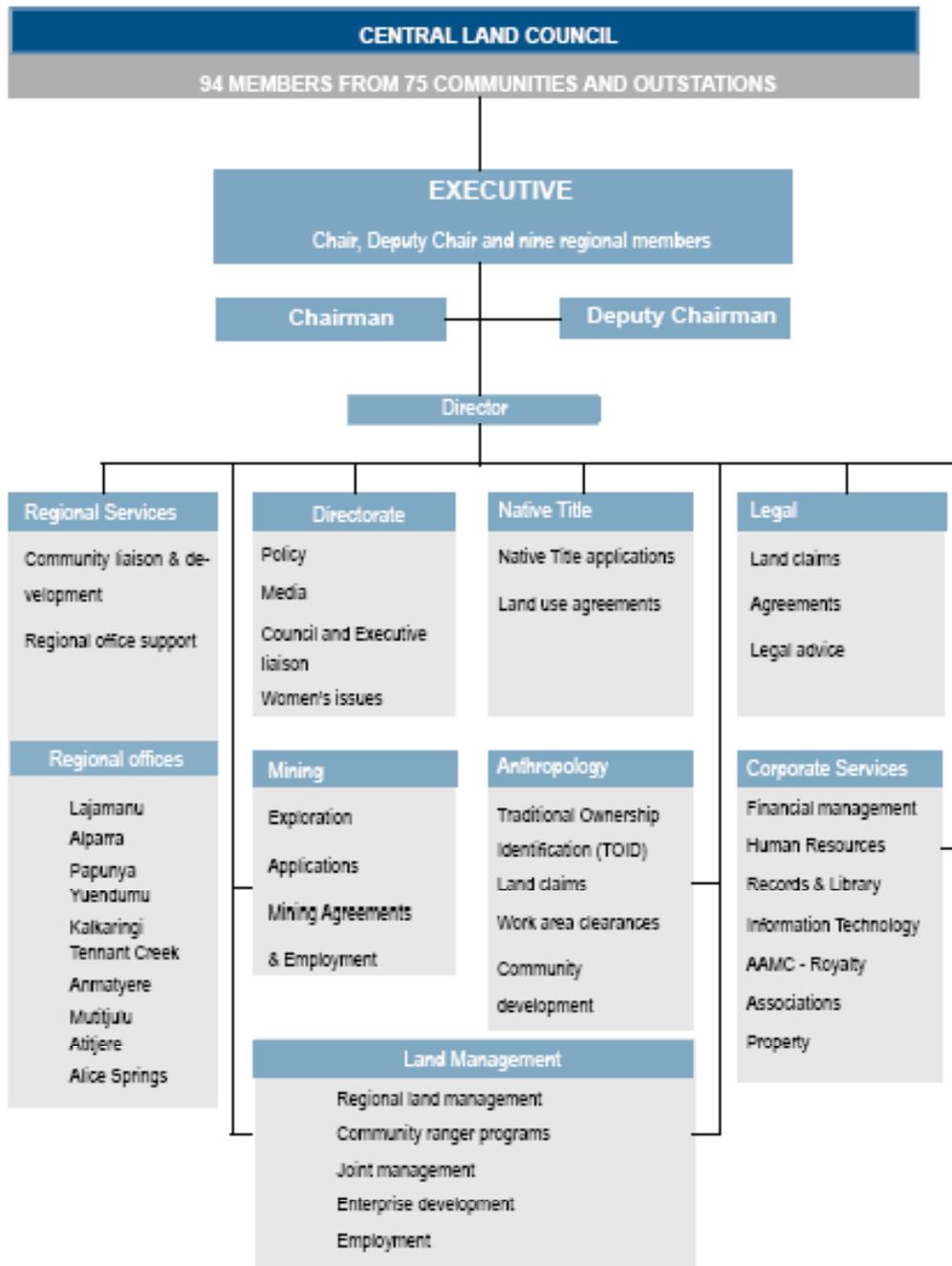
- 14 Fringe Benefit Tax Statements
- 15 Correspondence with Auditors
- 16 Documents or evidence of entitlement to or ownership of assets
- 17 Correspondence between the Central Land Council and Centrecorp
Aboriginal Investment Corporation Pty Ltd
- 18 Documents concerning disbursements to or from Centrecorp

Yeperenye Pty Ltd

- 19 Letter to Secretary
- 20 Special purpose financial report for the year ended 30 June
2009
- 21 Annual financial report for the year ended 30 June 2008
- 22 Annual financial report for the year ended 30 June 2007
- 23 Annual financial report for the year ended 30 June 2006

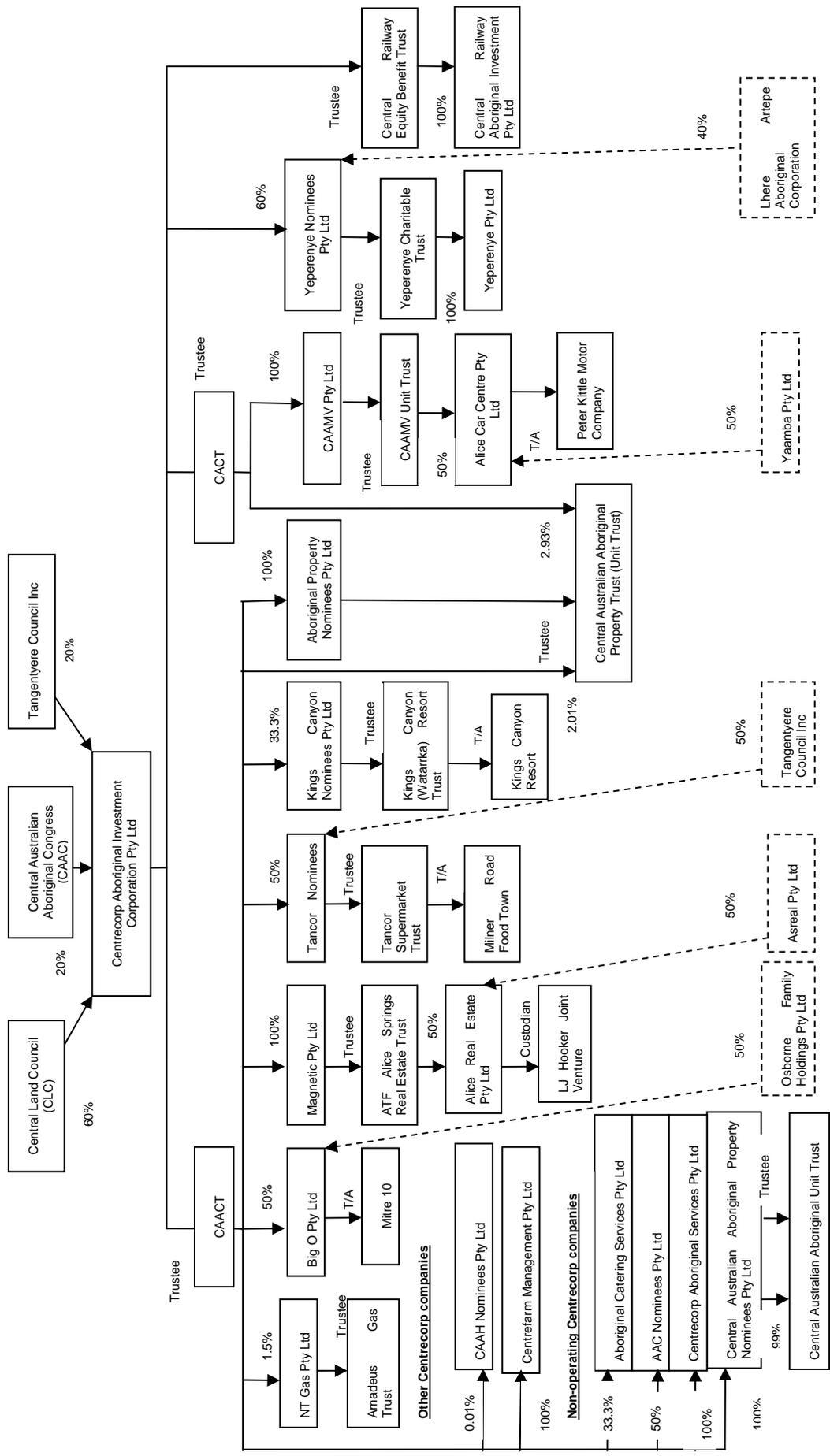
Appendix 3

Central Land Council—Organisational Structure¹



¹ Central Land Council, *Annual Report 2007–08*, p. 101.

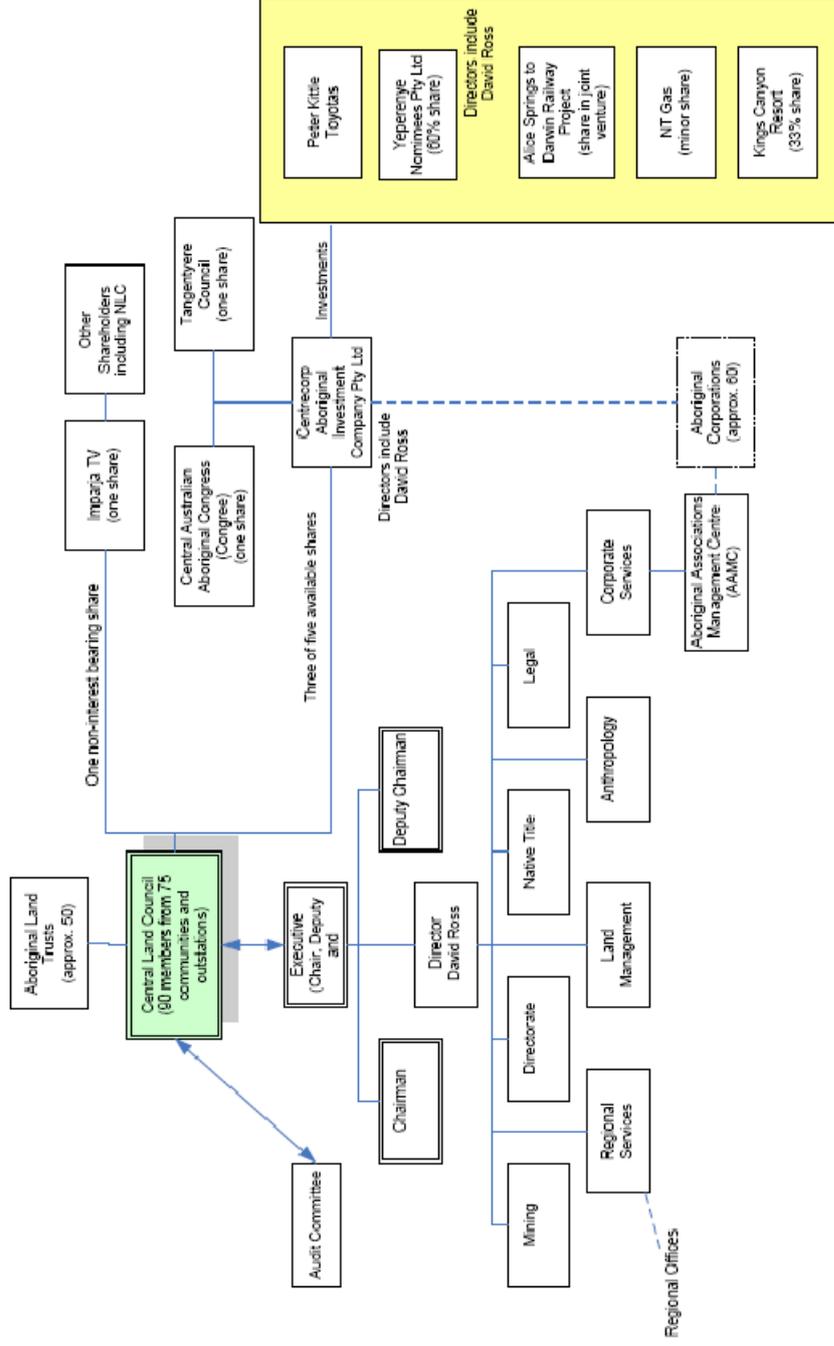
Appendix 4 Centrecorp Aboriginal Investment Corporation Pty Ltd—Corporate Structure¹



¹ Department of Finance and Deregulation Office of Evaluation and Audit (Indigenous Programs), *Performance Audit of Centrecorp Aboriginal Investment Corporation Pty Ltd*, November 2008, p. 16. Note: The content of the above figure is identical to the version published in the OEA report, but in a slightly different format. It was provided to the committee by the OEA on 23 November 2009.

Appendix 5

Central Land Council Governance Arrangements¹



1 OEA, *Performance Audit of the Northern Territory Land Councils*, January 2008, p. 71.

