

Audit Report No. 28, 2002–2003

Northern Territory Land Councils and the Aboriginal Benefit Account

Introduction

Background

- 11.1 In February 1973, the Commonwealth Government set up a Royal Commission, led by Mr Justice Woodward, to investigate how land rights for Aboriginal people might be achieved in the Northern Territory (NT). Justice Woodward's first report recommended the establishment of two land councils to represent the views of Aboriginal people in the NT. These land councils were the Northern Land Council (NLC) and the Central Land Council (CLC).
- 11.2 Following recommendation in Justice Woodward's second report, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) was passed in 1976. The ALRA combined concepts of traditional Aboriginal law and property rights associated with land ownership. Under the ALRA, traditional owners who were granted land were able to exercise

considerable control over activities on their land, including mining and related activities. The passing of the ALRA gave both existing Land Councils statutory powers and responsibilities.

- 11.3 Two additional land councils have been established. In 1978, the Tiwi Land Council (TLC), to represent people of Bathurst and Melville Islands; and in 1991, the Anindilyakwa Land Council (ALC), to represent the people of the Groote Eylandt archipelago was established.
- 11.4 The functions of the Land Councils are set out in section 23 of the ALRA and include:
- ascertaining and expressing the wishes and the opinion of Aboriginals in the area as to the management of Aboriginal land in that area, and as to appropriate legislation concerning the land;
 - protecting the interests of traditional Aboriginal owners of, and other Aboriginals interested in Aboriginal land in the area of the Land Council;
 - assisting Aboriginals claiming to have a traditional land claim to an area of land within the area of the land council in pursuing the claim;
 - consulting with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land; and
 - assisting Aboriginals in the area of the Land Council to carry out commercial activities (such as resource development, tourism and agriculture).¹
- 11.5 In addition, the Land Councils were required to deliver a variety of services to a range of stakeholders, including traditional owners, other Aboriginals, mining companies and tourists. These services included consulting with traditional owners regarding the use and management of land, arranging for access to Aboriginal land and negotiating arrangements between traditional owners and external parties for land use agreements.²
- 11.6 The audit report noted that the Land Councils faced certain obstacles associated with indigenous service delivery. For example, the services often needed to be provided over large geographical areas, which at times was inaccessible. Their constituents had a low level of literacy and there

1 Auditor-General, *Audit Report No. 28, 2002–2003, Northern Territory Land Councils and the Aboriginals Benefit Account*, Canberra, February 2003, p. 10.

2 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 10.

were often difficulties in contacting traditional land owners who may have been separated from their families or no longer be living on the land under claim.³

- 11.7 In the 1950s, the Commonwealth allowed access to Aboriginal reserves for large-scale mining projects. The statutory royalties paid on minerals produced from Aboriginal reserves were paid into an Aboriginal (Benefits from Mining) Trust Fund. In July 1999, this was renamed the Aboriginals Benefit Account (ABA). It was administered by the Aboriginal and Torres Strait Islander Commission's (ATSIC) Native Title and Land Rights Centre.⁴
- 11.8 The funding available to the Land Councils under ALRA is thus dependent upon the stream of royalty equivalents received by the ABA.
- 11.9 Payments out of the ABA are made under section 64 of the ALRA as follows:
- 40 per cent for administration of the Land Councils;
 - 30 per cent distributed by the Land Councils to Aboriginal organisations in areas affected by mining; and
 - the remaining 30 per cent to be applied at the discretion of the Minister for Immigration and Multicultural and Indigenous Affairs, to be used for:
 - ⇒ payments for the benefit of Aboriginals in the NT;
 - ⇒ extra payments to NT Land Councils administration of the ABA; or
 - ⇒ increasing the equity of the ABA.⁵

The audit

- 11.10 The audit arose from a letter of 21 December 2001 from the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP, to the Auditor-General in which he requested that an audit of the efficiency and effectiveness of the four NT Land Councils. In a further letter, of 26 January 2002, the Minister asked that the audit include the relevant parts of ATSIC's administration of the ABA.

3 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 11.

4 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 11.

5 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 12.

- 11.11 The objectives of the audit were to assess whether the governance arrangements used by the ATSIC Native Title and Land Rights Centre were appropriate. The audit assessed whether:
- the ATSIC Native Title and Land Rights Centre had met its legislative requirements concerning the ABA in an effective and efficient manner; and
 - the Land Councils are effective and efficient in managing their resources to meet the objectives of the ALRA

Audit findings

- 11.12 The audit found that both ATSIC and the Land Councils had appropriate procedures in place to assist them to comply with relevant legislation.
- 11.13 However, it also found that there was significant scope for all five agencies to improve their performance monitoring and communication with stakeholders.
- 11.14 In the case of the Land Councils, the ANAO found that there was a need to place greater emphasis on outcomes, outputs and cost effectiveness. This would improve the transparency of their operations and allow stakeholders to better assess whether the Land Councils were achieving value for money.
- 11.15 The audit noted that ATSIC could improve the efficient achievement of the functions of the ABA through the development of:
- an explicit objective for the management of ABA equity; and
 - performance indicators for the investments of available moneys.
- 11.16 Performance assessment was a major concern of the audit report's conclusion. The report noted that the lack of adequate systematic performance assessment supported by suitable performance information made it very difficult for the ANAO to assess whether the Land Councils were fulfilling their functions and delivering services in an efficient and effective way.⁶
- 11.17 The lack of performance information meant that the ANAO was unable to assess whether the current level of resources provided to the Land Councils was appropriate. The report noted that performance information such as effectiveness indicators and output indicators would allow the Land Councils to assess criteria such as whether they had produced more

⁶ Auditor-General, *Audit Report No. 28, 2002–2003*, p. 15.

services with the same or lower levels of resources, or increased the quantity of services without any increase in funding. This information would provide a sound basis for funding discussions between the Land Councils, ATSIC and the Minister.

- 11.18 The audit report also suggested the development of service charters as a tool to improve the transparency of Land Council processes and to clarify stakeholder expectations. Land Councils would be able to obtain stakeholder feedback on their performances and to use this information to improve their service delivery.
- 11.19 The ANAO made seven recommendations:
- two were directed at improving ATSIC's management of the ABA and were agreed to by ATSIC;
 - one related to the establishment of audit committees in the ALC and CLC; and
 - four were directed at improving the Land Councils risk management and planning processes and the development of performance information.
- 11.20 The ALC and NLC agreed with all recommendations relating to them. The CLC agreed with all but one recommendation and the TLC agreed with four of the recommendations and agreed with qualifications to two other recommendations.⁷

The Committee's review

- 11.21 On 21 May 2003, the Committee held a public hearing to review the progress made by the relevant agencies in relation to the implementation of the ANAO's recommendations.
- 11.22 Representatives from the ALC, the NLC, the CLC and ATSIC appeared before the Committee. The Tiwi Land Council was unable to attend.
- 11.23 The Committee took evidence on the following issues:
- risk management;
 - collection and use of performance information;
 - development of service charters; and

⁷ Auditor-General, *Audit Report No. 28, 2002–2003*, p. 26–7.

- other issues, including cultural considerations and support for implementation of recommendations.

Risk management

- 11.24 As noted earlier, the audit report examined the service delivery aspect of the Land Councils' work and identified that the Land Councils provided services to a wide range of stakeholders, including:
- traditional owners;
 - other Aboriginals;
 - NT Government departments;
 - Commonwealth Government departments;
 - mining companies;
 - tourists and tourist companies;
 - pastoralists; and
 - commercial and amateur fishermen.
- 11.25 The audit report identified that the Land Councils not only had an obligation of service provision to Aboriginal people as their traditional constituency but that they also had obligations to stakeholders who had purchased their services, for example, providing tourist permits for access to Aboriginal land or gaining decisions on Exploration licence applications.⁸
- 11.26 The audit report noted that the Land Councils were operating in an environment where the risks to effective service delivery were increasing due primarily to the complexity of responsibilities held by the Land Councils.
- 11.27 The ANAO examined the risk assessment and risk management of the four Land Councils and found that there was 'no formal, documented risk assessment to support the strategic planning undertaken by the Land Councils.'⁹
- 11.28 The Committee questioned the land councils about these findings, in particular risk management and the use of audit committees for assessing risk and documenting accountability.
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8 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 65.

9 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 68.

11.29 The NLC's response noted that the detailed findings of the ANAO indicated 'good risk management at a project level' and that risk management activities were very much part of the day-to-day work of the NLC. The NLC explained:

It is important for the record to note that we do analyse and manage risks very carefully in relation to all the projects that we do. ANAO were quite complimentary to us in the way we do that at the project level. We acknowledge that that was not formalised into an organisational policy but it was certainly not something we ignored or considered to be unimportant.¹⁰

11.30 The CLC acknowledged that risk management was something that the organisation had not dealt with and that it would be a challenging new area to address:

[Prior to the audit] we had not started working on a documented, strategic risk management process. That is something that, while it might have been around for a few years had not particularly penetrated our organisation. So the challenge for us to do it at ... the strategic level ... as opposed to the project management level, is quite a big one.¹¹

11.31 The Committee also questioned the land councils about the use of audit committees as it would expect to see them in organisations with a sound risk assessment and management framework.

11.32 The CLC declared that it had established such a committee and that the committee had recently held its first meeting. The establishment of the committee had been in direct response to the audit report findings:

... we have been going off the ANAO guidelines for audit committees. The charter will, in the first instance, focus on financial management and oversight and compliance, and then, once we have got the audit committee comfortable with its role, we will move to extend it into risk management.¹²

11.33 The audit report acknowledged that the NLC already operated an audit committee but sought to clarify the roles and responsibilities of such a committee in an organisation the size of the NLC.

11.34 The audit report also acknowledged that the smaller land councils would need less sophisticated risk management frameworks that were

10 Ms Catherine Haire, *Transcript*, 21 May 2003, p. 141.

11 Ms Jayne Weepers, *Transcript*, 21 May 2003, p. 143.

12 Ms Jayne Weepers, *Transcript*, 21 May 2003, p. 142.

appropriate to their size.¹³ It also noted that the TLC had incorporated an audit committee function into an existing committee and recommended this as a course of action for the ALC.

Committee comment

- 11.35 The Committee is pleased to note that all the Land Councils have understood and acted upon the recommendations regarding risk assessment and management and accountability.
- 11.36 The Committee commends the Land Councils for having accepted the advice of the ANAO in a responsive and proactive manner and for having acted quickly to apply the advice to their organisational practices.

Collection and use of performance information

- 11.37 The audit report drew attention to the importance of performance information to an organisation:

Performance information is a tool for management and performance improvement. It identifies where an organisation is heading, whether it is heading in the right direction and whether the organisation is using resources in the most cost effective manner. As well as providing a basis of informed decision making, it is also an early warning system enabling managers to undertake preventative action.¹⁴

- 11.38 The report added that the Land Councils were failing to collect this important information and consequently, the ANAO was unable to accurately assess whether the Land Councils were fulfilling their functions.¹⁵
- 11.39 The ANAO made a comprehensive recommendation about the establishment of an outcomes and outputs framework that also described the need for proper monitoring of performance and efficient use of resources. The report noted that :

The adoption of a performance framework, such as the Commonwealth's outcome and output reporting model, would help the Land Councils to measure their efficiency and effectiveness. It would also improve Land Council reporting and

13 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 65.

14 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 65.

15 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 77.

provide a sound basis for stakeholders to assess Land Council performance over time.¹⁶

- 11.40 The Land Councils, in particular the NLC and the CLC, disagreed with this statement, stating that it was possible to assess performance even when agencies did not conform to the preferred outcome-output framework. The NLC stated :

We acknowledge the fact that we do not currently have the performance outputs and outcomes framework in place within our organisations and because the ANAO prefers that model as a way of assessing effectiveness and efficiency it concluded that it was unable to assess us because we do not use that framework. It is our view that [the ANAO] could have made some comments based on what it saw. It is unfortunate only to be able to assess through the one framework.¹⁷

- 11.41 The ANAO clarified its expectation:

... in any program I would expect to have some performance targets, some statement about your objectives and what you are trying to do, and some measures against that which an external scrutineer ... could follow and make some judgements about performance.¹⁸

- 11.42 At the hearing, however, the Land Councils acknowledged that performance information would be beneficial and agreed that they would be implementing the recommendation in its entirety. The NLC explained that it had undertaken a pilot of the outputs and outcomes framework within one key area of operation and that it was expected this would provide a model for implementation across the organisation.¹⁹

- 11.43 The ALC indicated that it had become aware of the need for greater accountability and performance information through another review in 2001 and that the audit reinforced the learning from the earlier review. The ALC committed itself to continuing the process of reform begun since the earlier review.²⁰

- 11.44 While explaining that some key business areas had sophisticated levels of performance assessment, the CLC acknowledged the lack of a systematic

16 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 84.

17 Ms Catherine Haire, *Transcript*, 21 May 2003, p. 134.

18 Mr John Meert, *Transcript*, 21 May 2003, p. 134.

19 Mr Norman Fry, *Transcript*, 21 May 2003, p. 133.

20 Mr Ross Hebblewhite, *Transcript*, 21 May 2003, p. 135.

approach to the collection and application of performance information within the organisation. It confirmed its commitment to developing and implementing a comprehensive framework that will provide detailed reporting of the CLC's work.²¹

Committee comment

- 11.45 The Committee is pleased that all the Land Councils have agreed to implement the ANAO's recommendation regarding the collection and use of performance information. The Committee considers that the Land Councils have shown a spirit of cooperation that demonstrates sound understanding of the importance of high quality performance assessment.
- 11.46 The Committee also notes that the Land Councils have taken a proactive approach in response to the audit and that the process of implementing the recommendation has begun.

Development of service charters

- 11.47 The audit report commented on the value of service charters:
- All government bodies which provide services directly to the public are required to develop a service charter. The introduction and use of service charters by the Land Councils would demonstrate to their stakeholders that they are committed to providing them with information about the range and standard of services offered.²²
- 11.48 The audit report recommended that the Land Councils develop service charters that included service standards that could be used to assess performance and enhance efficiency.
- 11.49 Three of the Land Councils agreed (the TLC agreed with qualification), however, the CLC disagreed with this recommendation.²³
- 11.50 The Committee questioned the CLC about their reluctance to develop a service charter.
- 11.51 The CLC responded that it would be develop a service charter. It explained that the disagreement over the recommendation had reflected issues of concern held by the CLC regarding the development of such a charter. The CLC elaborated:

21 Ms Jayne Weepers, *Transcript*, 21 May 2003, p. 135.

22 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 87.

23 Auditor-General, *Audit Report No. 28, 2002–2003*, p. 90.

Much of the ANAO's description of stakeholders through the process included traditional owners as stakeholders. We are having what might seem a bit of a semantic argument over the fact that traditional owners are not just stakeholders in the land council; they actually are the land council. We cannot function without their instruction ... But we will implement a service charter. I guess the other aspect of it is that the majority of our council members do not speak English as a first language. Part of what we were questioning was the appropriateness of a service charter which may tick a box in terms of the audit process but will not necessarily make a lot of difference to the land council's responsiveness to the stakeholders—the traditional owners.²⁴

- 11.52 In response the ANAO, while acknowledging the concerns of the CLC, reiterated the purpose of a service charter as a statement or policy that provided some guidelines to stakeholders or recipients of services as to what they could expect from the organisation:

We are saying, 'Put down what people can expect from you in terms of service delivery.' Otherwise, they are going to be complaining about the level of service. They will make their own minds up about their expectations of your agency, which were reflected in some of the comments and criticisms we got.²⁵

- 11.53 The Committee supported the ANAO's view that a useful instrument for agencies to be clear about their role and performance.

Committee comment

- 11.54 The Committee considers service charters to be an important statement which sets out the parameters of an organisation's role and performance. It provides information to stakeholders about what they can expect of a well-performing organisation and, because of this, it serves to focus the organisation on its role and performance.

Other issues

Cultural considerations

- 11.55 The Land Councils gave evidence about cultural considerations that, in their view, were not given enough emphasis in the audit report.

24 Ms Jayne Weepers, *Transcript*, 21 May 2003, p. 136.

25 Mr John Meert, *Transcript*, 21 May 2003, p. 137.

11.56 In particular the NLC expressed concern that due consideration was not given to the efforts of the Land Councils to balance the needs of performance management with sensitivity to cultural factors that impact on the work of the Councils.

11.57 The NLC emphasised that much of the work of the Council had to be undertaken in the dry season, due to the inaccessibility of remote communities during the wet season. However, this caused a clash of priorities, culture and time as the dry season was also the time for ceremony. The NLC elaborated:

We have to ensure that [the Aboriginal people who make up the Land Council] are being serviced in a way that does not conflict with their priorities as traditional Aboriginal people and landowners. We felt that that was not appreciated or could not be picked up in the way that the auditors' methodology looked at it. It is not appreciated just how hard and just what a huge consideration in all of our planning that really is. If we do not do that in a very judicious way, a lot of our work simply would not get done.²⁶

11.58 The Land Councils clearly indicated their willingness to learn from the audit and to implement the recommendations put forward by the ANAO. However, they were also at pains to distinguish the unique circumstances of their relationships with their key stakeholders—the traditional owners of Aboriginal land:

We think the great challenge is on us to show how we can implement these recommendations in a way which is not only meaningful for the parliament when our annual report is tabled but is also meaningful out at Maningrida, Borroloola, Ramingining or Galiwinku, where our key stakeholders live and the people to whom we are, in the first instance, responsible.²⁷

11.59 The Committee recognises this concern and believes the aim of the audit is to assist the Land Councils to improve performance and accountability within their own cultural context.

26 Mr Norman Fry, *Transcript*, 21 May 2003, p. 137.

27 Ms Catherine Haire, *Transcript*, 21 May 2003, p. 145.

Support for implementation of the recommendations

- 11.60 The Committee expressed concern that implementation of the ANAO's recommendations would be an onerous task for the Land Councils, given the current work and resource demands placed upon them.
- 11.61 ATSIC advised the Committee that there was an assistance plan to assist in implementing the recommendations. This included the contracting of a consulting firm to provide the expert assistance. ATSIC noted:
- The minister did offer to provide assistance to the land councils ... recognising that there might not be all the expertise that is required to implement what are fairly complicated processes which public service departments have difficulty dealing with.²⁸
- 11.62 ATSIC emphasised the importance of implementing a consistent framework across the four northern Land Councils, in the best interest of the Land Councils and the Commonwealth.²⁹
- 11.63 The Committee endorses ATSIC's view.

Bob Charles MP
Chairman
17 September 2003

28 Mr Brian Stacey, *Transcript*, 21 May 2003, p. 138.

29 Mr Brian Stacey, *Transcript*, 21 May 2003, pp. 138–9.

