

The Auditor-General
Auditor-General Report No.29 2022–23
Performance Audit

Governance of the Anindilyakwa Land Council

Anindilyakwa Land Council

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

Or via email:

communication@anao.gov.au.





Canberra ACT

31 May 2023

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Anindilyakwa Land Council. The report is titled *Governance of the Anindilyakwa Land Council*. I present the report of this audit to the Parliament.

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

Yours sincerely

A handwritten signature in black ink, reading 'Grant Hehir'.

Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

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For further information contact:

Australian National Audit Office

GPO Box 707

Canberra ACT 2601

Phone: (02) 6203 7300

Email: ag1@anao.gov.au

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Audit team

Alicia Vaughan	Dr Isabelle Favre
Weinnie Zhou	Dr Jennifer Canfield
Eliza Glascott	Kai Swoboda
Graeme Corbett	Michael Commens
Elizabeth Robinson	Lily Engelbrethsen
Grace Sixsmith	Sean Brindle
Henry Maher	Katiloka Ata
Andrew Grice	Daniel Whyte
Christine Chalmers	

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Audit snapshot

Auditor-General Report No.29 2022–23

Governance of the Anindilyakwa Land Council



Why did we do this audit?

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



What did we find?

- ▶ The ALC's governance arrangements under the ALRA and PGPA Act are partly effective.
- ▶ The ALC has not appropriately delegated its functions under the ALRA and there is a lack of clarity as to whether an NT Land Council accountable authority can delegate.
- ▶ The ALC's governance arrangements under the ALRA are partly effective.
- ▶ The ALC's arrangements to promote the proper use and management of resources under the PGPA Act are partly appropriate.



Key facts

- ▶ The Anindilyakwa Land Council (ALC) was established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).
- ▶ The ALC is also a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- ▶ Its jurisdiction covers the Groote Archipelago.
- ▶ The Council is comprised of 26 members from 14 clans.



What did we recommend?

- ▶ There were 15 recommendations to the ALC: two aimed at improving the exercise of decision-making authority, eight aimed at improving governance arrangements under the ALRA and five aimed at improving governance arrangements under the PGPA Act.
- ▶ The ALC agreed to 14 recommendations and disagreed to one.

1574

Aboriginal and Torres Strait Islander population of the Groote Archipelago at the 2021 census.

\$7.4m

received by the ALC from the Aboriginals Benefit Account for operations in 2021–22.

\$70.2m

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

Summary and recommendations

Background

1. Four Northern Territory (NT) Land Councils are established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) to represent the interests of Aboriginal people within their respective regions and assist them with the management of Aboriginal land. The four NT Land Councils are corporate Commonwealth entities and must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).
2. The *Native Title Act 1993* (NTA) provides for the Land Councils' responsibilities as native title representative bodies. The NTA provides a mechanism for the recognition of the rights and interests of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and customs.
3. The Anindilyakwa Land Council (ALC) was established in 1991 to represent the Aboriginal people of the Groote Archipelago. The Council has 26 members comprised of one or two representatives from each of the 14 clan groups of the Groote Archipelago. In 2021–22, the ALC received \$7.4 million from the Aboriginals Benefit Account for its operations and distributed approximately \$70.2 million in land use rents and royalties.

Rationale for undertaking the audit

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

Audit objective and criteria

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

Conclusion

8. The Anindilyakwa Land Council's governance arrangements under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Public Governance, Performance and Accountability Act 2013* are partly effective.

9. Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. A delegation instrument for ALRA functions and powers is not valid. A lack of specificity raises questions over whether functions and powers belonging to the ALC accountable authority under the PGPA Act have been invalidly delegated by the Council. Greater clarity is required for the NT Land Councils in relation to how accountable authority delegations are meant to be implemented under the two Acts.

10. The ALC's governance of its legislative functions under the ALRA is partly effective. Governance arrangements to manage operations have not fully met the intent of the ALRA with respect to appointments, meetings and training. Governance arrangements to support the exercise of the ALC's key legislative functions are partly appropriate. In the context of high value land use development proposals, the ALC has not fully met its obligation to satisfy itself that Traditional Owners have understood the proposals they consent to. ALC provides assistance to Aboriginal corporations, as required, however the arrangements lack transparency. Decisions about the distribution of royalty equivalents also lack transparency.

11. The ALC's arrangements to promote the proper use and management of resources are partly appropriate. Most key policies are established however require further operationalisation. While the ALC has established a system of risk oversight and management, it has not fully met the requirements of the Commonwealth fraud rule. Conflict of interest is not appropriately managed. The ALC's 2021–2025 Corporate Plan and draft 2021–22 Annual Report comply with most legislative requirements. The performance statements are partly effective in measuring progress. The Audit Committee does not deliver on most of its key mandatory functions and its Chair is not independent from management.

Supporting findings

Exercise of decision-making authority

12. There is a delegation policy, however the Land Council has not validly delegated its functions and powers under the ALRA. A delegation instrument has not been established under common seal of the Land Council. The document that seeks to be a delegation instrument lacks specificity. PGPA Act functions and powers belonging to the accountable authority may have been invalidly delegated by the Land Council. The delegation instrument also allows for sub-delegation, however there is no legislative power for sub-delegation included in the ALRA. (See paragraphs 2.5 to 2.14)

13. A delegation instrument made in 2022 by the Council may invalidly attempt to delegate powers and functions that belong to the ALC accountable authority under the PGPA Act. A lack of specificity with regard to legislative sections in the delegation instrument makes this difficult to determine. There is no governance document regarding how the CEO and Chair of the ALC (the joint accountable authority) expect to manage their joint responsibilities. There is also a lack of

clarity as to whether the accountable authority of the ALC has any power to delegate under the PGPA Act and ALRA. (See paragraphs 2.15 to 2.23)

Governance under the *Aboriginal Land Rights (Northern Territory) Act 1976*

14. The ALC's governance arrangements to manage and implement its operations are partly appropriate. There is an approved method of choice, however the method of choice is not fully compliant with ALRA requirements. The method of choice is followed. Council members do not receive training or adequate guidance on how to discharge their duties, which are not clearly documented. Arrangements for the Council's scrutiny of the Chief Executive Officer's performance review, remuneration and other employment conditions in August 2022, prior to renewing the engagement, were not robust. Council and committee meeting rules are established appropriately but not fully implemented. The Finance Committee does not provide briefings to the Council that allow it to make fully informed decisions. ALC has met the intent of the ALRA in relation to maintaining registers of members. (See paragraphs 3.4 to 3.37)

15. The ALC has partly appropriate governance arrangements to exercise its key legislative functions.

- Negotiating and assisting — Negotiating and assisting activities are not always supported by robust processes. There are procedures for managing section 19 agreements, however not for administering Part IV agreements or land access permits. Compliance with section 19 agreement conditions is not monitored, and monitoring of Part IV agreements is developing. The ALC assists Aboriginal corporations with commercial activities and could provide greater assurance that the ALC is not receiving financial benefit from these arrangements (which is prohibited by the ALRA). Processes to protect sacred sites are largely appropriate.
- Consulting and obtaining consent — An analysis of consultation on section 19 and Part IV agreements showed that Traditional Owners were engaged and consent was sought, however there could be improvements in: how the benefits and risks of proposals are presented; the use of interpreters; broader community engagement; and procedures to identify and deal with the risk that consent has changed following changes to proposals.
- Distribution of monies — There is a clear procedure for the distribution of Part IV agreement monies. Processes to distribute the ALC's largest category of land use monies (royalty equivalents) lack transparency. The rationale for assessment outcomes is not clearly documented. (See paragraphs 3.38 to 3.94)

Arrangements to promote the proper use and management of resources

16. The ALC has established a system of risk oversight and management. A Risk Management Policy is established, and risk registers have been developed. Reviews of registers are not always timely, and some key risks are missing from the enterprise risk register. Controls are identified for most risks. Corporate policies are established but are not all finalised or fully operationalised and communicated. (See paragraphs 4.2 to 4.18)

17. Arrangements to support the integrity of Land Council operations are partly appropriate. The ALC's fraud control arrangements have not met the requirements of the mandatory Commonwealth fraud rule in terms of fraud prevention, reporting and recording mechanisms;

and the ALC does not have a fraud control plan based on assessed fraud risks. There is a conflict of interest policy and register for senior management and Council members, and some interests are declared. There are few management plans for identified conflicts. Council meeting rules relating to conflicts of interest are consistent with requirements of the PGPA Rule, however, broad exceptions mean that, in practice, the majority of matters discussed at Council meetings are exempt from conflict of interest management. Key interests held by the CEO and Council members (including the Chair) in corporations that receive funding based on decisions of the Council, are not consistently declared and are ineffectively managed. (See paragraphs 4.19 to 4.51)

18. The 2021–2025 Corporate Plan largely complies with the PGPA Rule, however performance measures and targets are not fully effective in measuring performance. The 2021–22 Annual Report was not published as at March 2023. Although the draft 2021–22 Annual Report mostly complies with PGPA Act and Rule and ALRA requirements, it lacks transparency in relation to operations. The line of sight between performance measures in the corporate plan and performance measures in the annual performance statements is somewhat unclear. The ALC has not established a process for gaining assurance over performance information published in the annual report. (See paragraphs 4.52 to 4.63)

19. The Audit Committee does not provide adequate oversight and scrutiny of the ALC’s operations. The Audit Committee is not independent from management and is not effective in the delivery of some of its key mandatory functions under the PGPA Act. It does not appropriately review the ALC’s performance reporting; system of risk oversight and management; and system of internal control. The Audit Committee secretariat is not effective. (See paragraphs 4.64 to 4.85)

Recommendations

Recommendation no. 1 The Anindilyakwa Land Council develop delegation instruments that comply with section 28 of the ALRA, including by establishing the delegations under common seal of the Land Council.
Paragraph 2.11

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 2 The Anindilyakwa Land Council establish a governance document setting out:
Paragraph 2.20

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

Anindilyakwa Land Council response: *Agreed.*

- Recommendation no. 3**
Paragraph 3.14
- The Anindilyakwa Land Council:
- (a) clearly define and document the roles and responsibilities of the full Council, Chair, Deputy Chair and committee members; and
 - (b) implement regular and mandatory training on roles and responsibilities for new and continuing Council members.

Anindilyakwa Land Council response: *Agreed.*

- Recommendation no. 4**
Paragraph 3.22
- The Anindilyakwa Land Council establish formal arrangements, endorsed by the Council, to determine and manage the recruitment, employment conditions, performance management and remuneration of the CEO.

Anindilyakwa Land Council response: *Agreed.*

- Recommendation no. 5**
Paragraph 3.26
- The Anindilyakwa Land Council increase the accessibility of the Council and Finance Committee meeting rules and minutes (which could include the use of the ALC website, radio and social media platforms to promote how the rules and minutes can be accessed).

Anindilyakwa Land Council response: *Agreed.*

- Recommendation no. 6**
Paragraph 3.30
- The Anindilyakwa Land Council conduct Council and Finance Committee meetings in accordance with the rules, and in a manner that supports effective discussions and decision-making, including by:

- (a) conducting Finance Committee meetings at the prescribed frequency;
- (b) annually reviewing key governance documents; and
- (c) implementing meeting rules aimed at facilitating member understanding of matters discussed.

Anindilyakwa Land Council response: *Agreed.*

- Recommendation no. 7**
Paragraph 3.43
- The Anindilyakwa Land Council establish:
- (a) a policy and procedures for administering Part IV agreements; and
 - (b) systematic monitoring against section 19 agreements and Part IV agreements to detect and address non-compliance with agreement conditions.

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 8 To ensure that it is not receiving any financial benefit from its commercial assistance, the Anindilyakwa Land Council put in place mechanisms to provide assurance that:

Paragraph 3.53

- (a) Anindilyakwa Royalties Aboriginal Corporation payments for employees contracted from Anindilyakwa Land Council are not in excess of the work performed under the general service deed; and
- (b) staff contracted to Anindilyakwa Royalties Aboriginal Corporation are not performing work for the Anindilyakwa Land Council.

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 9 For each land use proposal, the Anindilyakwa Land Council ensure that stakeholders are given a complete and accurate explanation of the risks, costs and benefits of the proposal; and that trained interpreters are used for complex meetings.

Paragraph 3.70

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 10 The Anindilyakwa Land Council strengthen the royalty equivalents distribution process by:

Paragraph 3.87

- (a) developing an assessment method that includes funding priorities;
- (b) communicating the assessment method to potential applicants and informing all applicants of outcomes;
- (c) applying the assessment method to all decisions; and
- (d) keeping adequate records of the basis for funding decisions.

Anindilyakwa Land Council response: *Disagreed.*

Recommendation no. 11 The Anindilyakwa Land Council implement regular and mandatory training on governance functions for all staff, including risk management, key policies and fraud.

Paragraph 4.17

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 12 The Anindilyakwa Land Council comply with the Commonwealth fraud rule, including by developing and implementing a fraud control plan and mechanisms to record and report fraud.

Paragraph 4.21

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 13 The Anindilyakwa Land Council:

Paragraph 4.51

- (a) develop and implement effective management plans for interests declared in the staff and Council registers of interest; and
- (b) assess whether management plans for the Chair's and CEO's interests in Winchelsea Mining and Groote Holdings Aboriginal Corporation are effective.

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 14 In order to provide information about the Anindilyakwa Land

Paragraph 4.62

Council's performance in achieving its purpose, the Anindilyakwa Land Council enhance its performance measures by ensuring that:

- (a) each measure is clearly explained, including the underlying methodology;
- (b) each measure has a target where practicable;
- (c) each measure is consistently expressed in the corporate plan and annual performance statements; and
- (d) a process exists to provide assurance over the completeness and accuracy of the performance results published in annual reports.

Anindilyakwa Land Council response: *Agreed.*

Recommendation no. 15 The accountable authority of the Anindilyakwa Land Council:

Paragraph 4.83

- (a) ensure the Audit Committee Chair is independent;
- (b) require the Audit Committee to provide written statements to the Council, at least annually, about the appropriateness of the ALC's financial and performance reporting; systems of risk oversight and management; and system of internal control;
- (c) annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions; and
- (d) implement an effective secretariat to support the operation of the Audit Committee.

Anindilyakwa Land Council response: *Agreed.*

Summary of Anindilyakwa Land Council response

20. The ALC's summary response is provided below and its full response is included at Appendix 1. An extract of the draft report was provided to the Northern Territory Electoral Commission (NTEC), which did not provide a response. The improvements observed by the ANAO during the course of this audit are at Appendix 2.

Thank you for the opportunity to comment on the draft audit report on the Governance of the ALC. We are proud of our achievements and welcome any opportunity to identify improvements to our governance arrangements. Effective governance is a high priority for us.

The ALC has grown rapidly as we work to secure the future of the Groote Archipelago for the benefit of TOs. We believe that the positive impact of our efforts and the governance improvements in recent years must be recognised within the context of the findings of the audit report.

We acknowledge the findings are administrative or procedural in nature, with the identified irregularities being addressed in our responses. We accept 14 out of the 15 audit recommendations and have identified an additional 10 initiatives to improve our governance arrangements that are not identified in the report. We hold the position that we mostly comply with our obligations.

Our view is the findings reflect the rapid growth of the ALC and the challenges in establishing effective governance practices with limited resources in a remote location. Some of our previous requests for additional resources from the funding agency for governance and internal audit have previously been declined.

Audit findings

1. Background

Introduction

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

Legislative framework

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

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

Aboriginal Land Rights (Northern Territory) Act 1976

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

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

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

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

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

4 As at March 2023 the Commonwealth minister responsible for the administration of the ALRA was the Minister for Indigenous Australians. The Administrator of the NT represents the Crown in the NT. Their role is essentially the same as state governors across Australia.

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

Native Title Act 1993

1.6 Determinations of native title recognise the ongoing connection of Aboriginal and Torres Strait Islander peoples to specific areas of land and waters. Successful claims under the NTA give Aboriginal and Torres Strait Islander peoples a collection of rights, which may include exclusive possession or such rights as the right to camp, hunt, use water, hold meetings, perform ceremony and protect cultural sites.⁷ As at 2016 native title had been recognised over 238,120 square kilometres (17 per cent) of land and waters in the NT.⁸

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

Public Governance, Performance and Accountability Act 2013

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

Governance structures under the ALRA and NTA

Northern Territory Land Councils

1.9 The CLC and NLC were established in 1973 as part of the Australian Government’s Aboriginal Land Rights Commission (Woodward Royal Commission) to inquire into the appropriate way to

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

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

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

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

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

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

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

recognise Aboriginal land rights in the NT. The function of the Land Councils at that time was to represent the views of Aboriginal people to the Woodward Royal Commission. The CLC and NLC are responsible for the southern and northern parts of the NT, respectively.

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

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

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

Native Title Representative Bodies

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

National Indigenous Australians Agency

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

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

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

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

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

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

Functions of the Land Councils

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

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

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

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

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

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

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

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

Land use and access arrangements

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

Table 1.1: Land use and access arrangements

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

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

Note b: In this table township leases are voluntary agreements between Traditional Owners and the Australian Government, established by the Executive Director of Township Leasing under ALRA section 19A. The Executive Director of Township Leasing manages the land in the township on behalf of the Traditional Owners and the community for up to 99 years, including sub-leases to business and governments and the protection of sacred sites. There is one Township Lease in the area of the ALC, over the townships of Angurugu, Umbakumba and Milyakburra. This was established by the Executive Director of Township Leasing in 2008 and transferred to the Anindilyakwa Royalties Aboriginal Corporation in November 2022.

Source: ANAO analysis.

About the Anindilyakwa Land Council

1.23 The ALC's jurisdiction covers the Groote Archipelago (the Archipelago), which is located off the eastern coast of Arnhem Land, approximately 650 kilometres from Darwin, in the Gulf of Carpentaria.¹⁵ The Archipelago consists of two inhabited islands (Groote Eylandt and Bickerton Island) and approximately 40 smaller islands.¹⁶

1.24 At the 2021 census, the population of the Archipelago was 2541, including 1574 Aboriginal and/or Torres Strait Islander people.¹⁷ Anindilyakwa people reside primarily in three main townships on the Archipelago — Angurrkwa (Angurugu), Ambukwamba (Umbakumba) and Milyakburra. There is also Alyangkwula (Alyangula), a township established by the Groote Eylandt Mining Company (GEMCO) in the 1960s, where most non-Indigenous people reside.¹⁸

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- 15 Anindilyakwa Land Council and Northern Territory Government, *Groote Archipelago Local Decision Making Agreement* [Internet], 2018, p. 11, available from https://ldm.nt.gov.au/data/assets/pdf_file/0010/791317/groote-archipelago-ldm-agreement.pdf [accessed 26 January 2023].
- 16 Northern Territory Government Department of Environment, Parks and Water Security, *Groote Archipelago Threatened Species Management Plan 2019-2028* [Internet], available from <https://depws.nt.gov.au/programs-and-strategies/groote-archipelago-threatened-species-management-plan> [accessed 23 May 2023].
- 17 Australian Bureau of Statistics, *Anindilyakwa (Groote), Search Census data* [Internet], ABS, available from <https://abs.gov.au/census/find-census-data/search-by-area> [accessed 26 January 2023].
- 18 Miwatj Health Aboriginal Corporation, *Alyangula*, [Internet], available from <https://www.miwatj.com.au/project/alyangula/#:~:text=Alyangula%20was%20established%20in%201963,Co uncil%20and%20Anindilyakwa%20Land%20Trust> [accessed 26 January 2023].

Figure 1.1: Map of Groote Archipelago



Source: Anindilyakwa Land Council.

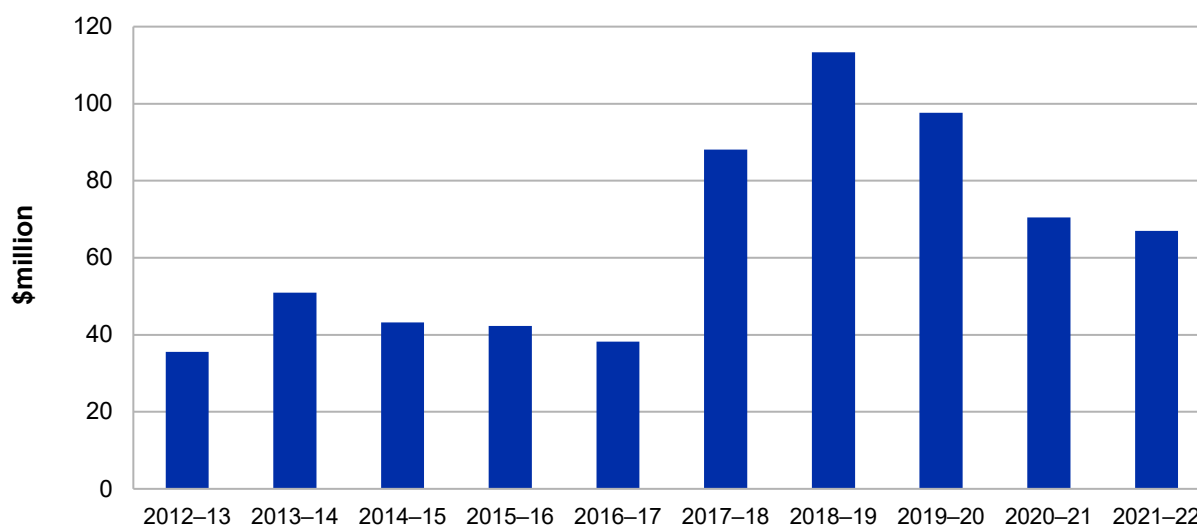
1.25 The Council, which the ALC refers to as the ‘Board’, has 26 positions of which 25 were filled as at March 2023, including 12 women. The Chair of the Council was appointed to the position in 2003 and as at March 2023 was in his seventh term.¹⁹ The Council elects a Finance Committee, which is to consist of seven Council members, including the ALC Chair and Deputy Chair.

1.26 As at June 2022 the ALC had 151 employees, 98 of whom were full time, working across ten ‘departments’.²⁰ Forty–nine per cent of ALC employees are Traditional Owners. The ALC has offices on Groote Eylandt, in Cairns and in Darwin.

1.27 In 2021–22 the ALC received \$7.4 million from the Aboriginals Benefit Account for its operations. In addition, the ALC received \$5.3 million under the NT Indigenous Economic Stimulus Package in 2021–22 and \$8 million in 2020–21 to support Indigenous businesses and jobs in the NT.²¹ It also received \$2.1 million in grants from the Australian and NT governments.

1.28 Groote Eylandt hosts the world’s largest manganese mine. GEMCO commenced mining on Groote Eylandt in 1964 and in 2023 holds approximately 34,500 hectares of leases over the island. GEMCO and other mining companies must pay royalties and rents for their exploration and mining operations. A portion of these are transferred to the ALC to administer on behalf of the Traditional Owners of the land on which the operations are taking place. Between 2012–13 and 2021–22 the ALC received \$646.6 million in royalties and rents for mining and non-mining operations (Figure 1.2).

Figure 1.2: Royalties and rents received by the ALC, 2012–13 to 2021–22^a



Note a: The ALC 2021–22 financial statements were not finalised as at March 2023.

Source: ANAO analysis of ALC financial statements.

19 Terms are for three years. The Chair served five full terms and two out of the three years between 2009 and 2012 (another Council member stepped into the position for 2009–10).

20 While the ALC draft 2021–22 Annual Report states that the ALC has 151 employees, 78 per cent of them are subcontracted to the Anindilyakwa Royalties Aboriginal Corporation.

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

1.29 In 2022 GEMCO estimated that it would cease mining operations by 2032. The ALC has a 15-year Strategic Plan 2012–2027, and a Future Groote Strategy (2019). Both documents outline social and cultural priorities, and economic development plans to secure an income for Traditional Owners after GEMCO’s closure.²² In 2018 a Local Decision Making Agreement was signed by the NT Government and ALC, in relation to six areas: housing; economic development; law, justice and rehabilitation services; education; health; and local government.²³ Several Aboriginal corporations have been established to lead the implementation of the Local Decision Making Agreement. These include the Anindilyakwa Advancement Aboriginal Corporation and the Groote Holdings Aboriginal Corporation, which are overseeing two major developments.

- Winchelsea Mining Pty Ltd was established in 2018 to exploit a manganese deposit on Akwamburrkba (Winchelsea Island). A mining lease was granted in March 2022 covering 1444 hectares and, as at March 2023, the project was awaiting final mining approvals.
- Little Paradise is an undeveloped area on Groote Eylandt leased for the establishment of a logistics base for the prospective Winchelsea Mine and other economic development projects.²⁴

Rationale for undertaking the audit

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

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

Audit approach

Audit objective, criteria and scope

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

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

22 Anindilyakwa Land Council and Groote Holdings Aboriginal Corporation, *Invested in Our Future Groote, Building the foundations for a sustainable future cultural economy* [Internet], GHAC, p. 10, available at <https://anindilyakwa.com.au/app/uploads/2022/06/Invested-in-Our-Future-Groote.pdf> [accessed 26 January 2023].

23 Northern Territory Government, *Local Decision Making* [Internet], NT Government, available from <https://ldm.nt.gov.au/> [accessed 4 February 2023].

The ALC’s Local Decision Making Agreement with the NT Government and relevant implementation plans are available from <https://ldm.nt.gov.au/about-ldm/east-arnhem> [accessed 8 March 2023].

24 As at March 2023, approximately 300 hectares were leased to build infrastructure including: a luxury resort; marine harbour and biosecurity facilities; a logistics and base camp; aquaculture facilities; a hospitality complex; a timber industries precinct; a workers’ village; a solar farm; a residential estate; and a vehicle centre.

- Has the ALC appropriately exercised its decision-making authority under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Public Governance, Performance and Accountability Act 2013*?
- Is the ALC effectively governing its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976*?
- Has the ALC established appropriate arrangements to promote the proper use and management of resources?

Audit methodology

1.34 The audit involved:

- reviewing legislation, regulations, policies and best practice standards;
- reviewing ALC documentation, including charters, meeting papers and minutes, policies and procedures, annual reports, corporate plans and correspondence;
- visits to the NT including the Archipelago, Cairns and Darwin;
- observing meetings of the ALC Council and Finance Committee;
- meetings with Council members and ALC staff;
- meetings with officers from relevant business areas within the:
 - Australian Government (including the NIAA, Office of Township Leasing and Office of the Registrar of Indigenous Corporations);
 - NT Government (including: the Office of the Chief Minister and Cabinet; Department of Infrastructure, Planning and Logistics; and NT Electoral Commission);
 - NT local government; and
- 47 meetings with and 19 submissions from stakeholders including businesses, Aboriginal corporations, members of the public, peak bodies and non-government organisations operating on the Archipelago and NT mainland.

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

1.36 The team members for this audit were Alicia Vaughan, Dr Isabelle Favre, Weinnie Zhou, Dr Jennifer Canfield, Eliza Glascott, Kai Swoboda, Graeme Corbett, Michael Commens, Elizabeth Robinson, Lily Engelbrethsen, Grace Sixsmith, Sean Brindle, Henry Maher, Katiloka Ata, Andrew Grice, Daniel Whyte and Christine Chalmers.

2. Exercise of decision-making authority

Areas examined

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

Conclusion

Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. A delegation instrument for ALRA functions and powers is not valid. A lack of specificity raises questions over whether functions and powers belonging to the ALC accountable authority under the PGPA Act have been invalidly delegated by the Council. Greater clarity is required for the NT Land Councils in relation to how accountable authority delegations are meant to be implemented under the two Acts.

Areas for improvement

The ANAO made two recommendations to the ALC aimed at: developing delegation instruments that comply with section 28 of the ALRA; and establishing a governance document setting out how the accountable authority wishes to exercise its joint authority. The ANAO suggested that the ALC increase the specificity of its instruments of delegation and avoid sub-delegation which is not allowable under the ALRA.

2.1 Authorisations and delegations are a fundamental part of good governance. They play an important role in ensuring that the entity is acting in accordance with the legal framework that applies to it. An entity needs to put in place arrangements to devolve decision-making power from the ultimate repository of that power to the relevant officers of the entity, as the ultimate repository of that power cannot do everything.²⁵

2.2 Appendix 4 shows how Land Council decision-makers are defined under the ALRA, *Native Title Act 1993* (NTA) and PGPA Act. Under the ALRA, the members of the Council, including an elected Chair and Deputy Chair, are the decision-makers. Under the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the accountable authority of the Land Council is defined as the Chair of the Council and the Chief Executive Officer (CEO). The former is to be elected by the Council and the latter is to be appointed by the Council under section 27 of the ALRA, which states that the Council may employ staff.

2.3 Whether the Council, Native Title Representative Body or accountable authority has decision-making authority depends upon the decision that is being made and whether that decision relates to powers and functions under the ALRA, NTA²⁶ or PGPA Act, respectively. Appendix 3 outlines the Councils', Native Title Representative Bodies' and accountable authorities' respective powers and functions under the ALRA, NTA and PGPA Act. In summary: the Land Council is the primary decision-maker in relation to the land; Native Title Representative Bodies have the power

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

26 The NTA is not relevant to the ALC's governance in that the ALC is not a Native Title Representative Body.

‘to do all things necessary or convenient to be done for or in connection with the performance of its functions’; and the accountable authority is the primary decision-maker in relation to performance and proper use of resources under finance law.

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

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

There is a delegation policy, however the Land Council has not validly delegated its functions and powers under the ALRA. A delegation instrument has not been established under common seal of the Land Council. The document that seeks to be a delegation instrument lacks specificity. PGPA Act functions and powers belonging to the accountable authority may have been invalidly delegated by the Land Council. The delegation instrument also allows for sub-delegation, however there is no legislative power for sub-delegation included in the ALRA.

2.5 The Australian Government Solicitor has noted that when enabling legislation establishes a board or Council as having ultimate control over the operations of the entity, most commonly the enabling legislation prescribes the CEO or director as the officer responsible for the day-to-day management of the entity.²⁷ This may result in the CEO having ‘implied authority’, although the Australian Government Solicitor advises that even so it is generally better that decision-making power be expressly delegated.²⁸ The ALRA is silent on the role of the CEO (in both their capacity as a CEO and as one of the accountability authorities) or other officials, and an instrument of delegation for functions and powers under the ALRA is therefore required.

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

2.7 The *Performance Audit of the Northern Territory Land Councils*, conducted by Department of Finance’s Office of Evaluation and Audit²⁹ in 2008 concluded that the ALC did not have a clear instrument of delegation. The audit found that:

- the ALC had recorded the delegation of Council functions and powers through minuted decisions at full Council meetings;

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

28 *ibid.*, p. 2.

29 In December 2009, the functions of the Office of Evaluation and Audit (Indigenous Programs) were transferred from the Department of Finance and Deregulation to the ANAO.

- these minutes made broad ‘catch-all’ statements that did not specifically refer to sections of the ALRA;
- staff needing to clarify whether they had delegated authority were referred to meeting minutes;
- this method of recording delegations lacked transparency and specificity, was inefficient, placed too great a burden on delegates to interpret the minutes, and was non-compliant with section 28 of the ALRA; and
- the management of delegations through multiple internal documents increased the risk of inaccuracy, inconsistency and inefficiency.

2.8 The 2008 audit recommended to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)³⁰ that the ALC³¹ record in writing under the common seal of the Land Council the functions and powers delegated by the full Council to persons and committees³², and record the functions and powers retained by the full Council.

2.9 Two ALC documents refer to delegations: the Finance Committee meeting rules and a ‘Delegations Policy’.

- Finance Committee meeting rules — The Finance Committee meeting rules state under the heading ‘Delegated Powers’ that ‘As a committee formed pursuant to s.29A of the ALRA, the Finance Committee shall exercise the powers delegated to it in writing by the ALC.’
- Delegations Policy — The Delegations Policy maps three types of ‘authorities’ (endorse, approve, inform) against different ALC activities and functions, such as purchasing, development of policies and procedures, recruitment and procurement. As an overarching statement, the Delegations Policy establishes that:

The Board of the ALC³³ delegates authority to the Chief Executive Officer (CEO) of the ALC to enable the CEO to manage the organisation. The policy sets out the delegations from the Board to the CEO and from the CEO to the organisation.

In the Delegations Policy, named ‘approvers’ (defined as the ‘person with accountability for deciding’) include the CEO, Audit Committee, Chief Financial Officer (CFO), Human Resources and Performance Manager, departmental managers, support officers and team leaders, among others. The Delegation Policy delegates decision-making authority to the Council Chair for ‘organisation structure’ (this is the only function delegated to the Chair).

30 As a result of an Administrative Arrangements Order issued on 18 September 2013, the Department of Social Services was established and assumed most of the responsibilities of FaHCSIA; while indigenous affairs functions were assumed by the Department of the Prime Minister and Cabinet.

31 Department of Finance and Deregulation, *Performance Audit of the Northern Territory Land Councils* [Internet], 2008, Recommendation 11, available from https://www.aph.gov.au/~media/Estimates/Live/fapa_ctte/estimates/add_0809/finance/answers/F56_attachment.ashx [accessed 3 March 2023].

32 As at December 2022 the Finance Committee, established in 2015, was the only committee established under section 29A of the ALRA.

33 The ‘Board of the ALC’ is not referenced in the ALRA. In practice the ALC uses this terminology to refer to the Council. If a power is to be delegated, it needs to be specifically delegated from the entity that has been given the power (in this case the Land Council, not the Board).

2.10 Neither document represents an appropriate delegation instrument.

- The Finance Committee meeting rules are not an instrument of delegation, however assert that certain delegations have been conferred on the Finance Committee by the Council in writing. The Finance Committee is mentioned once in the Delegation Policy, as an ‘endorser’ of the ‘Rulebook for Community Support’ and, additionally, that delegation is invalid for the reasons outlined below.
- The Delegations Policy is not established under common seal of the ALC, as required under section 28 of the ALRA. The Delegations Policy indicates that the policy was approved on 16 March 2022, but does not indicate who approved the policy, and it specifies that the CEO is the ‘content owner’, which is not consistent with the requirements of the ALRA.

Recommendation no. 1

2.11 The Anindilyakwa Land Council develop delegation instruments that comply with section 28 of the ALRA, including by establishing the delegations under common seal of the Land Council.

Anindilyakwa Land Council response: *Agreed.*

2.12 *The ALC will wait for “greater clarity...for the NT Land Councils in relation to how accountable authority delegations are meant to be implemented under the... [PGPA and ALRA]” (refer to Chapter 2 p.26 of the audit report) and will seek legal advice before implementing changes to the delegation document. In the meantime, it will remain in use as a day-to-day means of approving the use of ALC resources.*

2.13 The Delegations Policy has other deficiencies.

- It does not clearly identify which specific sections of the ALRA are being delegated to officials. For example, the Delegations Policy seeks to delegate the ‘Mining Rents and Royalties Distribution Framework’ but does not identify which legislative power in the ALRA it is designating. This lack of specificity makes it difficult to clearly identify which ALRA functions and powers are retained by the Council.
- It delegates provisions of the ALRA which do not provide the Land Council with powers, and which therefore cannot be delegated by the Land Council. For example, the Delegations Policy delegates subsection 64(1) as ‘general expenditure within budget’, however this provision of the legislation relates to moneys being debited from the Aboriginals Benefit Account for distribution between the Land Councils as the Minister for Indigenous Australians (the Minister) determines.
- It explicitly allows for sub-delegation. The specified process involves getting approval in writing from the approver’s line manager, or in the event that a delegate has not been nominated, the sub-delegate is the line manager. For each delegation under this policy a new delegation instrument is required to be made.³⁴ Typically it is not possible for a delegate to ‘sub-delegate’, unless there is a specific legislative power to sub-delegate.

³⁴ The ANAO did not examine sub-delegation instruments.

Opportunity for improvement

2.14 The Anindilyakwa Land Council could increase the specificity of the delegation instrument by referring to the legislative sections it delegates; and avoid sub-delegation.

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

A delegation instrument made in 2022 by the Council may invalidly attempt to delegate powers and functions that belong to the ALC accountable authority under the PGPA Act. A lack of specificity with regard to legislative sections in the delegation instrument makes this difficult to determine. There is no governance document regarding how the CEO and Chair of the ALC (the joint accountable authority) expect to manage their joint responsibilities. There is also a lack of clarity as to whether the accountable authority of the ALC has any power to delegate under the PGPA Act and ALRA.

2.15 The ALC accountable authority has not established any Accountable Authority Instructions under section 20A of the PGPA Act, and there is no delegation instrument relating to the ALC accountable authority's functions and powers.

2.16 The Delegations Policy (see paragraph 2.9) seeks to delegate functions and powers which may not belong to the Council, but rather to the accountable authority under the PGPA Act. For example, the Council delegates to various ALC officers financial delegations and risk management functions. The lack of specificity in the delegations means the ANAO cannot determine if these are related to functions that are incidental to Council's functions under the ALRA, or more correctly functions and powers held by the accountable authority under the PGPA Act.

2.17 Separate responsibility for approving the risk framework and risk appetite / tolerance is assigned in the Delegations Policy to the CEO and Council, respectively. Under the PGPA Act the accountable authority of a Commonwealth entity must establish and maintain an appropriate system of risk oversight and management. The risk management function is delegated to the CEO for approval in the Delegations Policy. Risk management is a direct responsibility of the CEO and Chair, under the PGPA Act, as the accountable authority of the ALC.

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

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

Recommendation no. 2

2.20 The Anindilyakwa Land Council establish a governance document setting out:

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

Anindilyakwa Land Council response: Agreed.

2.21 The ALC will modify existing governance documents to set out:

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

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

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

3. Governance under the Aboriginal Land Rights (Northern Territory) Act 1976

Areas examined

This chapter examines whether the Anindilyakwa Land Council (ALC) has effectively governed its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).

Conclusion

The ALC's governance of its legislative functions under the ALRA is partly effective. Governance arrangements to manage operations have not fully met the intent of the ALRA with respect to appointments, meetings and training. Governance arrangements to support the exercise of the ALC's key legislative functions are partly appropriate. In the context of high value land use development proposals, the ALC has not fully met its obligation to satisfy itself that Traditional Owners have understood the proposals they consent to. ALC provides assistance to Aboriginal corporations, as required, however the arrangements lack transparency. Decisions about the distribution of royalty equivalents also lack transparency.

Areas for improvement

The ANAO made eight recommendations aimed at: defining the roles and responsibilities of Council members and providing members with training; establishing formal arrangements for the Council to determine the Chief Executive Officer's employment conditions; increasing community accessibility to meeting rules and minutes; conducting Council and Finance Committee meetings in accordance with the rules; establishing policies and procedures for administering and monitoring Part IV agreements; ensuring that financial benefit to the ALC is not gained from the ALC's assistance to Aboriginal corporations; improving processes for consulting Traditional Owners for land use proposals; and strengthening the royalty equivalents distribution process.

The ANAO also suggested the ALC: document key discussion points in Council and Finance Committee meetings; update its procedures to address the potential for changes to land use proposals; align its complaints management arrangements with the Commonwealth Ombudsman's guidance; and enhance its communications on projects funded by royalty equivalents.

3.1 The Northern Territory (NT) Land Councils' key purpose is to assist in claiming Aboriginal land and once a claim has been granted, to manage Aboriginal land on behalf of Traditional Owners and other Aboriginal people living in the area of the Land Council. To achieve this purpose, the ALRA prescribes that specific governance arrangements must be in place for Land Councils to manage their operations. The arrangements relate to: appointments to key governance positions; the establishment and conduct of Council and committee meetings; and the establishment of registers of Council and Land Trust members, and Traditional Owners.³⁵

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

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

- Negotiation and assistance — Land Councils must assist Traditional Owners and Aboriginal people with land claims³⁶, negotiate on behalf of Traditional Owners and other Aboriginal people with third parties wanting to use or access Aboriginal land; and assist Aboriginal people to carry out commercial activities and protect sacred sites.³⁷
- Consultation and consent — Land Councils must consult with Traditional Owners and Aboriginal people in the area of the Land Council about the management of land and endeavour to protect their interests.³⁸
- Distribution of royalties and payments — Land Councils must distribute royalties and other payments, such as rents, to, or on behalf of, Traditional Owners.³⁹

3.3 Land Councils and Land Trusts are exempt from compliance with the *Freedom of Information Act 1982*.⁴⁰ There are also no appeal or review mechanisms in the ALRA. This reinforces the importance of effective governance arrangements to support the management of Land Councils' key activities.

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

The ALC's governance arrangements to manage and implement its operations are partly appropriate. There is an approved method of choice, however the method of choice is not fully compliant with ALRA requirements. The method of choice is followed. Council members do not receive training or adequate guidance on how to discharge their duties, which are not clearly documented. Arrangements for the Council's scrutiny of the Chief Executive Officer's performance review, remuneration and other employment conditions in August 2022, prior to renewing the engagement, were not robust. Council and committee meeting rules are established appropriately but not fully implemented. The Finance Committee does not provide briefings to the Council that allow it to make fully informed decisions. ALC has met the intent of the ALRA in relation to maintaining registers of members.

Appointment of key governance positions

3.4 The ALRA prescribes how Council and Land Trust⁴¹ members, including the Chair and Deputy Chair of the Council, must be appointed (see Appendix 6). The ALRA specifies that:

- Council Members shall be chosen by Aboriginal people living in the area of the Land Council in accordance with a 'method of choice', which is to be approved by the Minister; and

36 There are no unresolved claims in the area of the ALC.

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

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

39 *ibid.*, section 35.

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

41 Under the *Aboriginal Land Rights (NT) Act 1976* (Cth) section 4, Aboriginal Land Trusts are established by the Minister responsible for the administration of the ALRA to hold title and exercise their powers as owners of the land for the benefit of Aboriginal people.

- Land Trust members shall be appointed by the Minister based on nominations from the Council.

Land Trust member appointments

3.5 In accordance with the ALRA, Anindilyakwa Land Trust members are nominated by the ALC Council and appointed by the Minister for Indigenous Australians (the Minister) every five years. Members were last appointed in 2020. There are six positions, of which five were filled as at March 2023.

Council member appointments

Method of choice

3.6 The ALC's method of choice for Council members was last approved by the Council in February 2018. The Minister approved the method of choice on 26 April 2018.

3.7 There are 26 positions on the ALC Council, comprising 23 clan representatives (one or two for each of the 14 clans) and three community representatives (one for each township of Angurugu, Umbakumba and Milyakburra). Elections to the Council are held every three years. The elections are to take place in two stages.

- Nominations — Members of clans and communities submit individual nominations to the ALC.⁴² If the number of nominations for each clan does not exceed the number of positions available, then the nominated candidates are automatically appointed as Council members.
- Elections — If the number of nominations exceeds the number of positions available, elections within clans and communities are conducted by secret ballot and overseen by a 'Returning Officer' from the Northern Territory (NT) Electoral Commission or the Australian Electoral Commission.⁴³ Elections are to be open for no less than seven days.

3.8 Although approved by the Minister, the ALC's method of choice is not fully compliant with the requirements of the ALRA. The ALRA (subsection 29(1)) stipulates that the members of a Land Council are 'chosen by Aboriginals living in the area of the Land Council'. However, the ALC's method of choice states that: 'The election process is to provide for postal voting for eligible electors not resident in the Groote Archipelago.' The ALC advised the ANAO that it does not conduct any postal voting.

2018 and 2021 Council member elections

3.9 In 2018 members for nine out of 14 clan groups and one of three communities were declared on the basis of nominations only. In 2021 members for all three communities and all except one clan were declared on the basis of nominations only. Approximately three-quarters of the members elected to the Council in 2021 were current members or had been members in the past.

42 Any individual clan member who meets the eligibility criteria is permitted to submit a nomination. Clan members can nominate themselves, with the approval of another clan member; or nominate another clan member, with the approval of the nominee.


43 Prior to the 2018 ALC Board election, the Australian Electoral Commission assisted the ALC in its conduct of elections. From the 2018 election onwards, the 'Returning Officer' was appointed from the NT Electoral Commission.

3.10 The method of choice requires that elections are advertised in public locations at least four weeks before the election commences; and that other methods may also be used to publicise the election (including email, newspaper and verbal communication). In 2018 two complaints were submitted to the NT Electoral Commission stating that there had been inadequate public notification of the ALC elections and that the method of choice was not publicly available. The NT Electoral Commission responded that the ALC was responsible for 'nomination eligibility and awareness', and it was 'satisfied' that the processes had been 'adequate'. The NT Electoral Commission did not directly address the complaint that the method of choice was not publicly available. The ALC published the method of choice on its website on 28 March 2023.⁴⁴

3.11 A consistent theme of the ANAO's consultations with stakeholders in 2022 was concern about the visibility and accessibility of the nomination and election process. In 2021 the ALC advertised the elections (including the call for nominations) at least six weeks before election week. This included: radio broadcasts; flyers displayed in the ALC's offices and distributed to stakeholders for display in other community locations; and notices posted on the ALC's website and Facebook page (Figure 3.1).

44 Anindilyakwa Land Council, *Method of Choice for Members* [Internet], ALC, available from <https://anindilyakwa.com.au/method-of-choice-for-members/> [accessed 2 April 2023.]

Figure 3.1: Public notice for September 2021 Council member appointments



ALC Election Notice

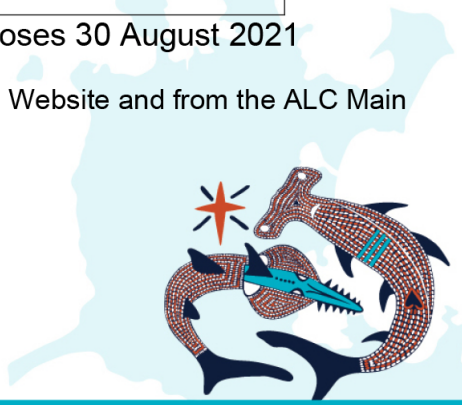
The 2021 Anindilyakwa Land Council Election will be held
between 13 September and 19 September 2021

Membership of the Land Council will be made up as follows:

Clan	Maximum number of ALC Members
Amagula	2
Mamarika	2
Bara/Murrungun	2
Jaragba	2
Wurramara	2
Bara Bara	2
Lalara	2
Maminyamanja	2
Wurramarrba	2
Wurragwagwa/Yantarrnga	2
Wurrawilya	2
Durilla	1
Angurugu	1
Umbakumba	1
Milyakburra	1

Nominations open 2 August and closes 30 August 2021

Nomination forms will be available from the ALC Website and from the ALC Main Office



30 Bougainvillea Drive, Alyangula NT | PO Box 172, Alyangula NT 0885
T: (08) 8987 4006 | F: (08) 8987 4099 | E: admin@alcnt.com.au

anindilyakwa.com.au

Source: ALC.

Guidance and training for Council members

3.12 The method of choice states that at the first meeting after the Council member election, members are to be provided with an induction. Following the 2018 and 2021 elections, the ALC did not provide an induction. In 2021 the minutes of the first meeting record that the Code of Conduct and expectations were discussed. The ALC has not developed training or documentation on the roles and responsibilities of Council and committee members. As at November 2022, six Council members had commenced or completed a governance-related training course through their directorship of other organisations.⁴⁵

Election of the Chair and Deputy Chair

3.13 The method of choice describes the process by which the Chair and Deputy Chair are to be elected. This is done by Council members through an anonymous ballot within 14 days of the completion of the Council member elections. In line with the ALRA, the ALC Chair and Deputy Chair hold office for a period of three years and are eligible for re-election. The 2021 Chair and Deputy Chair election process conformed to the method of choice.

Recommendation no. 3

3.14 The Anindilyakwa Land Council:

- (a) clearly define and document the roles and responsibilities of the full Council, Chair, Deputy Chair and committee members; and
- (b) implement regular and mandatory training on roles and responsibilities for new and continuing Council members.

Anindilyakwa Land Council response: *Agreed.*

3.15 *The ALC will:*

- (a) *update existing documents to clearly define and document the roles and responsibilities of the ALC Board (Council), Chair, Deputy Chair, and Finance Committee (Committee) members; and*
- (b) *implement regular and mandatory training on roles and responsibilities for new and continuing ALC Board (Council) members. Governance training commenced on 18 April 2023.*

Remuneration of Council Chair and members

3.16 The remuneration of Council members is determined by the Remuneration Tribunal.⁴⁶ As at March 2023 the prescribed remuneration of the Chair as a full-time office holder was \$199,330. The prescribed daily fees for Council members when engaged on the functions or duties of the Land Council were \$344.⁴⁷ The ALC advised the ANAO that, as at March 2023, seven members of the

45 As at 30 June 2022, 17 of the 26 Council members were directors of at least one Aboriginal corporation.

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

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

Council including the Chair were also employees of the ALC. The ALC advised that members who are also full-time or part-time employees of the ALC and who receive a salary for their ALC employment do not receive a Council sitting fee.

3.17 Under subsection 7(11) of the *Remuneration Tribunal Act 1973*, a full-time public office holder is prohibited from receiving remuneration for holding, or performing the duties of, another public office. The Chair advised the ANAO that he receives sitting fees for seven organisations outside the ALC. It is not clear to the ANAO that the Chair holding multiple paid positions in other organisations is consistent with the *Remuneration Tribunal Act 1973*. The ANAO did not examine whether the Chair's performance of duties for other entities impact on his capacity to complete his duties for the Council as a full-time remunerated public office holder.

Chief Executive Officer appointments, employment conditions and reviews

3.18 Under the ALRA, the Council has the power to employ staff, including the CEO of the ALC.⁴⁸ The CEO as at March 2023 was appointed by resolution of the Council in September 2011, following a competitive selection process.

3.19 The power to employ staff (excluding the CEO's own appointment) was delegated by the Council to the CEO (see paragraph 2.9). The ALC does not have a policy, approved by the Council, documenting the process for the appointment, review and remuneration of the CEO.

- The CEO responsibilities and requirements for performance reviews are defined in the employment contract and in two policies: the Organisational Design Policy (approved by the CEO); and the Human Resource (HR) Policy (approved by the HR manager, who reports to the CEO). Neither policy was endorsed by the Council.
- The CEO's remuneration is stipulated in his 2022–2027 employment contract, which was signed by the Chair (who does not have the delegation to approve this). The CEO's previous contract expired in August 2021, and was not renewed until December 2022. The ALC was unable to provide evidence of how the CEO's remuneration was determined between August 2021 and December 2022.

3.20 The HR Policy requires that CEO performance reviews are conducted annually against Key Performance Indicators (KPIs) established in the employment contract. The reviews involve a self-assessment by the CEO, followed by an assessment by a panel consisting of the Chair of the ALC Audit Committee, Chair of the Council and another Council member. The ANAO analysed the CEO's performance review for 2022, and observed the Council meeting of 30 August 2022 where the performance review was conducted. The panel assessed the CEO as strongly performing against all KPIs, with one area for improvement (community engagement). The Audit Committee Chair communicated the assessment to the Council, which then resolved to renew the CEO's contract for five years.

3.21 The full Council was not given: an opportunity to review the performance assessment in detail; a copy of the CEO's draft contract; or information about the terms of the contract. The Audit Committee Chair advised the Council that the CEO's salary would increase by around two per cent from the previous year and that a new work location had been added to the contract. The Audit Committee Chair did not advise the Council of: the new salary amount; an increase in potential bonus payments from 7.5 per cent to nine per cent; an increase in annual leave from four to five

48 ALRA paragraph 27(1)(a).

weeks; or a decrease from 20 to 17.5 per cent in the reduction that is applied to the CEO's salary as a result of his concurrent position in Winchelsea Mining (see Appendix 8).

Recommendation no. 4

3.22 The Anindilyakwa Land Council establish formal arrangements, endorsed by the Council, to determine and manage the recruitment, employment conditions, performance management and remuneration of the CEO.

Anindilyakwa Land Council response: *Agreed.*

3.23 *The ALC will establish formal arrangements, endorsed by the ALC Board (Council), to determine and manage the recruitment, employment conditions, performance management and remuneration of the CEO.*

Establishing and implementing meeting and committee rules

Establishment of committees

3.24 The ALC established the Finance Committee in accordance with the ALRA (see Appendix 6).

Establishment of Council and Finance Committee meeting rules

3.25 The ALC has largely complied with the requirements of the ALRA (see Appendix 6) in relation to the establishment of Council and Finance Committee meeting rules, which were approved by the Minister in April 2018. The ALRA prescribes that meeting rules and minutes must be made available for inspection. The Council meeting rules contain the requirement for meeting minutes to be available for inspection, as required, however the Finance Committee meeting rules do not. The ALC advised the ANAO that there have been no requests and that it does not promote the fact that meeting rules and minutes are available for inspection due to administrative burden.

Recommendation no. 5

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

Anindilyakwa Land Council response: *Agreed.*

3.27 *The ALC will provide instructions on how to access minutes (i.e. viewing access only at the ALC offices) as follows:*

- *ALC Website – Board Members page*
- *Announcement on ALC Facebook page (to be issued within one week each set of minutes are finalised, and the requirement will be reflected in ALC Board (Council) and Finance Committee (Committee) rules)*
- *announcement on community radio within one week after the minutes are approved*

3.28 *The website instructions and announcements will reflect the requirements of the ALRA s29A (7) Finance Committee and ALRA s31(11) Meetings of the Council, which states that traditional Aboriginal owners of Aboriginal land living in the area of the ALC must be allowed to*

inspect, at any reasonable time and without charge, the minutes of its meetings (other than any part of the minutes that relates to an excludable matter).

Implementation of meeting rules

3.29 The ANAO analysed records of the Council and Finance Committee meetings to determine if meeting rules were complied with.⁴⁹ Some meeting rules were implemented appropriately.

- Quorum was met for all Council and Finance Committee meetings.
- Council minutes were endorsed as required⁵⁰ and Finance Committee minutes were recorded as being 'presented' but not endorsed.
- Decisions were made by a process of 'moving' and 'seconding' by members, and appropriately recorded.

3.30 The substance or intent of some meeting rules were not met.

- Meeting frequency — In 2021–22 Council meetings were held at least monthly (except for January) in line with the meeting rules, however Finance Committee meetings were held every six months when the meeting rules state that they should be held no less than six times annually.
- Review of key governance documents — The meeting rules state that key governance documents should be reviewed annually by members. ANAO analysis of the minutes for 1 July 2019 to 30 June 2022 shows that this rule was not complied with for all key governance documents, as the meeting rules, register of interests and annual report were not reviewed by the Council each year.
- Briefing for meetings — The meeting rules require 'briefing papers, presentations and reports to facilitate background and understanding of the matters discussed'. Records examined for 2021–22 showed that the required materials were not circulated to members before, during or after the meetings. The ALC advised the ANAO that the reason for not circulating information ahead of Finance Committee meetings was due to time constraints, to prevent disclosure of confidential matters into the community and to prevent members from being influenced by their constituents. During the meetings observed by the ANAO in August 2022, supporting information was presented on large screens, although some members commented that the text was not always legible.⁵¹

49 During 2021–22, 16 Council meetings and two Finance Committee meetings were conducted.

50 For six of these meetings, the endorsement of the minutes was either 'moved' or 'seconded' by a member who was not recorded as being present at the meeting whose minutes were being endorsed.

51 Cultural protocols require that certain members avoid direct contact with each other (including physical proximity). This can result in some members being situated some distance from the screen.

Recommendation no. 6

3.31 The Anindilyakwa Land Council conduct Council and Finance Committee meetings in accordance with the rules, and in a manner that supports effective discussions and decision-making, including by:

- (a) conducting Finance Committee meetings at the prescribed frequency;
- (b) annually reviewing key governance documents; and
- (c) implementing meeting rules aimed at facilitating member understanding of matters discussed.

Anindilyakwa Land Council response: *Agreed.*

3.32 *The ALC will update the Board (Council) and Finance Committee rules to ensure they include improved practices that facilitate member understanding of matters discussed and comply with the law. The rules will be reviewed every three years which aligns to the ALC Board election cycle. Additional funding will be sought from NIAA for corporate secretarial services.*

3.33 The ALRA states that Traditional Owners and Aboriginal people living in the area of the Land Council should be able to access meeting minutes. For access to be meaningful, the minutes should be clear and provide more information than just a summary of decisions. The ALC meeting rules require that the minutes are an ‘accurate account of the business discussed and the decisions reached’. Minutes that documented decisions were recorded for all meetings, however the minutes did not record the business discussed, concerns raised or options considered. The ALC advised that this is due to some discussions taking place in Anindilyakwa language, and that as an alternative means of communication with Traditional Owners, the ALC produces videos in Anindilyakwa language. However, the videos do not cover the breadth of matters and decisions dealt with in meetings.

Opportunity for improvement

3.34 To better meet the intent of the ALRA with respect to access and transparency, the Anindilyakwa Land Council could make meeting minutes more fit for purpose by more clearly documenting key points discussed in meetings.

3.35 The role of the Finance Committee is to make recommendations to the Council regarding the distribution of royalties and land lease payments. Under section 28 of the ALRA, decisions over the distribution of royalties and land lease payments must be made by the Council and cannot be delegated.⁵² The Finance Committee meeting rules state under the heading of ‘Delegated Powers’ that:

As a committee formed pursuant to s.29A of the ALRA, the Finance Committee shall perform the following functions conferred upon it by the Anindilyakwa Land Council: 4.1.1 recommendations to the ALC pursuant to s.35(2) and/or s. 35(4) 4.1.2 review matters for an [sic] on behalf of the ALC so as to make recommendations to the ALC concerning matters pursuant to s 35A, s. 35B and/or s. 35C of the ALRA.

⁵² Subsection 28(2) of the ALRA prescribes that the making of determinations under section 35 is the prerogative of the Land Council and is a power that cannot be delegated to a committee.

3.36 In the 2021–22 meetings of the Land Council, the Finance Committee did not provide complete information to allow the full Council to make informed decisions about the Finance Committee’s recommendations. Until the August 2022 meeting, Council members were briefed on funding applications that were recommended by the Finance Committee, but not those that the Finance Committee had not supported. From August 2022 Council members were briefed on all applications.

Compiling and maintaining registers

3.37 The ALC complies with the ALRA (see Appendix 6) in maintaining a register of Council members. It maintained a record of Land Trust members from 2020 onwards. Schedule 6 of the ALRA provides a detailed description of the area held by the Anindilyakwa Land Trust. The ALC advised that this is sufficient to meet the ALRA requirement to include in registers descriptions of each area of the land held by the Land Trusts and ALC registers do not contain this information. The ALC also maintains a register of Traditional Owners under the ALRA (section 24).⁵³

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

The ALC has partly appropriate governance arrangements to exercise its key legislative functions.

- Negotiating and assisting — Negotiating and assisting activities are not always supported by robust processes. There are procedures for managing section 19 agreements, however not for administering Part IV agreements or land access permits. Compliance with section 19 agreement conditions is not monitored, and monitoring of Part IV agreements is developing. The ALC assists Aboriginal corporations with commercial activities and could provide greater assurance that the ALC is not receiving financial benefit from these arrangements (which is prohibited by the ALRA). Processes to protect sacred sites are largely appropriate.
- Consulting and obtaining consent — An analysis of consultation on section 19 and Part IV agreements showed that Traditional Owners were engaged and consent was sought, however there could be improvements in: how the benefits and risks of proposals are presented; the use of interpreters; broader community engagement; and procedures to identify and deal with the risk that consent has changed following changes to proposals.
- Distribution of monies — There is a clear procedure for the distribution of Part IV agreement monies. Processes to distribute the ALC’s largest category of land use monies (royalty equivalents) lack transparency. The rationale for assessment outcomes is not clearly documented.

53 Registers of Traditional Owners can establish genealogies, which are required for Traditional Owners pursuing land claims to prove their customary relationship with the land. The register can also be used to identify the Traditional Owners from whom consent must be obtained by the Land Councils when delivering other functions (for instance when negotiating land use and access).

Negotiating and assisting

Negotiating Aboriginal land use and access

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

Section 19 agreements

3.39 As at November 2022, 34 active s19 agreements were being administered by ALC. The ALC's policy and procedures outline key steps in the s19 agreement process. The s19 lease template employed by the ALC contains a range of standard conditions with which the lessee must comply, including that the lessee will: not remove any extractive minerals without a separate agreement; endeavour to minimise 'deleterious' environmental impacts; obtain authorisation from the Aboriginal Areas Protection Authority (AAPA) for any sacred sites⁵⁴; and maximise employment opportunities for local Aboriginal people. The s19 procedure states that the ALC officer is to monitor the lease for compliance with the conditions of the s19 agreement, report non-compliance to the relevant ALC manager and consult with Traditional Owners on any non-compliance. The ALC adopts a reactive approach to compliance, and does not undertake monitoring to detect non-compliance with lease conditions.

Part IV agreements

3.40 As at February 2023, eight Part IV agreements were being administered by ALC. Under the ALRA, council consent is required for an exploration licence and is not required for a mining agreement.⁵⁵ The Council must enter into a mining agreement, if sought by the holder of an exploration licence, although it may negotiate the terms and conditions. For both mining and exploration, an agreement cannot be entered into unless consultations have been conducted with Traditional Owners and any affected Aboriginal people.

3.41 As at March 2023 the ALC has not developed a policy or procedures to support the administration of Part IV agreements. The ALC's draft 2021–22 Annual Report stated that 'Commitments under existing agreements are met', however systematic compliance monitoring was not undertaken against all key commitments established in agreements (for example Traditional Owner employment and cultural awareness training).

3.42 From February 2022 the ALC began conducting meetings with the Groote Eylandt Mining Company (GEMCO) on a weekly to fortnightly basis. In 2022 it performed two environmental site inspections; and responded to two incident reports from GEMCO where non-conformances were identified. The ALC did not perform any site inspections for Winchelsea Mining exploration activities

54 The AAPA is an independent statutory authority established under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT). The AAPA issues Authority Certificates to applicants, which protect sacred sites from damage by setting out the conditions for using or carrying out works proposed on an area of land or sea. The AAPA states that the Authority Certificate is legal document which 'indemnifies the holder against prosecution under the Act'.

55 Before the ALRA was amended in 1987, 'two approval processes were needed for mining-related activity on Aboriginal land; approval for exploration, and then approval for mining. (...) The 1987 Amendments conjoined these processes so that only one approval (or veto) from Traditional Owners was needed or could be exercised, although there are still separate agreement-making processes for exploration and mining.' *BILLS DIGEST NO. 28, 2021–22: Aboriginal Land Rights Act (NT) Amendment (Economic Empowerment) Bill*, p. 25.

and conducted one environmental inspection under the related mining agreement in September 2022. The ALC advised the ANAO that it plans to introduce biannual routine inspections in 2023.

Recommendation no. 7

3.43 The Anindilyakwa Land Council establish:

- (a) a policy and procedures for administering Part IV agreements; and
- (b) systematic monitoring against section 19 and Part IV agreements to detect and address non-compliance with agreement conditions.

Anindilyakwa Land Council response: *Agreed.*

3.44 *The ALC will establish:*

- (a) *a policy and procedures for administering Part IV agreements; and*
- (b) *systematic monitoring against ALRA s19 agreements and Part IV agreements to detect and address non-compliance with agreement conditions.*

3.45 *Additional funding will be sought from NIAA to purchase a Governance Risk and Assurance system in which to manage systematic monitoring. Additional human resources will also be required.*

Land access permits

3.46 Under the ALRA (section 70), unless a person holds a lease or a license, they cannot enter or remain on Aboriginal land, or use a road on Aboriginal land, without a permit.⁵⁶

3.47 The draft 2021–22 Annual Report states that the ALC issued 875 visitor permits in that year. The ALC has not developed procedures to guide staff through the permit application and management process. However, it has established two advisory groups — a staff advisory group to select research permit applications for presentation to the Council and a Traditional Owners advisory group to provide advice to ALC on permit non-compliance (among other matters). In its draft 2021–22 Annual Report, the ALC reported that it had conducted 40 compliance controls over permits, from which four instances of permit non-compliance were identified. The draft 2021–22 Annual Report states that these instances were referred to the ALC Chair and investigated by NT police.

Assisting with commercial and other activities

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

3.49 The ALC provides corporate services to 12 Aboriginal corporations and one proprietary company on the Groote Archipelago. These services are stipulated in a service deed established between the ALC and each corporation, with provision for additional services to be provided as

⁵⁶ In some circumstances (for example, accessing common areas, boarding or disembarking aircraft, or for those with traditional rights to use the land), Aboriginal land can be accessed without a permit.

required. Services include payroll, human resources, governance assistance and business development.

3.50 Of the 13 organisations assisted by the ALC, the Anindilyakwa Royalties Aboriginal Corporation (ARAC) is the largest recipient of royalty equivalents on average.⁵⁷ The ALC established ARAC in 2016 as a means of disbursing royalty equivalents within the legislated timeframe.

3.51 ARAC oversight and staffing arrangements overlap those of the ALC: five of ARAC's eight Board members are members of the ALC Council; and ARAC does not have its own CEO (or equivalent). Approximately 80 per cent of ALC employees are contracted to ARAC. In 2021–22 ARAC paid the ALC \$8.1 million in employee costs, using royalty equivalents distributed to ARAC by the ALC. ARAC contracted employees report to the ALC CEO and appear on the ALC organisation chart.

3.52 The ALC advised that, where operational funding provided by the NIAA is insufficient to meet ALC needs, it uses royalty equivalents to fund ARAC, and in turn ARAC pays for the relevant ALC employee costs. There is a lack of transparency regarding how much time these ARAC-paid employees are spending undertaking work for ALC. While the ANAO did not perform analysis to identify any instances of financial benefit to the ALC, there is a risk that employee costs paid by ARAC to the ALC could result in financial benefit if the labour provided in return is not commensurate.

Recommendation no. 8

3.53 To ensure that it is not receiving any financial benefit from its commercial assistance, the Anindilyakwa Land Council put in place mechanisms to provide assurance that:

- (a) Anindilyakwa Royalties Aboriginal Corporation payments for employees contracted from Anindilyakwa Land Council are not in excess of the work performed under the general service deed; and
- (b) staff contracted to Anindilyakwa Royalties Aboriginal Corporation are not performing work for the Anindilyakwa Land Council.

Anindilyakwa Land Council response: *Agreed.*

3.54 *The ALC will put in place mechanisms to provide assurance that:*

- (a) *Anindilyakwa Royalties Aboriginal Corporation payments for employees contracted from ALC are not in excess of the work performed under the general service deed; and*
- (b) *staff contracted to Anindilyakwa Royalties Aboriginal Corporation are not performing work for the ALC.*

Assisting with the protection of sacred sites

3.55 The ALRA prescribes that the Land Councils must take measures to assist in the protection of sacred sites on land in the area of the Land Council. Most work undertaken by the ALC to protect sacred sites is triggered by the lodgement of land use proposals. The ALC's Organisational Design Policy requires anthropologists to undertake fieldwork to identify Traditional Owners of the relevant land and seek their advice on any sacred sites. For each proposal, the anthropologists are

⁵⁷ ARAC received the largest proportion of annual royalty equivalent allocations from 2018–19 to 2021–22: between 31 and 88 per cent (\$179 million in total).

to prepare a report documenting the results of these consultations with Traditional Owners. The ALC employs two anthropologists for this purpose.

3.56 The s19 agreement procedure states that where potential sacred sites are identified, the application should be placed on hold pending further advice from the anthropologists. The ALC may request that the applicant obtain an Authority Certificate from the AAPA. Based on ANAO examination of two groups of land use proposals (relating to Winchelsea Mining and Little Paradise logistics base, see paragraph 1.29), potential sacred sites were confirmed by ALC, and a clause was appropriately included in the relevant land use agreements requiring the applicants to obtain an Authority Certificate.

3.57 From mid-2021 the anthropology reports included a Traditional Owner Identification Document.⁵⁸ There is no standard process or documented procedure for conducting anthropological fieldwork or preparing Traditional Owner Identification Documents. The ALC anthropologists advised the ANAO that an applicant often modifies their original proposal during or after the consultation process. The s19 agreement policy and procedures do not provide guidance on what to do in these circumstances.

Consulting and obtaining consent

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

- the Traditional Owners of that land understand the nature and purpose of the proposed action and, as a group, consent to it⁵⁹; and
- any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.⁶⁰

3.59 The ALC's processes for consulting with Traditional Owners and obtaining consent in relation to s19 lease agreements are detailed in the s19 agreement policy and procedures. These consultation processes are consistent with the ALC's obligations under the ALRA to consult. As the ALC has not developed a policy or procedures to support the administration of Part IV agreements, the ALC advised the ANAO that it refers to the s19 agreement policy and procedures when consulting on Part IV agreements. The ALC also advised that while special access permits require consultation, recreation and work permits do not.

3.60 The ALC undertakes three types of consultations in response to land use proposals: anthropological consultations; community information meetings; and Traditional Owner

58 A Traditional Owner Identification Document is a listing of Traditional Owners of the land subject to the proposal, compiled on the basis of clan membership and informed by ALC genealogical records.

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

60 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), subsection 23(3).

meetings.⁶¹ The ALC refers collectively to these last two types of consultations as ‘community meetings’, and community meetings where consent is being sought are called ‘decision meetings’.

3.61 The s19 agreement procedure prescribes methods for publicising and conducting community meetings, including assisting attendees to interpret information about the proposal and seeking further information from the applicant as required. A translator is to be engaged if required, and a Community Liaison Officer may also assist in conveying information.

3.62 The ALC executed 15 land use agreements in 2021–22. Of these, 12 were s19 agreements and three were Part IV agreements. Eleven of the 12 s19 agreements related to the Little Paradise logistics base development⁶², and 10 of the 11 were considered together as part of the same consultation process. The ANAO assessed consultations conducted for the 10 of the 11 Little Paradise agreements that were considered as part of the same consultation process and for the one⁶³ Part IV agreement that related to Winchelsea Mining (Table 3.1).⁶⁴

Table 3.1: ANAO assessment of consultations for Little Paradise and Winchelsea Mining s19 and Part IV agreements

Requirement	Assessment criteria	Little Paradise	Winchelsea Mining
Engagement of Traditional Owners and other Aboriginal people ALRA paragraphs 23(3)(a) and (b)	<ul style="list-style-type: none"> Did the ALC organise and advertise meetings with the relevant groups? Were these meetings adequately attended? 	▲	◆
Understanding and consent ALRA paragraph 23(3)(a) and subsection 77A(a)	<ul style="list-style-type: none"> Was the information provided by the ALC sufficiently detailed to enable Traditional Owners to understand what they were consenting to? Was the information provided by the ALC complete and balanced, including information on the risks, costs and benefits? 	▲	▲

Key: ◆ Fully demonstrated ▲ Partly demonstrated ■ Not demonstrated

Source: ANAO analysis against ALRA and ALC Section 19 Lease policy and procedure.

Engagement of Traditional Owners and other Aboriginal people

3.63 The total number of Traditional Owners identified by the ALC as affected by the Little Paradise proposals was 271, including 44 senior clan members. The total number of Traditional Owners identified by the ALC as affected by the Winchelsea Mining proposal was approximately 230,

61 Anthropological consultations involve one or more Traditional Owners and may include home visits and site visits (such as helicopter surveys). Community information meetings are held in public settings where anyone may attend. Traditional Owner meetings aim to include all key Traditional Owners — usually senior clan members —but are generally more restricted than community information meetings.

62 The 12th agreement related to a separate development proposal covering an area of 4.16 hectares and requiring \$95,837 in total rent (one-off payment). The 11 Little Paradise leases cover an area of approximately 300 hectares and require annual rental payments of \$1 million.

63 This agreement commenced with a separate exploration proposal in 2017, the consultations for which were also examined by the ANAO.

64 The other two Part IV agreements were excluded from the assessment as they amended deeds to existing agreements with GEMCO.

including 27 senior clan members. There are no targets for the proportions of senior clan members who must be consulted and the ALC defers to Traditional Owners to determine when attendance is adequate (see paragraph 3.72).

3.64 For the Little Paradise proposals, public advertising, for instance through flyers, was not undertaken. One of the three Traditional Owner clans was not invited to the first of two decision meetings, which resulted in deferral of the decision until the clan could be consulted. This led to amendment of the s19 agreement procedure to prevent similar errors in future.

- The ALC recorded 15 consultations with Traditional Owners.⁶⁵ This included two decision meetings, which were attended by 14 and nine senior clan members, respectively.
- The ALC did not hold separate community meetings to consult with other Aboriginal residents who were not Traditional Owners of the land subject to the Little Paradise proposals. However, 24 such community members attended one or both of the decision meetings.

3.65 For the two Winchelsea Mining proposals, meetings were advertised through flyers (and radio for the mining proposal), and the ALC met with relevant Traditional Owner clans and other Aboriginal people.

- The ALC recorded 36 consultations with Traditional Owners and other community members.⁶⁶ Six decision meetings were conducted, which were attended by between five and 15 senior clan members. The ALC was unable to provide minutes of the final decision meeting. Both Traditional Owner clans affected by the proposals were invited to all decision meetings.
- Traditional Owner meetings were also attended by other Aboriginal people living in the area. In addition, the ALC organised six community meetings in 2017 and 2020 for these residents to discuss the proposals although it did not retain minutes for two of these.

Understanding

3.66 Means employed by the ALC to communicate details of the proposals in meetings included: PowerPoint presentations in mostly plain English and large font; site maps; computer-generated images of proposed developments; and opportunities for Traditional Owners to ask questions. For the Winchelsea Mining proposals, the ALC also commissioned a video, which it presented at a decision meeting on 10 October 2017.⁶⁷

3.67 The ALC's 15-year Strategic Plan 2012–2027 outlines a number of considerations for consulting with Anindilyakwa people, including that trained interpreters are 'critical' for meetings where complex information will be presented. An interpreter was engaged for none of the Little Paradise meetings and four of the 17 meetings on the Winchelsea Mining proposals.

3.68 Meeting minutes record instances of attendees inquiring about details of the proposals, including aspects of environmental and cultural protection. Responses were provided by ALC representatives, including staff with legal, anthropological and technical expertise. ANAO consultations and analysis of ALC records indicate that Traditional Owners may not have

65 These comprised 12 anthropological consultations and three community meetings.

66 These comprised 19 anthropological consultations and 17 community meetings.

67 Anindilyakwa Land Council, *ALC Mining Project* [Internet], ALC, 2021, available from <https://www.youtube.com/watch?v=HFRLT6-LCHY> [accessed 31 March 2023].

understood some aspects of the proposals presented for Little Paradise and Winchelsea Mining, such as the payment scheme or expected impacts on the community.

3.69 Traditional Owners were briefed on the benefits of the proposals, however there was little briefing on the risks and potential costs to them such as limitations to land access, impacts on the environment or the volume of royalties that would be diverted away from other potential projects. The ANAO identified one documented instance of Traditional Owners being alerted to a risk when the ALC CEO, in his capacity as a director of Winchelsea Mining, advised five Traditional Owners in attendance at a 4 September 2018 exploration decision meeting:

There is risk in this project and there are unknowns, no one has ever drilled on Winchelsea before so no one knows what's there. There won't be any money at this early stage but if/when production starts that's when the profit sharing would kick in.

Recommendation no. 9

3.70 For each land use proposal, the Anindilyakwa Land Council ensure that stakeholders are given a complete and accurate explanation of the risks, costs and benefits of the proposal; and that trained interpreters are used for complex meetings.

Anindilyakwa Land Council response: *Agreed.*

3.71 *For each land use proposal, the ALC will ensure that stakeholders are given a complete and accurate explanation of the risks, costs, and benefits of the proposal; and that trained interpreters are used for complex meetings.*

- *Develop a robust, staged, project approval procedure to consistently present information and seek progressive approval from the ALC Board and landowners for major investments.*
- *Include formal risk assessments in the mining and sustainability procedures. The risk assessments would be performed by consultants and an in-language presentation prepared for TO consultations.*
- *Work with Preserving Culture to produce videos for the ALC Board and TO's generally, to better explain the project details, risks, costs, and benefits.*
- *Improve the use of video to formally record proceedings as a permanent record.*

Consent

3.72 ALC advised the ANAO that a key indicator of consent is the attendance of senior clan members at the decision meeting, however this was not consistently established. Minutes did not document the ALC confirming with attendees that the right people were present for either of the Little Paradise decision meetings; and did document this for four of the six Winchelsea Mining decision meetings.

3.73 The Traditional Owners' final decision is to be formally documented in the meeting minutes, including any specific conditions or actions. Little Paradise and Winchelsea Mining proposal meeting

minutes recorded the final decision for seven of the eight meetings⁶⁸ conducted between August 2017 and March 2022.

3.74 While consent was provided at specific points in the proposals' development, the ALC did not seek Traditional Owners' consent to subsequent changes to the proposals.

- Traditional Owners' consent to the Little Paradise proposals was sought (and granted) without the ALC receiving complete and up-to-date application forms from the proponent, Grootte Holdings Aboriginal Corporation. Various additional changes were made to the Little Paradise plans subsequent to Traditional Owners' consent to the original proposals.
- As at March 2023 plans are not finalised for Winchelsea Mining, for which consent was provided in March 2021.

Opportunity for improvement

3.75 To gain assurance that Traditional Owners' consent remains valid, the ALC could:

- develop guidance to determine at which points consent from Traditional Owners should be sought following changes made to initial land use proposals; and
- develop procedures to guide anthropological work in circumstances where the applicant modifies their original proposal during or after the consultation process, particularly where land use proposals are modified with a potential impact on sacred sites.

3.76 The s19 agreement procedure requires the Council to be informed of consultation outcomes. The meeting minutes do not demonstrate that the Council was briefed on the consultation outcomes for the Little Paradise and Winchelsea Mining proposals.⁶⁹ However, at least one third of the Council members had also attended the relevant consultations.

Disputes and complaints

3.77 The ALRA establishes a duty of Land Councils to attempt conciliation of disputes with respect to land in the area of the Council.⁷⁰ The ALRA does not include requirements for complaints management, however in order to ensure the Land Council is representing the interests of its constituents effectively and transparently, complaints should be handled effectively. The Commonwealth Ombudsman's Better Practice Complaint Handling Guide identifies attributes of a strong complaints system, including: actively encouraging complaints; supporting early resolution; communicating outcomes; and feeding back systemic issues.⁷¹

3.78 ALC does not have a disputes conciliation function and advised that disputes are 'not regular' and are typically resolved without ALC intervention.

68 The ALC did not retain minutes or any other record of consent for the final Winchelsea Mining proposal meeting on 31 March 2021. Minutes for the other meetings were not all finalised — some were labelled 'draft' or contained edits and review comments.

69 ALC was unable to provide minutes of the Council meeting where the terms and conditions for the Winchelsea Mining agreement were approved.

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

71 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* [Internet], Commonwealth Ombudsman, 1 January 2023, available from https://www.ombudsman.gov.au/publications-resources-and-faqs?form=simple&profile=default&num_ranks=&query=%21showall&collection=comomb-publications&f.Tab%7CFUN7lh9eghnqfzocccchoegs0qpg=Better+practice+guides [accessed 5 February 2023].

3.79 The ALC developed an External Complaints Policy and register in July 2022, and added a complaints form to its website in September 2022. These are largely consistent with the Commonwealth Ombudsman’s principles, with potential for improvements in four areas.

- While managers were advised of the new External Complaints Policy via email and an intranet post, training was not conducted.
- The External Complaints Policy does not outline a referral process for complaints received by phone or in person, which the ALC advised is how complaints are typically received.
- The register does not include a field for recording details of the resolution.
- The External Complaints Policy aims to ‘identify and implement improvements’ addressing the causes of complaints however does not outline arrangements for the capture of systemic issues or lessons learned.

3.80 As at February 2023 the complaints register contained two complaints. One related to a potential land access breach and the other related to a matter outside the ALC’s scope of responsibilities.

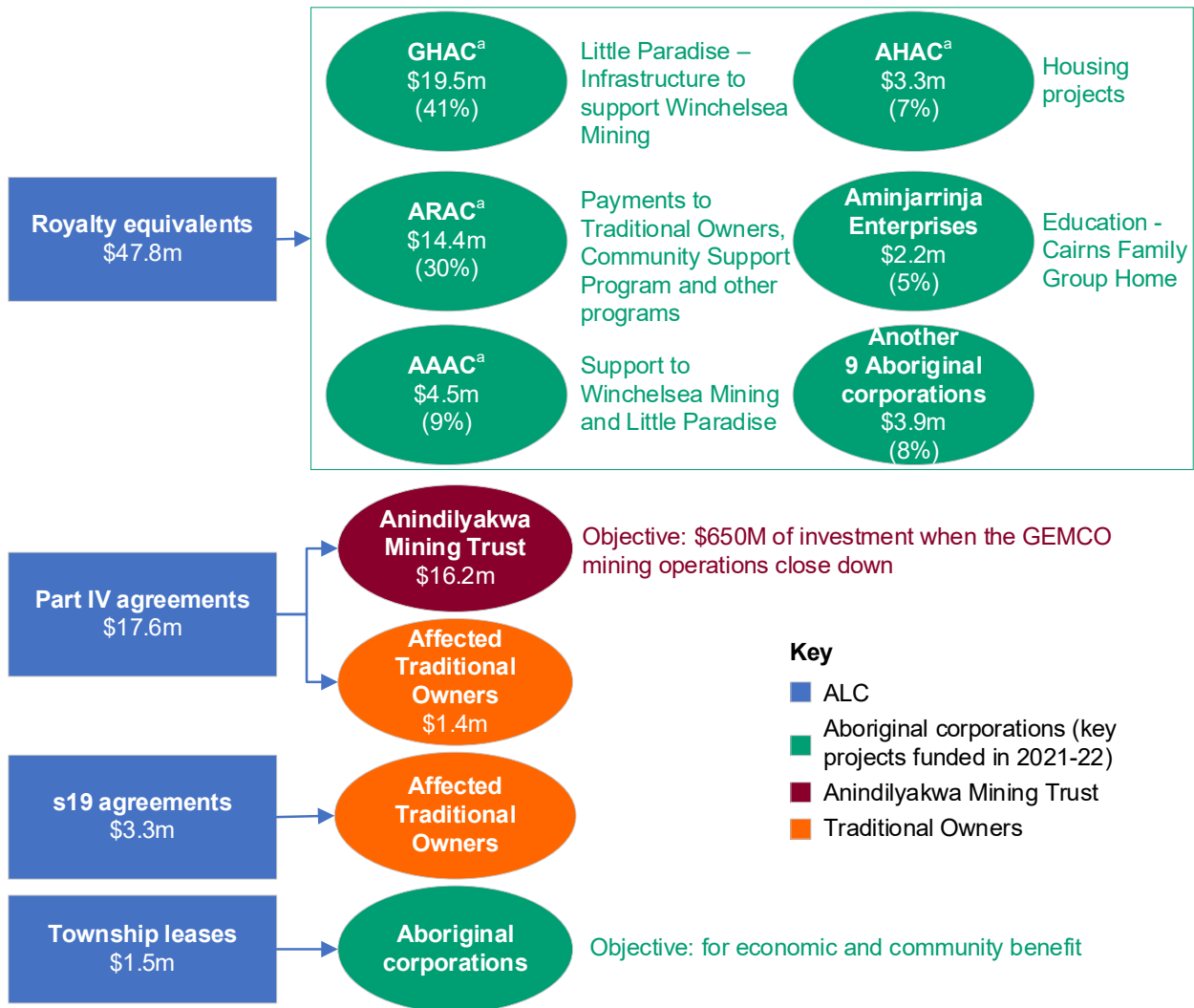
Opportunity for improvement

3.81 ALC could review its complaints management arrangements to align with the Commonwealth Ombudsman’s better practice guidance.

Distributing royalties and other payments

3.82 The ‘ALC Sources of Funding and Rent/Royalties Distribution Model’ (Distribution Model) describes which funds are received by the ALC and how they are used or distributed. This was updated annually from 2021 and is supported by policies and procedures for the distribution of royalty equivalents. While other payments (Part IV agreements and township leases) are not covered by a specific policy, the Distribution Model provides some key information on the distribution methods for these funds. Figure 3.2 describes how land use agreement monies received in 2021–22 by the ALC were distributed (see Table 1.1).

Figure 3.2: Distribution of royalties and other payments, 2021–22



Note a: GHAC — Groote Holdings Aboriginal Corporation; ARAC — Anindilyakwa Royalty Aboriginal Corporation; AAAC — Anindilyakwa Advancement Aboriginal Corporation; AHAC — Anindilyakwa Housing Aboriginal Corporation.

Source: ANAO analysis of ALC’s draft 2021–22 Annual Report, other ALC documents and advice from ALC.

3.83 The ANAO examined the distribution of payments from royalty equivalents and Part IV agreements as they are the most material forms of agreements for the ALC. In 2021–22 these two types of payments represented 93 per cent (\$65.4 million) of the payments distributed by the ALC.

Distribution of royalty equivalents

3.84 Royalty equivalents since 2012–13 have ranged from \$15.1 million in 2016–17 to \$86.0 million in 2018–19. The Finance Committee’s key function is to make recommendations to the Council regarding the distribution of royalty equivalents to various Aboriginal corporations. Finance Committee meetings are conducted twice annually over three to four days. Meetings are attended by the ALC CEO, CFO, Legal and Executive Operations Manager and other ALC staff. An ALC staff member presents the requests for funding to the Finance Committee. Finance Committee recommendations are then presented to the Council.

3.85 The ALC draft 2021–22 Annual Report includes a performance measure for ‘transparent governance processes to allocate [royalty equivalent] monies to Aboriginal corporations’, which is described as ‘demonstrated’.⁷² The ANAO considered ALC distribution processes in relation to the following characteristics.

- Information for applicants — The promotion of the opportunity for funding; communication about eligibility, funding priorities and the assessment method; and communication of the outcome of the assessment, including the rationale for the decision.
- Information for decision-makers — Applications which include sufficient information; and adequate due diligence applied to applications to support the decision-makers’ assessment.
- Assessment of applications — Assessment made against the funding priorities and in accordance with an agreed assessment method; and records kept documenting a clear rationale for the decision.

3.86 The ANAO analysed 128 requests for funding submitted to the ALC for two rounds of royalty equivalents (February and August 2022). The information for applicants and decision-makers was partly effective, and the assessment of applications was ineffective (Table 3.2).

Table 3.2: Requests for royalty equivalent funding, February and August 2022

Characteristic	Assessment	Rating
Information for applicants	<p>Ahead of royalty equivalents being received by the ALC, the ALC wrote to local Aboriginal corporations inviting them to submit a request for funding. Information about the process was outlined in the letters, on the ALC website and in the application form, which applicants were required to complete.</p> <p>This included details about eligibility, and required information about the applicant and project for which funding was being sought, including how it would benefit Anindilyakwa people. However, there was no information about the assessment process or funding priorities.</p> <p>A letter of offer was sent to successful applicants. The letters to applicants who were successful for part of their funding request did not include a rationale for the outcome. The ALC advised the ANAO that letters were not sent to unsuccessful applicants and verbal feedback was provided on request.</p>	▲

72 ALC, *Annual Report 2021–22* (draft), p. 64.

Characteristic	Assessment	Rating
Information for decision-makers	<p>The requests were reviewed by ALC staff, who assessed the eligibility of applicants by seeking additional information from them and examining financial statements. Overall, the checks were conducted adequately by the ALC staff, however alignment of the requests with ALC strategic goals was not assessed and records did not document clearly the assessment method that was used.</p> <p>While the majority of the 128 requests for funding (112, or 87.5 per cent) included the completed application form (with or without supporting documents), 16 (12.5 per cent) did not. Requests without an application were nevertheless considered eligible, and submitted to the Committee for consideration.</p> <p>ALC staff prepared a slideshow presentation for the Finance Committee which included, for each request presented, the amount and purpose of funding requested, expected benefits to the Anindilyakwa people and hyperlinks to supporting documents when available.</p> <p>Of 128 requests, 16 (12.5 per cent) were not included in the presentation to the Finance Committee, and there was no recorded justification for their exclusion by ALC staff. It is unclear whether these requests failed an eligibility test, or were eligible and ALC staff had made an assessment decision without appropriate authority.</p>	▲
Assessment of applications	<p>For each funding round, the Finance Committee met over three days to review the requests and each request was discussed. However, the applications were not assessed against specific funding priorities or a documented method. For 56 (50 per cent) of the 112 requests included in the presentation, there was no record of the final rationale supporting the decision to recommend or not recommend funding. While at times a suggested rationale was outlined in the slideshow presentation to the Committee, this did not necessarily represent the Finance Committee's reasons for deciding whether or not to support the request.</p>	■

Key: ◆ Fully effective ▲ Partly effective ■ Not effective

Source: ANAO analysis of 128 requests for funding submitted to the ALC for two rounds of royalty equivalents (February and August 2022).

Recommendation no. 10

3.87 The Anindilyakwa Land Council strengthen the royalty equivalents distribution process by:

- (a) developing an assessment method that includes funding priorities;
- (b) communicating the assessment method to potential applicants and informing all applicants of outcomes;
- (c) applying the assessment method to all decisions; and
- (d) keeping adequate records of the basis for funding decisions.

Anindilyakwa Land Council response: *Disagreed.*

3.88 *A formal assessment and decision model was tried and found not to work. Ultimately the wishes of the TOs as represented in the Finance Committee and Board are the only guide necessary for the distribution of royalty equivalents. The use of a prescribed assessment and decision model would unreasonably limit the ability for the Finance Committee to make recommendations.*

3.89 *The ALC will however take the following steps:*

- *Add a presentation on the status of ALC Strategic Plan to the Finance Committee standing agenda so as to bring the Board objectives to front of mind.*
- *Include a reference to the Strategic Plan in correspondence with applicants – so that they may consider the relevance of their application in that context.*
- *Consider the level of information recorded in the Finance Committee minutes and the consequent recommendations made to the Board.*

3.90 Beyond the annual report, the ALC does not have any formal mechanisms for reporting back to the community on how royalty equivalents are distributed and used. In the ANAO's consultations with Traditional Owners and other stakeholders in 2022, a consistent theme was a desire for more communication from the ALC on the use of royalty equivalents.

Opportunity for improvement

3.91 The ALC could enhance its communications to Traditional Owners and other Aboriginal people, to ensure details are provided about projects funded by royalty equivalents.

Distribution of Part IV agreement monies

3.92 Part IV agreement monies are received under one of the GEMCO leases and distributed to two main recipients: the Anindilyakwa Mining Trust (Trust); and Traditional Owners of the land on which the mining operations take place. The Trust was established in 2006 with the aim of achieving an investment target of \$650 million to sustain future activities for the benefit of Traditional Owners after GEMCO mining ceases.⁷³

⁷³ The Trust is administered by a Board of seven trustees including the Chair of the ALC, and managed by an investment management company. As at 30 June 2022 the Trust had a balance of \$226 million against its \$650 million target.

3.93 The GEMCO lease prescribes that the ALC will distribute the monies received in the following way: an annual rent of \$600,000 (indexed) is to be paid to Traditional Owners of the lease area; and the balance of monies is to be paid to the Trust, two weeks after receipt by the ALC. Under the Distribution Model, payments are to be made to each clan in proportion to the area of clan land within the mining lease. Relevant clan representatives review and approve a list of Traditional Owners, and provide instructions to the ALC regarding how payments are to be distributed. In February 2022 the ALC met with six clans for this purpose.

3.94 A written record of the approvals and directives is to be retained by the ALC and recorded in a database. Evidence of payments made are to be reconciled to the 'rent list' and retained by the ALC.

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

Areas examined

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

Conclusion

The ALC's arrangements to promote the proper use and management of resources are partly appropriate. Most key policies are established however require further operationalisation. While the ALC has established a system of risk oversight and management, it has not fully met the requirements of the Commonwealth fraud rule. Conflict of interest is not appropriately managed. The ALC's 2021–2025 Corporate Plan and draft 2021–22 Annual Report comply with most legislative requirements. The performance statements are partly effective in measuring progress. The Audit Committee does not deliver on most of its key mandatory functions and its Chair is not independent from management.

Areas for improvement

The ANAO made five recommendations to the ALC aimed at: implementing governance training; strengthening fraud control arrangements; improving management of conflicts of interest; enhancing performance measures; and assurance of the effectiveness and independence of the Audit Committee. The ANAO also suggested the ALC introduce a member rotation policy for the Audit Committee.

4.1 Under the PGPA Act, Commonwealth entities are accountable to the Parliament and the public for the proper use and management of public resources to deliver programs and services and achieve outcomes. Effective management of risk, fraud and probity; a robust policy framework; a corporate plan and annual report, including performance statements; and an audit committee are key mechanisms under the PGPA Act to implement this duty.⁷⁴

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

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

The ALC has established a system of risk oversight and management. A Risk Management Policy is established, and risk registers have been developed. Reviews of registers are not always timely, and some key risks are missing from the enterprise risk register. Controls are identified for most risks. Corporate policies are established but are not all finalised or fully operationalised and communicated.

Risk oversight and management

4.2 The PGPA Act (section 16) requires accountable authorities of Commonwealth entities to establish and maintain appropriate systems and internal controls for the oversight and management of risk. The Commonwealth Risk Management Policy supports the PGPA Act. As a corporate Commonwealth entity, the ALC is not required to comply with the Commonwealth Risk Management Policy, however the Policy states that corporate Commonwealth entities 'should align their risk management frameworks and systems with this policy as a matter of good practice'.⁷⁵

Risk management policies and risk appetite

4.3 In January 2022 the ALC updated a Risk Management Policy first developed in 2020, which complies with key requirements in the Commonwealth Risk Management Policy. The Risk Management Policy sets out requirements to record, measure, report and action risks and defines risk and control owners. The Risk Management Policy includes the ALC's risk appetite, which is a tolerance for 'High residual risk ratings where key control effectiveness is assessed as Effective.'

Risk assessment

4.4 The Risk Management Policy requires that the ALC maintain an 'ALC risk profile' (enterprise risk register) and departmental risk registers, each to be reviewed annually with material risks reviewed twice annually.⁷⁶ The Risk Management Policy requires periodic review of controls.

4.5 ALC developed risk registers for all 10 of its departments in 2020–21, and a separate strategic risk register in 2021–22. These were used to inform the development of the ALC's enterprise risk register in April 2022.⁷⁷ As at January 2023, eight of the 10 departmental risk registers had not been reviewed in the previous 12 months. Material risks were not reviewed twice annually as required by the ALC policy.

4.6 The 2021–22 enterprise risk register comprises 15 risks across 10 categories.⁷⁸

75 Department of Finance, *Commonwealth Risk Management Policy* [Internet], Finance Minister's Forward, updated 29 November 2022, available from <https://www.finance.gov.au/government/comcover/risk-services/management/commonwealth-risk-management-policy> [accessed 20 March 2023].

76 'Material risks' are those rated High or Extreme (numerical rating of 12 or above, on a scale of one to 25). The Risk Management Policy includes a risk matrix to support the assessment of risks and the determination of a risk rating.

77 The enterprise risk register is compiled from all material departmental and strategic risks.

78 These are: 'cultural heritage', 'environment and biosecurity', 'financial', 'legal and compliance', 'management operations', 'people', 'reputation', 'strategic', 'traditional owners', and 'workplace health and safety'.

- Controls are identified for 14 of 15 enterprise risks. Controls have not been identified for a financial risk regarding external party contract management, which is rated 'Extreme', although two treatments are identified.
- Of the 15 enterprise risks, four have a residual risk rating of 'Extreme'. These risks exceed the ALC's risk appetite, and additional treatments are identified for all four. The ALC advised the ANAO that its risk appetite statement 'is not yet in use'.
- Some treatments may be insufficient for the high or extreme residual risks. For example, a risk of 'ALC staff maltreating vulnerable people [which would] have major consequences [for] ALC reputation and ability to operate in the archipelago' has no controls and one treatment: 'Require ALC staff to have an Ochre card'.⁷⁹
- The ALC's enterprise and departmental risk registers do not adequately address some key enterprise risks, for example: compliance risks relating to the ALC's obligations under the ALRA; probity and conflict of interest risks; and reputational risks regarding related entities.

4.7 There is no training on risk management beyond workplace health and safety. The ALC advised the ANAO that staff engagement on risk occurs through workshops run with each department to develop departmental risk registers.

Risk monitoring and reporting

4.8 The Risk Management Policy requires the enterprise risk register to be presented to the Council annually. The enterprise risk register has not been presented to the Council.

4.9 In October 2022 the ALC commenced monthly monitoring and reporting to management on the status of actions arising from fraud, risk and other reviews. As at January 2023, of 87 risk management action items identified across all departments: 18 were complete; 51 were 'on track'; and 18 were 'off track'. The ALC advised the ANAO that risk updates are also delivered at weekly manager meetings (which include the CEO), although these are not minuted.

Policy framework

Establishment of policies

4.10 Policies and procedures are an important part of an entity's system of internal controls. The ALC's Organisational Design Policy states that the Human Resources and Performance (HR) Manager is responsible for establishing a governance framework through maintaining a set of approved policies and procedures. The ALC has developed a Governance Framework Policy, which provides guidance on developing, maintaining and approving policies, including requirements for review.

4.11 From 2020 to 2022 the ALC reviewed its corporate policies and procedures. As at February 2023, 51 corporate policies and procedures were drafted, covering most key resource management issues, and of which 28 were approved by either the CEO, the HR Manager or other department managers. For the remaining 23, the policy approver was not specified.

79 An Ochre card is a working with children clearance from the Northern Territory Government.

4.12 Table 4.1 provides an overview of ANAO’s assessment of ALC’s key governance policies, focusing on whether the policies are sufficiently detailed and clear, and consistent with the PGPA Act’s requirement for proper use and management of resources.

Table 4.1: Selected key governance policies^a

Title	Clear and detailed ^b	Consistent with PGPA Act
Asset Management	◆	◆
Code of Conduct	◆	◆
Compliance Policy	◆	◆
Credit Card Policy	▲	◆
HR Policy	◆	▲
Information Management Policy	◆	N/A
Interests and Gifts Policy	▲	◆
Procurement Policy	▲	▲
Travel Policy	▲	◆
Vehicle Usage Policy	▲	◆

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

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

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

Source: ANAO analysis.

4.13 The examined policies are mostly clear and detailed, and aligned to relevant PGPA Act requirements. Exceptions are described below.

- Credit Card Policy — The policy requires that credit cards are used for ‘business purposes’ only but does not define business purposes or provide examples. Credit card expenses were approved in 2021–22 for a variety of purposes, including dining out with internal or external stakeholders.
- HR Policy — The policy commits to equal opportunity and merit-based employment decisions. However, the policy states that ‘vacancies to be filled must be put to market unless approved by the CEO.’ This provision means that the CEO can override merit-based processes, although the ANAO did not assess whether this had occurred.
- Interests and Gifts Policy — Some aspects of the policy are generic and could be made more specific to the ALC. There are some inconsistencies in the instructions for dealing with conflicts of interest. Section 4 notes that ‘ALC Officers will, **where possible**, withdraw from decisions where there is possible conflict’ [ANAO emphasis]. Section 5 notes that ‘All ALC Officers **must** absent themselves or otherwise withdraw from discussions, negotiations and decisions that may advance their personal interests’ [ANAO emphasis]. The Interests and Gifts Policy is examined in more detail in paragraphs 4.27 to 4.29.

- Procurement Policy — The policy is one page in length and not sufficiently detailed. The policy states that the ALC applies the Commonwealth Procurement Rules (CPRs)⁸⁰ and that the ALC must establish and maintain appropriate systems for procurement to achieve value for money (the core rule of the CPRs). Other than this reference, the policy does not outline guidance to address probity risks and procedures, assessment processes or how value for money should be demonstrated and documented.
- Travel Policy — The policy states that all travel requests are to be approved by the relevant manager but does not outline the necessary considerations for manager approval.
- Vehicle Usage Policy — The policy requires that vehicles be used for ‘ALC business’ only, unless authorised by the relevant department manager. The policy does not outline the necessary considerations for manager approval of use for non-business purposes. The policy also states that workplace participants’ family members may ‘use ALC vehicles for allocated vehicles only’. It is unclear what this statement means.

4.14 Several important policies to support governance do not exist. There is no contract management policy (and this is not addressed in the Procurement Policy), privacy policy, whistle-blowers policy or fraud policy.

Operationalisation and communication of policies

4.15 Key artefacts (including templates and procedures) required by some policies are missing or remain in development. For example, the legal obligations register supporting the Compliance Policy is incomplete. In August 2022 a Business Improvement Coordinator was employed to drive the implementation of policies. As at March 2023 ALC did not have an effective process to assure that policies and procedures are complied with.

4.16 Policies approved between 2020 and 2022 were published on the ALC intranet. Of the 28 approved policies, records show that 22 were communicated to staff upon completion or following an update.⁸¹ Policies and procedures are incorporated into induction processes for new staff. Further training is not required by the Governance Framework Policy and is not provided. Analysis of Council meeting minutes identified several instances during 2021–22 of specific policies being discussed, including the Code of Conduct Policy, Vehicle Usage Policy and Travel Policy.

Recommendation no. 11

4.17 The Anindilyakwa Land Council implement regular and mandatory training on governance functions for all staff, including risk management, key policies and fraud.

Anindilyakwa Land Council response: *Agreed.*

4.18 *The ALC has commenced the implementation of regular and mandatory training on governance functions for all staff, including risk management, key policies, and fraud.*

80 Land Councils do not have to comply with the CPRs. However it is better practice to apply the CPRs when developing and implementing procurement policies.

81 A further 12 policies were communicated to staff without records of approval on file.

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

Arrangements to support the integrity of Land Council operations are partly appropriate. The ALC's fraud control arrangements have not met the requirements of the mandatory Commonwealth fraud rule in terms of fraud prevention, reporting and recording mechanisms; and the ALC does not have a fraud control plan based on assessed fraud risks. There is a conflict of interest policy and register for senior management and Council members, and some interests are declared. There are few management plans for identified conflicts. Council meeting rules relating to conflicts of interest are consistent with requirements of the PGPA Rule, however, broad exceptions mean that, in practice, the majority of matters discussed at Council meetings are exempt from conflict of interest management. Key interests held by the CEO and Council members (including the Chair) in corporations that receive funding based on decisions of the Council, are not consistently declared and are ineffectively managed.

Fraud control

4.19 Under section 27 of the PGPA Act and under section 10 of the PGPA Rule, an official of a Commonwealth entity must not improperly use his or her position to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person, and the accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity. Requirements for fraud control by Commonwealth entities are contained in the 2017 *Commonwealth Fraud Control Framework*⁸², which consists of three tiered documents — the fraud rule, fraud policy and fraud guidance. As a corporate Commonwealth entity, the ALC must comply with the fraud rule, which ensures a minimum standard for managing the risk and incident of fraud. While Land Councils are not bound by the fraud policy or fraud guidance, the government 'considers both documents as better practice for corporate Commonwealth entities and expects that these entities will follow the fraud guidance and fraud policy where appropriate in meeting the requirements of the fraud rule'.⁸³

4.20 The ALC's fraud control arrangements fall short of the minimum requirements established in the fraud rule (see Appendix 7). The ALC: has not developed a fraud control plan that deals with identified risks; has undertaken limited fraud training; does not have a confidential reporting process; and does not have a mechanism for recording and reporting incidents of fraud or suspected fraud.

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

83 *ibid.*, p. iv.

Recommendation no. 12

4.21 The Anindilyakwa Land Council comply with the Commonwealth fraud rule, including by developing and implementing a fraud control plan and mechanisms to record and report fraud.

Anindilyakwa Land Council response: *Agreed.*

4.22 *The ALC has internal controls designed to prevent and detect fraud. This includes financial authorisations, separation of duties, account reconciliations and the continuous monitoring of payment transactions through the use of the EFTSure system. In 2021-22 the ALC performed a review of Fraud Risk across the organisation and the Chair of the Audit Committee also performed fraud awareness refresher training for Department Managers. A most recent improvement is the adoption of a new Fraud Management policy on 31 March 2023, and new training is being developed to increase the awareness of fraud risk across all levels the ALC.*

4.23 *The ALC is committed to continuing to improve on our fraud control framework and a review will be undertaken to ensure the ALC complies with the fraud rule and has effective mechanisms to record and report fraud.*

4.24 This audit did not examine potential instances of fraud, however, the ALC became aware of two incidents of attempted fraud during 2021 and 2022. Both incidents were remediated before a loss was incurred to the ALC or other parties. In response to one of the incidents, the ALC procured software to check the consistency of vendor details and mitigate the risk of fraudulent payments.

4.25 The ALC's draft 2021–22 Annual Report indicates that 'during the reporting period, the ALC performed a review of Fraud Risk across the organisation' which did not identify any fundamental control gaps or failings. The 2020–21 and 2021–22 annual reports stated that there had been no instances of fraud reported or detected in the reporting periods.

Conflicts of interest management

Conflict management policy

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

Agencies should provide clear and consistent guidance to employees on how to identify, declare and manage conflicts of interest. Agency executives and management should regularly communicate about the conflict of interest framework and how it is implemented.⁸⁴

4.27 In June 2022 the ALC established an Interests and Gifts Policy, replacing a policy from 2015. The Interests and Gifts Policy explains what conflicts of interest are and provides several examples relevant to the ALC. It highlights the heightened risk of conflicts faced by the ALC due to its remote location and 'tight knit community' and 'limited opportunities for diverse commercial relationships in the region'.

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

4.28 The Interests and Gifts Policy requires ALC ‘officers’ (defined in the policy as the accountable authority, Council members and department managers) to disclose conflicts as soon as they become aware of them, or to complete a nil declaration annually. Conflicts that appear to be unmanaged may be reported to the CEO, Audit Committee Chair or other identified management personnel. To manage actual or potential conflicts of interest, officers must:

- withdraw from discussions, negotiations and decisions that may advance their personal interests; and
- where a conflict cannot be avoided, seek advice from the Legal and Executive Operations Manager, and document the basis of the decision and reasonable steps implemented, to preserve the interests of the ALC.

4.29 Officers and coordinators⁸⁵ are required to disclose gifts received valued at \$150 or more using a declaration form, and inform their supervisor about gifts valued at less than \$150. Officers and coordinators are required to discourage vendors from providing gifts in the first instance.

Conflict of interest management

CEO and department managers

4.30 The ALC established a register of declared interests for the CEO and managers in June 2022, called the ‘ALC Declared Interests Register’. Guidance instructs staff to record: nature of interest (commercial or relationship); description; date of declaration; date interest commenced; date interest ended; and ‘notes’. There is no provision in the ALC Declared Interests Register or elsewhere to document how the potential conflict would be managed.

4.31 As at March 2023 the ALC Declared Interests Register included 26 declarations, all made on 30 June 2022 by 13 staff (the CEO and the 12 managers).

- Five managers made a ‘nil’ declaration.
- Of the 21 declarations describing an interest, the ‘notes’ section was blank for 13, and completed for eight. The completed notes section described:
 - for two, the interest in greater detail but no description of a management plan;
 - for two, information on how the risk would be managed, which was insufficient⁸⁶; and
 - for four, sufficient information on how the risk would be managed.

4.32 The CEO’s declaration identified an interest arising from the ALC’s employment of his spouse (who was first employed by the ALC in 2014). The ‘notes’ section of the declaration was left blank, and no management plan was included in the register or elsewhere. The CEO had not made a written declaration of the interest prior to 2022.

4.33 The ALC entered into a one-month casual employment contract with the CEO’s spouse in May 2014. In June 2016 it entered into a full-time ongoing employment contract for the role of

85 Coordinators are staff that report to department managers.

86 One stated: ‘Discussed with ALC CEO’. The other stated: ‘ongoing communication with Manager HR & Performance about performance, operational requirements and other engagements’. In both cases it is unclear how this would deal with the declared conflict.

finance officer. There were weaknesses in the process for establishing the permanent contractual arrangements in 2016.

- 2014 — The short-term appointment was taken to the Council for approval and the meeting minutes document that the CEO declared an interest and left the room. The Council was briefed on the length and basis of employment, the role and the funding source. The Council resolved to approve the appointment and the contract was signed by the ALC Chair.
- 2016 — The permanent position was not advertised and no alternative candidates were considered. The appointment was taken to the Council for approval and the meeting minutes document that the CEO declared an interest and left the room. The minutes discuss the role, and the location and department of employment, however do not document clear approval of the appointment, including the terms and conditions of employment. The contract was signed by the CEO, who was also involved in the drafting of the contract.

4.34 Management of the potential ongoing conflict could be achieved through line reporting relationships. The CEO's spouse reports to a department manager, who reports to the CEO. There have been instances where the CEO's spouse has sought and received spending authority directly from the CEO.

4.35 The ALC established a gifts register in April 2022. As at 5 December 2022 one declaration had been documented in the gifts register.

Council members

4.36 Section 29AA of the ALRA requires that each member of a Land Council make a written declaration of their direct or indirect pecuniary interests, in a register of interests kept by the Council. This is to be done in accordance with a determination made by the Minister for Indigenous Australians (the Minister).

4.37 Such a determination had not been made by the Minister as at March 2022. Despite this, the Council meeting rules require that such a register be maintained and updated annually, when new members join or when there is a change to their interests. A register of interests was in place, called the 'ALC Board Register of Interests'.

4.38 As at March 2023 the ALC Board Register of Interests listed all 25 Council members however five of these had not made declarations. Of the other 20 members, conflicts were declared for 17, with the remaining three making 'nil' declarations. Where conflicts were identified in the register, the entry comprised a list of corporations with no details provided of the nature of the conflict — for example, whether it constituted a direct or indirect interest and what the member's role (if any) was in the corporation.

4.39 The ANAO compared the interests declared in the ALC Board Register of Interests as at June 2022 to directorships in Aboriginal corporations receiving ALC funding and found that interests had been correctly identified for all members, except the Council Chair, who did not declare his interest in Winchelsea Mining, of which he is the paid Chair and a director (see paragraph 4.46).

4.40 Council member conflicts are required to be managed during the conduct of meetings. The Council and Finance Committee meeting rules state that during a meeting:

if a matter arises and Members in attendance have a material personal or pecuniary interest in the matter, all relevant Members must announce their interest in the matter and must not be present to participate in the discussion and decisions pertaining to that matter.

4.41 The meeting rules allow for three exceptions.

- The matter relates to all or substantially all Traditional Owners of the Groote Archipelago region.⁸⁷
- The matter relates to the payment of royalties, rents and other mining derived income to individual Traditional Owners of the Groote Archipelago region, other than to an organisation.
- The member holds knowledge and information that will be useful to inform the discussion and decision-making pertaining to the matter.⁸⁸

4.42 The meeting rules relating to conflicts of interest are consistent with subsection 12(2) of the PGPA Rule. However, as a result of the exceptions, the majority of matters discussed or decided by the Council and Finance Committee are exempt from conflict of interest management.

4.43 The ANAO reviewed the Council meeting minutes for 2021–22. There was no declaration of conflict of interest. The ANAO identified 10 instances where a conflict of interest may have arisen⁸⁹, however the minutes do not record that the member left the meeting and do not provide sufficient information to determine whether one of the exceptions applied.

4.44 The ANAO reviewed a random sample of 56 of the 112 royalty equivalent funding requests (see Table 1.1) made to the Council in 2022. Forty-three (77 per cent) of the applications were submitted by Aboriginal corporations that had at least one director at the Finance Committee meeting where they were considered. Of the 51 applications that were subsequently considered by the full Council, 45 (88 per cent) were submitted by Aboriginal corporations that had at least one director at the Council meeting where they were considered. One recorded instance of a conflict was identified in a Finance Committee meeting, and in this instance, the person left the room. No other declarations were documented.

Managing potential conflicts of interest related to the Anindilyakwa Advancement Aboriginal Corporation, Groote Holdings Aboriginal Corporation and Winchelsea Mining

4.45 In 2021–22 the ALC distributed \$47.8 million in royalty equivalents to 13 Aboriginal corporations. Fifty per cent were provided to two Aboriginal corporations: Anindilyakwa Advancement Aboriginal Corporation (AAAC) and the Groote Holdings Aboriginal Corporation (GHAC), which received, respectively, \$4.5 million and \$19.5 million. AAAC and GHAC also received funding from the ALC as part of the Northern Territory (NT) Indigenous Economic Stimulus Package.

87 The exception goes on to state: For members of the Council, this clause applies ‘where the matter relates to the payment of royalties, rents and other mining derived income to Traditional Owners of the Groote archipelago region via multiple organisations under an omnibus determination.’ An omnibus determination is the aggregate of multiple resolutions into a single resolution.

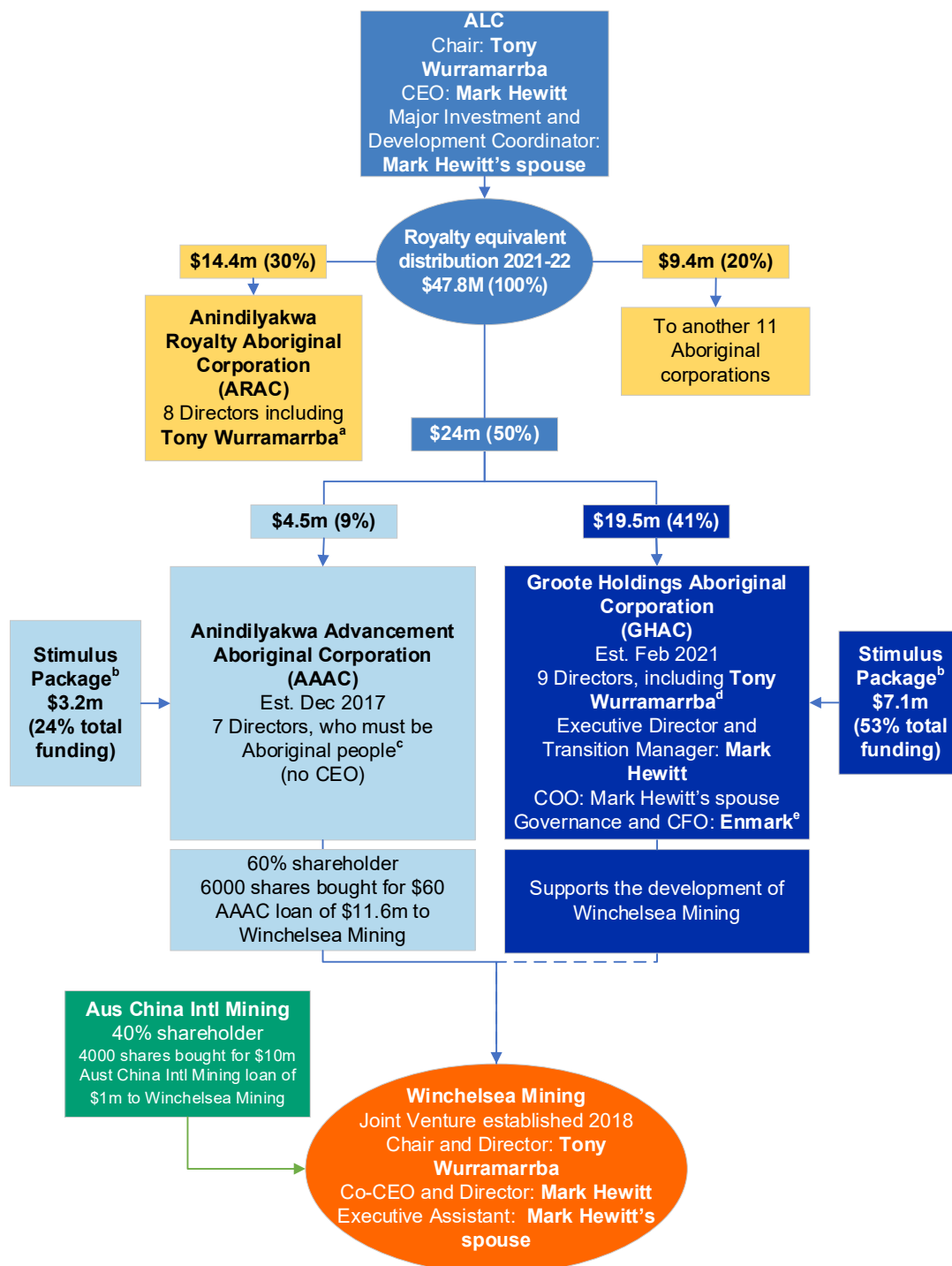
88 The exception goes on to state: In such instances, ‘the Member may be present to provide such knowledge and information, but is excluded from other discussion and decision pertaining to the matter.’

89 The ANAO cross-checked ALC Council minutes with records of the directorship of Aboriginal corporations and the ALC Board Register of Interests.

This amounted to \$10.2 million in 2020–21 and 2021–22, representing 77 per cent of the total grant funding available to the ALC.

4.46 AAAC holds 60 per cent of the shares in Winchelsea Mining, and GHAC will own the Little Paradise logistics base assets being developed to support the Winchelsea Mining venture (see paragraph 1.29). Figure 4.1 shows the directorships and senior positions of, and main financial flows between, the ALC, AAAC, GHAC and Winchelsea Mining. The figure shows that the ALC Chair and CEO have interests in GHAC and Winchelsea Mining, either as Chair, CEO or director.

Figure 4.1: Relationships between ALC, AAAC, GHAC and Winchelsea Mining, 2021–22



Note a: Five ARAC directors, including the ALC Chair, are members of the ALC.

Note b: The Stimulus Package funding was provided to the ALC over two financial years 2020–21 and 2021–22.

Note c: Four AAAC directors are also members of the ALC.

Note d: Five GHAC directors, including the ALC Chair, are members of the ALC.

Note e: The Chair of the ALC Audit Committee is the founding director of Enmark Pty Ltd.

Source: ANAO analysis of ALC draft 2021–22 financial statements, AAAC 2021–22 financial statements, GHAC 2021–22 financial statements and advice from ALC. AAAC and GHAC financial statements are publicly available from the Office of the Registrar of Indigenous Corporations website, <https://www.oric.gov.au/> [accessed 23 January 2023].

4.47 The involvement of the ALC Chair, CEO and CEO's spouse in organisations that, in 2021–22, received the majority of royalty equivalents and that, in 2020–21 and 2021–22, received the majority of NT Indigenous Economic Stimulus Package funds, creates a risk of conflicted interests. Appendix 8 analyses how this specific risk was managed by the ALC and demonstrates that: the risk has been partly recognised and documented by the ALC; not all potential conflicts were declared; not all declared conflicts have a management plan; and the management plans that exist for declared conflicts are not fully implemented.

4.48 In Council funding decisions, the ANAO observed disproportionate benefit to the entities with which the CEO is associated. During the two 2022 Finance Committee meetings (at which the ALC CEO was present), 112 requests for funding valued at \$109.1 million were reviewed. The Finance Committee resolved to recommend to the Council 79 requests valued at \$69.7 million. The Council adopted all of the Finance Committee's recommendations. The ALC CEO was the applicant, either on behalf of GHAC or AAAC, for 16 requests, totalling \$25.7 million. All 16 requests made by the ALC CEO were approved in part or in full for an amount of \$25.4 million, including one request that was approved for \$1 million more than the original request. In summary, requests submitted by the ALC CEO represented 24 per cent of funding applied for, and 36 per cent of approved funding; and the success rate for requests submitted by the ALC CEO was 99 per cent by value, compared to a success rate for the other applicants of 53 per cent by value.

4.49 In the above example, there was no clear reason for the ALC CEO being the applicant on behalf of AAAC, since the ALC CEO holds no formal position in AAAC (although he is co-CEO and director of Winchelsea Mining, which is a subsidiary of AAAC). The majority of applicants for royalty equivalent funding are Groote-based Aboriginal corporations that do not generally have the opportunity to personally present their applications to Finance Committee meetings taking place in Cairns or Darwin. In contrast, the ALC CEO attends all Finance Committee meetings.

4.50 Given the influence of the Chair and CEO over the ALC's funding and management decisions; the financial benefit that AAAC, GHAC and consequently Winchelsea Mining obtain from the ALC; and the ALC Chair's, CEO's and CEO's spouse's positions in GHAC and Winchelsea Mining; the risk of conflicts of interest is high. The current management strategies applied to this risk are either insufficient or not implemented.

Recommendation no. 13

4.51 The Anindilyakwa Land Council:

- (a) develop and implement effective management plans for interests declared in the staff and Council registers of interest; and
- (b) assess whether management plans for the Chair's and CEO's interests in Winchelsea Mining and Groote Holdings Aboriginal Corporation are effective.

Anindilyakwa Land Council response: *Agreed.*

- (a) *The ALC will ensure management plans for staff and ALC Board (Council) declared conflicts of interest provide sufficient detail in all cases.*
- (b) *The ALC will assess whether the management plans for the Chair and CEO's interests in Winchelsea Mining and GHAC are effective.*

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

The 2021–2025 Corporate Plan largely complies with the PGPA Rule, however performance measures and targets are not fully effective in measuring performance. The 2021–22 Annual Report was not published as at March 2023. Although the draft 2021–22 Annual Report mostly complies with PGPA Act and Rule and ALRA requirements, it lacks transparency in relation to operations. The line of sight between performance measures in the corporate plan and performance measures in the annual performance statements is somewhat unclear. The ALC has not established a process for gaining assurance over performance information published in the annual report.

Corporate plan

4.52 The ANAO assessed the ALC’s compliance with requirements for its corporate plan as set out in the PGPA Rule and Department of Finance (Finance) guidance (see Appendix 9). The ALC’s 2021–2025 Corporate Plan⁹⁰ fully met the requirements for its reporting period; introduction; operating context; explanation of entity purpose and key activities to achieve that purpose; and timeliness of publication. However, improvements could be made in relation to performance measurement.

4.53 The structure and content of the ‘Performance’ section of the Corporate Plan provides some meaningful performance information, however it could be improved.⁹¹

- Some measures are based on general functions of an organisation, which do not demonstrate the ALC’s level of achievement against its specific purpose.⁹²
- The measures are focused on activities mainly and outputs sometimes; they do not measure effectiveness in achieving outcomes or efficiency.
- The wording of some measures is long and contains multiple elements, making it difficult to comprehend what is being measured.
- Five of the 36 performance measures do not have targets. For the remaining measures, some targets are not specific, meaningful or explained. For example, 14 of the 36 performance measures have ‘demonstrated’ or ‘qualitative’ as the target.
- The ALC does not disclose how achievement of some targets will be measured.

90 Anindilyakwa Land Council, *Corporate Plan 2021–2022*, covering the reporting period 2021–22 to 2024–25, available from https://anindilyakwa.com.au/app/uploads/2021/08/Board-Endorsed_Corporate-Plan-2021-22.pdf [accessed 2 February 2023].

91 Compared to the 2021–2025 Corporate Plan, the 2022–2026 Corporate Plan (covering 2022–23 to 2025–26) adds, deletes and makes minor changes to the wording of some performance measures. This demonstrates that the ALC has reviewed its performance measures from 2021–22. The weaknesses discussed in paragraph 4.53 remain largely the same for the 2022–23 measures. The 2022–2026 Corporate Plan states that during 2022–23 and 2023–24, the ALC ‘will review and update the performance statements, targets and metrics used to track performance’.

92 For example: ‘Policies created and/or updated. Supporting tools and documents put in place to support practice and information collection’.

Annual report

4.54 Subsection 46(1) of the PGPA Act requires that ‘an entity’s annual report must be given to the responsible minister by the 15th day of the fourth month after the end of the reporting period’ (15 October for Land Councils). On 28 October 2022 the ALC CEO wrote to the Minister stating that the ALC was unable to submit its 2021–22 Annual Report by that date. On 7 November 2022 the Minister agreed to ‘receiving the final draft ALC 2021–22 Annual Report when it is finalised’. As at March 2023 the ALC 2021–22 Annual Report has not been finalised.

4.55 The draft 2021–22 Annual Report is mostly compliant with the PGPA Act and Rule and the ALRA requirements (see Appendix 9). The ANAO identified one instance of non-compliance.

- Regard to audience — The information included in the draft 2021–22 Annual Report is concise overall. However, there is a lack of transparency around the operational arrangements between the ALC and Anindilyakwa Royalties Aboriginal Corporation (ARAC) (see paragraphs 3.50 to 3.53). For instance, the draft 2021–22 Annual Report states that the ALC has 151 employees and that 11 business units ‘support the CEO, Chair and ALC Board to achieve the goals of the ALC’. Approximately two thirds of employees are sub-contracted to ARAC, and the four largest business units representing 110 positions are staffed with ARAC-funded positions. The draft 2021–22 Annual Report credits a large number of activities conducted by ARAC to the ALC. Six of the performance measures directly attribute the work conducted to achieve the measure to one of the business units funded by ARAC.

Annual performance statements

The ‘clear-read’ principle

4.56 A clear line of sight between an entity’s planning documents (corporate plan) and its key reporting document (annual report) is known as the ‘clear-read’ principle.⁹³ There is not always a clear line of sight between the ALC’s 2021–2025 Corporate Plan and the annual performance statements in the draft 2021–22 Annual Report. Of the 36 performance measures reported in the annual performance statements, 15 are worded differently to those in the corporate plan. Some of the differences are minor, however five of the measures in the 2021–22 annual performance statements are substantively different from those set out in the corporate plan for 2021–22 and do not measure the same thing.

PGPA Rule section 16F requirements

4.57 The annual performance statements of an entity, published in the annual report, must provide information about the entity’s performance in achieving its purposes and comply with any requirements prescribed under section 16F of the PGPA Rule. The ALC’s draft 2021–22 annual performance statements met these requirements (see Appendix 9).

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

Development of the corporate plan and annual report

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

4.59 The ALC accountable authority and Council were involved in the development and approval of the 2021–2025 and 2022–2026 corporate plans and draft 2021–22 Annual Report. In summary:

- ALC staff met with the ALC CEO, Chair and Deputy Chair to keep them informed on and gain input regarding the corporate plan and annual report;
- the CEO conducted reviews of the corporate plan and provided comments on specific sections of the plan; and
- the Council was provided with a video explaining aspects of the ALC 2022–2026 Corporate Plan and the Council subsequently endorsed the 2022–2026 Corporate Plan.

4.60 The ALC employed a new staff member in May 2021 whose responsibilities include the collation of the annual performance statements, using information provided by department managers. There is no process to verify the completeness and accuracy of information provided by the managers.

4.61 The ALC engaged with the National Indigenous Australians Agency (NIAA) and Department of Finance (Finance) when preparing the 2021–2025 Corporate Plan. Finance provided guidance on improving the Plan, and NIAA advised the ALC that the draft Plan met the minimum content requirements of the PGPA Act.

Recommendation no. 14

4.62 In order to provide information about the Anindilyakwa Land Council's performance in achieving its purpose, the Anindilyakwa Land Council enhance its performance measures by ensuring that:

- (a) each measure is clearly explained, including the underlying methodology;
- (b) each measure has a target where practicable;
- (c) each measure is consistently expressed in the corporate plan and annual performance statements; and
- (d) a process exists to provide assurance over the completeness and accuracy of the performance results published in annual reports.

Anindilyakwa Land Council response: *Agreed.*

4.63 *The ALC will enhance its performance measures and utilise data from the ALC Data Unit to support evidence based activities. The ALC will ensure that each measure:*

- (a) *is clearly explained, including the underlying methodology;*
- (b) *has a target where practicable; and*
- (c) *is consistently expressed in the corporate plan and annual performance statements; and that*
- (d) *a process exists to provide assurance over the completeness and accuracy of the performance results published in annual reports.*

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

The Audit Committee does not provide adequate oversight and scrutiny of the ALC's operations. The Audit Committee is not independent from management and is not effective in the delivery of some of its key mandatory functions under the PGPA Act. It does not appropriately review the ALC's performance reporting; system of risk oversight and management; and system of internal control. The Audit Committee secretariat is not effective.

Internal audit function

4.64 An internal audit function is an important mechanism in relation to the accountable authority's responsibility under section 16 of the PGPA Act to establish a system of internal control.⁹⁴ As at March 2023 the ALC did not have an internal audit function.

4.65 In December 2022 the ALC developed, for the first time, an internal audit program covering 2022 to 2033. The internal audit program was endorsed by the ALC Audit Committee Chair and CEO in December 2022 and was not reviewed or endorsed by the Council, the Council Chair or other members of the Audit Committee. The internal audit program covers HR, information technology, finance and governance; and sets out the proposed timing and frequency

⁹⁴ Department of Finance, *Resource Management Guide 206 - Model Accountable Authority Instructions for Corporate Commonwealth Entities*, Finance, 2021, p. 14.

of internal audits. In December 2022 the ALC applied to the NIAA for funding to engage an internal auditor to complete the planning of internal audits. The NIAA did not approve the bid, as it considered there was sufficient capacity within the ALC to meet the requirement.

4.66 The absence of an in-house or outsourced internal audit function to date reinforces the importance of the Audit Committee to provide advice and assurance to the accountable authority that its key responsibilities under the PGPA Act are met.

Establishment and composition of the Audit Committee

4.67 The ALC is partly compliant with the PGPA Rule requirements and Finance guidance in relation to the establishment and composition of an Audit Committee (see Appendix 10).

Charter

4.68 The ALC has an Audit Committee and Audit Committee Charter, with content that meets PGPA requirements.

Member characteristics

Skills and experience

4.69 PGPA Rule subsection 17(3) specifies that an Audit Committee must consist of at least three persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions.

- As at March 2023 the Audit Committee had four members.
- The draft 2021–22 Annual Report indicates that the Chair has qualifications in accounting and auditing and experience at a business consulting practice and accounting firm.
- The three other Audit Committee members are Council members. As members of the Council, they have knowledge of the ALC’s operations. The draft 2021–22 Annual Report indicates that they also have experience in managing organisations and are directors of Aboriginal corporations. There is no information in the draft annual report on other qualifications and technical skills.

Independence

4.70 The 2018 *Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule*, stated that ‘[t]he independence of audit committees from the day-to-day activities of management is critical to the contribution that they can make to good governance in an entity’.⁹⁵ Consistent with the PGPA Rule, there were no ALC employees on the Audit Committee as at March 2023 (although there were Council members, as noted above). The Audit Committee Chair is not an employee of the ALC or a member of the Council. However, in relation to the independence of the Audit Committee Chair, the ANAO has identified several significant issues.

- The Chair of the Audit Committee is the founding director of Enmark Pty Ltd (Enmark). Between 2014–15 and 2021–22 the ALC paid \$896,056 in fees to Enmark for consultancy

95 E Alexander and D Thodey, *Independent Review into the operation of the Public Governance Performance and Accountability Act and Rule* [Internet], Department of Finance, 2018, p. 27, available from https://www.finance.gov.au/sites/default/files/2019-08/PGPA_Independent_Review_-_Final_Report.pdf [accessed 12 January 2023].

services. Between 2017–18 and 2021–22 Enmark was one of the top three consultants by value engaged by the ALC.

- Enmark provides consultancy and other services to several Aboriginal corporations receiving royalty equivalent funding from the ALC. This includes GHAC and AAAC.

4.71 While the Charter requires each Audit Committee member to provide annual written declarations to the Council declaring any material personal interests that would preclude them from being members of the Audit Committee, neither the Audit Committee Chair nor the other members made a such a declaration.

Remuneration

4.72 Finance guidance does not establish a standard for Audit Committee remuneration and indicates that the remuneration should be commensurate with the importance of responsibilities and the commitment required.⁹⁶ The draft 2021–22 Annual Report noted that members other than the Chair were paid \$334 for each meeting attended.⁹⁷

4.73 The ALC Audit Committee Chair is paid on the basis of hours worked and travelled on Audit Committee business (with a reduced hourly pay rate for time spent travelling), and expenses are recovered at cost. In 2021–22 the Chair received \$58,352 in fees, \$12,765 for travel and \$10,040 for expenses. Of the four NT Land Councils, this is the highest level of remuneration for an Audit Committee Chair, and the amount of fees paid is approximately nine times as high as the next highest paid Chair in 2021–22.⁹⁸

4.74 In its review of the minutes for the eight Audit Committee meetings held between January 2020 and June 2022, the ANAO noted that, where start and end times were available, meeting duration ranged from 30 to 135 minutes.

Rotation

4.75 The 2018 *Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule* recommended that accountable authorities ‘establish an audit committee membership rotation policy, with maximum appointment terms to ensure regular

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

97 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to each of the Audit Committee members (excluding the Chair): Tiwi Land Council— between \$1672 and \$2090 (five meetings); Central Land Council — between \$6050 and \$6450 (four meetings); and Northern Land Council — between \$156 and \$496 (four meetings). The remuneration described here does not include the remuneration related to being a Council member, which is provided to Audit Committee members who are also Council members.

98 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to each of the Audit Committee Chairs (excluding travel and other expenses): Central Land Council — \$6700 (five meetings); Northern Land Council — \$3048 (four meetings); and Tiwi Land Council — \$2780 (five meetings).

rotation of committee membership'.⁹⁹ Finance guidance indicates that the Finance Secretary wrote to all accountable authorities in August 2019 drawing their attention to this recommendation.¹⁰⁰

4.76 The ALC's Audit Committee Charter includes term limits for Audit Committee members who are also Council members, set at the term the person is appointed to the Council as a member. The Charter is silent on the reappointment of Audit Committee members. There is no limit to the number of three-year terms for the independent Audit Committee Chair. The Charter notes that '[s]tability, knowledge and experience are important to the composition of the committee'. As at March 2023 the Audit Committee Chair had held the position since the ALC established an Audit Committee in 2012–13 and in December 2021 was reappointed to the role for a further three years. The remaining three members of the Audit Committee were appointed during 2014–15, 2018–19 and 2021–22, respectively.

Opportunity for improvement

4.77 The ALC could include in its Audit Committee Charter a member rotation policy that specifies the maximum number of appointment terms.

Effectiveness of Audit Committee operations

Frequency of meeting

4.78 The Charter requires that the Audit Committee meet at least four times annually. The Audit Committee met four times each year between 2017–18 and 2020–21, and met three times in 2021–22.

Mandatory functions and reporting

4.79 Appendix 10 presents the ANAO's assessment of the effectiveness of the ALC Audit Committee's operations against the PGPA Rule requirements and Finance guidance.

Mandatory functions

4.80 The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's financial reporting, performance reporting, system of risk oversight and management and system of internal control. The Audit Committee's mandatory functions have largely not been executed effectively. While the Audit Committee performs its role in overseeing the preparation of the ALC's annual financial statements there is limited attention given to other mandatory functions.

- Review of financial reporting — The Audit Committee did not consider financial reporting at two of its three meetings in 2021–22.

99 E Alexander and D Thodey, *Independent Review into the operation of the Public Governance Performance and Accountability Act and Rule* [Internet], Department of Finance, 2018, p. 29, available from https://www.finance.gov.au/sites/default/files/2019-08/PGPA_Independent_Review_-_Final_Report.pdf [accessed 12 January 2023].

While the PGPA Rule 2014 does not mandate minimum or maximum periods of appointment for audit committee members, it states that the rotation of audit committee members allows for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.

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

- Review of performance reporting — The Audit Committee did not review the ALC's performance reporting, including the annual performance statements in 2021–22. There was no consideration of the appropriateness or completeness of the ALC's performance measures.
- Review of risk oversight and management — The Audit Committee did not consider the ALC's risk management arrangements in 2021–22.
- Review of system of internal control — The Audit Committee considered aspects of the ALC's internal control arrangements in 2021–22 including fraud awareness and delegations. The Chair of the Audit Committee commissioned a review of ALC's payroll processing on 6 March 2022 (which was discussed at the Audit Committee's meeting on 13 April 2022) for which a report was provided to the Audit Committee Chair on 25 May 2022.

Mandatory reporting

4.81 The Audit Committee has mandatory functions in relation to reporting in the annual report, and to the Land Council. The Audit Committee's mandatory reporting requirements were partly met. Exceptions are noted below.

- Written statement — The Audit Committee provided a written statement to the Council in December 2021 about its view on the financial report for 2020–21 but not to the accountable authority. The Audit Committee has not provided a written statement of its view on the appropriateness of the ALC's performance reporting; system of risk oversight and management; and system of internal control.
- Assessment of Audit Committee performance and Audit Committee charter — The Audit Committee's Charter includes a provision that the Chair of the Committee shall initiate an annual self-assessment on the performance of the Committee and Charter.¹⁰¹ Neither the Council nor the Audit Committee meeting minutes for 2020–21, 2021–22 and the first three Council meetings of 2022–23 recorded that a review of Audit Committee performance was undertaken. The Audit Committee's Charter was updated during this period, with changes endorsed by the Council on 1 March 2022.

Secretariat support

4.82 The ALC Audit Committee Charter requires that the Council and CEO provide secretariat support to the Audit Committee, including by taking minutes of meetings and ensuring that the meeting agenda and supporting papers are circulated prior to the meeting, after approval by the Audit Committee Chair. Papers can help members prepare for meetings and understand relevant issues. The ANAO reviewed the minutes and papers for the nine scheduled Audit Committee meetings conducted between January 2020 and June 2022. The secretariat support was not adequate.

- There were no minutes for two of the eight meetings that were held.¹⁰² For six meetings, minutes were one page or less.

101 Anindilyakwa Land Council, *Audit Committee Charter* (approved by the ALC Council on 1 March 2022), p. 5.

102 Based on an agenda and papers, the ANAO has assumed that these meetings were held, but otherwise has no evidence that this is the case. The ANAO has confirmed that one of the nine scheduled meetings was cancelled.

- Of the eight meetings that were held during this period, there were no papers for three meetings; and 11 of the 20 papers for the remaining five meetings related to ANAO financial and performance audit work only. The ALC was not able to provide evidence that papers were provided prior to the meeting.

Recommendation no. 15

4.83 The accountable authority of the Anindilyakwa Land Council:

- ensure the Audit Committee Chair is independent;
- require the Audit Committee to provide written statements to the Council, at least annually, about the appropriateness of the ALC's financial and performance reporting; systems of risk oversight and management; and system of internal control;
- annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions; and
- implement an effective secretariat to support the operation of the Audit Committee.

Anindilyakwa Land Council response: *Agreed.*

4.84 *The ALC will:*

- ensure the Chair is independent;*
- require the Audit Committee to provide written statements to the ALC Board (Council), at least annually, about the appropriateness of the ALC's financial and performance reporting; systems of risk oversight and management; and system of internal control;*
- annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions; and*
- implement an effective secretariat to support the operation of the Audit Committee.*

4.85 *Specifically, and additionally, the ALC is:*

- *obtaining additional support for the ALC Finance department in the preparation of financial statements, so that the Chair of the Audit Committee does not need to be as involved as has been necessary previously.*
- *establishing an internal audit function to support the Audit Committee*
- *broadening the scope of the Audit Committee to consider operational and strategic risk*
- *introduce regular risk reporting to the Audit Committee by the Risk Innovation & Technology Manager*
- *obtaining additional resources for the Legal and Executive Operations department that will provide secretariat support to the Audit Committee.*



Grant Hehir
Auditor-General

Canberra ACT
31 May 2023

Appendices

Appendix 1 Anindilyakwa Land Council response



Anindilyakwa
Land Council

Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT, 2601

4 May 2023

Dear Mr Hehir,

Re: ANAO Section 19 draft report on the Governance of the Anindilyakwa Land Council (ALC) - 6 April 2023.

Thank you for your email dated 6 April 2023 and for the opportunity to provide comments on the Section 19 draft audit report on the Governance of the Anindilyakwa Land Council (the audit report).

We are proud of our achievements over the last 10 years and welcome any opportunity to identify and carry out further improvements to our governance arrangements.

Our Board has reviewed the draft audit report at a meeting held on 17 April 2023. The Board has considered the findings and recommendations of the draft audit report in consultation with ALC management, and their views are reflected in the ALC's response that is provided in the following pages.

We thank the ANAO for their professionalism and courtesy in undertaking this significant audit, and greatly appreciate the time taken to visit our offices in Cairns, Groote Eylandt, and Darwin.

Yours sincerely,

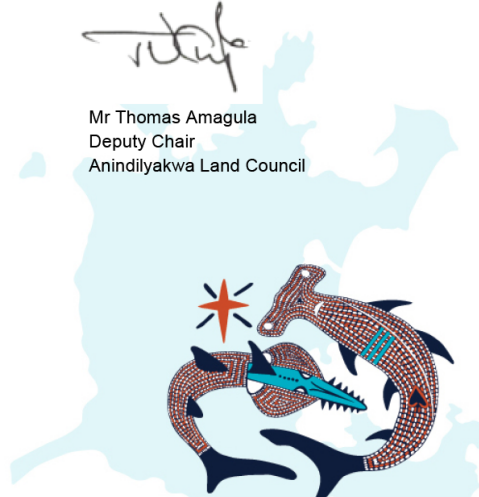
Mr Tony Wurramarrba AO
Chair
Anindilyakwa Land Council

Mr Mark Hewitt
Chief Executive Officer
Anindilyakwa Land Council

Mr Thomas Amagula
Deputy Chair
Anindilyakwa Land Council

30 Bougainvillea Drive, Alyangula NT | PO Box 172, Alyangula NT 0885
T: (08) 8987 4006 | F: (08) 8987 4099 | E: admin@alcnt.com.au

anindilyakwa.com.au





Anindilyakwa Land Council ANAO Governance Audit – Full Response

Thank you for your email dated 6 April 2023 and for the opportunity to provide comments on the Section 19 draft audit report on the Governance of the Anindilyakwa Land Council (the audit report). The ALC is proud of our achievements over the last 10 years and welcomes any opportunity to identify and carry out further improvements to our governance arrangements.

The ALC has undergone enormous changes and growth in recent years as it seeks to actively secure the future prosperity of the Groote Archipelago for the benefit of the Traditional Owners (TOs), as mining ceases in 7-10 years. We believe that the positive impact of our efforts and the governance improvements we have made in recent years, must be recognised within the context of the findings of the audit report. We have taken the opportunity in the following pages to provide this detail.

We note the findings of the audit are mostly administrative or procedural in nature, and we believe reflect the rapid growth of the ALC and the challenges in establishing effective governance practices with limited resources in a very remote location. We have accepted the 14 out of 15 recommendations of the audit report and have identified an additional 10 initiatives to enhance our governance arrangements, that are not identified in the report. We hold the position that we mostly comply with our obligations.

Requests for additional resources from the funding agency for governance have previously been declined. The ALC has also sought funding for an internal audit function that has been unsuccessful.

We would like to highlight that the ALC has consistently kept the Minister for Indigenous Australians and the National Indigenous Australians Agency (NIAA) updated on the activities of the ALC and the major economic developments taking place on the Groote Archipelago including on the purposes and activities of Groote Holdings Aboriginal Corporation (GHAC), Anindilyakwa Advancement Aboriginal Corporation (AAAC) and Winchelsea Mining Pty Ltd since their inception.

1. On 7 November 2019, when Minister Wyatt visited Groote Eylandt, he was provided with a detailed overview of all major projects including Winchelsea Mining and the Little Paradise Masterplan by the ALC Chair and CEO.
2. In 2020-2022 Minister Wyatt approved the COVID Stimulus Funding Program funded through the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) s64(4)* and funds were directed specifically to GHAC and AAAC based on detailed briefs provided to NIAA of all ALC supported priority projects. In almost all cases these were supported by ALC's *ALRA s64(3)* royalty co-contributions.
3. On 21 June 2022, ALC CEO and Chair fully briefed NIAA CEO Jody Braun face to face, providing a detailed overview of all major projects including Winchelsea Mining and Little Paradise Masterplan ("Invested in Our Future Groote" document was provided).

Over the past four years, there have been important developments in the areas of housing, education, economic development, and law and justice that are unprecedented (discussed further below). Support has been received from Australian and NT Government departments including funding for projects in these areas totalling \$156 million. The level of support for these initiatives demonstrates the confidence held in the ALC's Strategic Plan and capacity to deliver.



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1. Context

It is important to understand that the ALC bases the governance of its work by utilising data to inform the ALC Board and assist in good decision-making. A baseline Community Profile of the Groote Eylandt and Bickerton Island Communities of Angurugu, Umbakumba and Milyakburra was initially commissioned by the Australian Government (Department of Families, Housing, and Indigenous Affairs), in 2009. In 2022, the ALC entered into an agreement with the First Nations Portfolio of the Australian National University (ANU), to conduct another extensive baseline data report. This time, the report data was aligned with the key areas of focus as described below in the Local Decision Making Agreement. The report, Social Indicators and Data Governance to Support Local Decision Making in the Groote Archipelago (ANU report; ANU, 2022) took a year to complete, with ALC Board Members working closely with ANU experts to consult with the community to gather accurate information. The ANU Report is available on the ALC website (<https://anindilyakwa.com.au/app/uploads/2023/03/Social-Indicators-and-Data-Governance-to-Support-Local-Decision-Making-in-the-Groote-Archipelago.pdf>).

A key legacy of this approach is that the ALC now has its own "Data Unit" with two young TO's working with an ANU graduate as part of the ALC's Royalty Development Unit (RDU). This report has now been widely distributed to all key stakeholders on the Groote Archipelago and to both the NT and Australian Governments to better inform their provision of services to the Groote Archipelago communities.

The following sections quote data from the ANU report. The ALC can measure change and adjust accordingly, which assists in prioritising decisions and investments. There is objectivity and evidence in the way we carry out our work.

The operating context of the ALC can be defined broadly as the pre-Strategic Phase (pre-2012), and the Strategic Phase (post-2012 to current) which is characterised by strong engagement with TOs to set the post-mining future Groote Archipelago economy.

The pre-strategic phase (pre-2012) is characterised by:

- a single dominant Aboriginal Corporation on the Groote Archipelago, Groote Eylandt Bickerton Island Enterprises Aboriginal Corporation (GEBIE) as the primary recipient of ALC's distribution of royalty monies. Records indicate that between 2007 and mid-2015 ALC distributed \$233 million to GEBIE.
- the intended benefits of the distribution of large sums of royalty money not resulting in the expected economic and social improvements on the Groote Archipelago.
- GEBIE not (nor could it be expected to) addressing the breadth of social and economic change needed on the Groote Archipelago.
- TOs expressing dissatisfaction with the way decisions were being made about their land and sea country, and people.
- TOs seeking to be at the helm of decision making on the matters that impacted their lives, their land, and the future generations of Anindilyakwa-speaking people.

Strategic phase (post-2012 to current) is characterised by:

- a shifting discourse on the Groote Archipelago where TOs were increasingly finding platforms to express what it is they envisioned for their future and rejecting being told by outsiders what is best for their communities. This transition is described as a shift from an 'out-side in' approach to an 'inside-out' approach.
- The 2012-27 Strategic Plan, the first of its kind for the Groote Archipelago, providing a unifying point of focus for TOs and those working in community to collectively work towards a culturally informed, economically diversified, and prosperous future Groote Archipelago.
- The ALC, in-line with legal advice, disbursing royalty monies as directed by the ALC Board to meet the social and economic well-being of TOs and a shift away from the practice of distributing the majority of royalty monies to GEBIE.

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- A growing and strengthened representation of TO men and women who became actively involved in the business of the ALC and taking leadership roles in Aboriginal Corporations to govern traditionally government delivered services for the Groote Archipelago.

Key measured achievements in this Strategic era (post-2012 to current):

General:

The ALC expressing the wishes of TOs of the Groote Archipelago and entering into the Local Decision-Making Agreement (LDMA) with the NT Government to transfer services to Anindilyakwa-controlled entities on the Groote Archipelago, with Implementation Plans in place for housing, economic development, education, law, justice and rehabilitation, health, and wellbeing.

An Implementation Plan for community controlled local government is currently being considered by the NT Government Cabinet for approval.

The establishment of governance practices within the ALC that sought to create, engage, and actively support Aboriginal Corporations on the Groote Archipelago and to strategically distribute royalty monies into key categories of economic development, housing, education, employment, health, cultural protection, infrastructure, telecommunications, and community support.

In 2015, the ALC established a gazetted "ALC Finance Committee" to support the consideration of a large range of projects to meet strategic priorities and provide an advisory role to the ALC Board. This strengthened the ALC Board's decision making on the distribution of royalty monies that consequently mobilised a range of projects and programs for the Groote Archipelago. In particular, the ALC was able to better prioritize projects from the very large volume of ALRA s64(3) applications.

At the same time as establishing the Finance Committee, the ALC also established a dedicated department titled the ALC Royalty Development Unit (RDU), to assist the Board in the development of quality applications to optimise the performance of royalties and to assist in the capacity building of Aboriginal Corporations on the Groote Archipelago.

During this time the ALC introduced risk and compliance management, refreshed the policy framework and this work continues to support ALC's growing risk management and governance maturity.

Economic Development and Employment:

GEBIE ceased to be the majority recipient of royalty monies in 2014. Since that time, the number of Aboriginal Corporations operating on the Groote Archipelago has increased from 15 to 32 (ANU, 2022, Figure 3.13 p.48). As directed by the ALC Strategic Plan, the Board has consciously prioritised royalty expenditure to stimulate the local economy since 2014. The ALC has deliberately restructured the regional economy, to stimulate local job creation, in new areas through prioritising royalty distributions. Focus was placed on what key enterprises needed to be created to prepare for a post-Mining sustainable economy.

The ALC Board is also acutely aware that the Anindilyakwa Mining Trust (AMT) needs to be large enough by mine closure to sustain non-profit aspects of a cultural and community services economy. This is the main purpose of supporting the Winchelsea Mining project – to generate sufficient revenue to achieve this aim and to invest in the creation of sustainable revenue generation (renewable power, aquaculture, forestry, tourism etc).

The number of Aboriginal Corporations operating on the Groote Archipelago should be contemplated in the context of what that means in terms of the level of TO engagement in decision making on community and economic development activities. Each Aboriginal Corporation consists of a majority of TO Directors and members are TOs. This is with a population of approximately 1600.

ALC employment has risen from 36 at 30 June 2012 to 173 at 30 June 2022 (ALC Annual Report 2011-12 and Annual Report 2021-22). Figures fluctuate in terms of TO employment levels within the ALC, but the ANU Report indicates that the ALC is the largest employer of TOs in the Groote Archipelago and TO's making up over 50% of the ALC workforce.

In 2006, gross annual personal income for Indigenous residents of the Groote Archipelago amounted to \$10.7 million (\$14.9 million CPI adjusted). By 2021 this had risen to \$20.2 million (ANU, 2022).

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In 2019 the ALC introduced a cashless card (The Red Card) at the request of TOs as an alternative to cash distributions as was previously the norm. The Red Card is a cashless debit card initiative provided to all eligible royalty recipient TOs of the Groote Archipelago. There has been an increase in Red Card usage since introduction of the card, steadily rising from 50% when the Red Card was introduced in June 2019 to 76% of eligible TOs using the card in June 2022. The monies made available to TOs via the Red Card are mostly spent at Indigenous owned and operated businesses and predominantly at businesses operating on the Groote Archipelago, which made up 77% (\$1 million) of Red Card purchases in 2021-22.

Education:

Within the aboriginal community Government schools on the Groote Archipelago, the overall attendance level (those attending >90% of the time) has been consistently very low at <10% since 2011 (ANU, 2022). Data shows that there have been marked improvements in engagement as a result of the ALCs support of education initiatives.

The ALC has directly funded Groote Eylandt Bickerton Island Primary College Aboriginal Corporation (GEBIPCAC) and Aminjarrinja Enterprises Aboriginal Corporation to address this serious issue. This has directly resulted in over 180 of 301 children (60%) fully attending the Alyangula local school on Groote Eylandt and at off-Eylandt schools. GEBIPCAC's work to support Anindilyakwa-speaking student's attendance at Alyangula school has re-engaged 43 students who had not previously attended school for six months or longer.

Through ALC advocacy and the LDMA, funding was secured to establish an independent boarding school on Bickerton Island from the Aboriginal Benefits Account (ABA) for \$61 million. The boarding school will accommodate 48 Anindilyakwa children on-country for their primary education. The (GEBIPCAC) has been established to inform the design and operate the school, as well as establish a bi-lingual curriculum. The curriculum will be provided to all community schools in the area including the boarding school. In addition to the ABA funding the ALC Board has made \$4 million in ALRA s64(3) distributions to advance the work of GEBIPCAC since 2019.

Housing:

The community-controlled and managed housing stock in 2006 amounted to 238 dwellings. In 2006, 39% of the community-controlled housing stock was uninhabitable. The ALC has developed with community consultation the Groote Archipelago Housing Master Plan which was accepted by the NT Government as a base line document and subsequently entered into a LDMA that requires all housing on the Groote Archipelago to meet national housing standards.

Anindilyakwa Housing Aboriginal Corporation (AHAC) is registered under the National Regulatory System for Community Housing and is poised to take responsibility for all community housing stock by June 2025. AHAC provides a benchmark for other Anindilyakwa-controlled entities under the LDMA having built trust in community and achieving real jobs for TOs (11 TO positions or 60% TO workforce as of 30 June 2022).

The ALC Board has enabled the construction of 50 high quality houses and associated infrastructure since 2014 from a \$50 million contribution from the Anindilyakwa Mining Trust at the request of the ALC. Under the terms of the LDMA, in the next five years the NTG will invest an additional \$80 million to meet housing requirements on the Groote Archipelago. Overall, under this area of investment an additional 106 houses will have been built.

By 2028, the Groote Archipelago is set to have met national standards of suitable housing per capita of population.

Law, Justice, and Rehabilitation:

TOs from the Groote Archipelago are considered to have amongst the highest rates of incarceration per community in the NT justice system. The ALC Board has committed funding of \$4.9 million to build an alternative to custody facility on a remote part of Groote Eylandt, as agreed under the LDMA. In addition, the ALC Board is funding the establishment of a community justice group comprised of TO's with support from the NTG to increase Anindilyakwa participation in the justice system and inform the design and operation of the new facility. The alternative to custody facility is designed to reduce the number of inmates in Darwin jail from the Groote Archipelago by 50%, 32 people.

Programs that target youth specifically to address anti-social behaviour have been widely acclaimed nationally for their success. For the last three years the number of youth offenders up to the age of 17 years has now declined to zero (ANU, 2022).

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Health and Wellbeing:

Greater numbers in the population over 55 years will increase pressure on health services and aged and disability care services. Mortality rates for both men and women remain high at early ages, with little overall improvement since 2001.

Under the LDMA with the NT Government, GHAC is tasked with seeking financing from the private sector to construct a new housing residential estate which will cater for LDMA staff and families including 30 new residences for additional health workers. Under the Health and Well-Being LDMA financing from the Private Sector will be re-paid by a rental contract with the NTG Department of Government Housing.

2. Consultation and representing the wishes of TO's

The ALC's Board structure provides representation across the 14 clans of the Groote Archipelago and the ALC is recognised as the peak organisation representing the interest of all TOs. It is the ALC's statutory function to be the peak organisation to represent them. There are no other organisations on the Groote Archipelago that can provide Board/Director level representation across the 14 clans.

The 14 clans, while exercising independent perspectives on a range of matters, share the same vision and work collectively to achieve that vision.

Decision making takes place through consensus following extensive consultation and discussion in language. The ALC accepts that documentation of these extensive consultations can be improved on.

The distribution of ALRA s64(3) royalty equivalents is an important way for the ALC to drive the strategic agenda for the Groote Archipelago.

It is through the ALC Board structure that the primacy of TO decision making is upheld. The process of the ALC Board making determinations for the distribution of ALRA s64(3) monies places TOs as the ultimate decision maker.

The ALC accepts that there is a need to improve on the communication of the decisions of the ALC Board to the greater community. The ALC notes that the RDU, in providing an open-door approach to all community members, receives regular feedback and informal complaints from community about not being informed on what goes on at the ALC Board meetings.

When the RDU receives feedback, the community member is asked to consult with their representative Board member. The ALC Chair consistently asks ALC Board members to communicate with TOs and explain decisions that the Board has made.

The ALC will provide training to ALC Board members on their duties including their responsibility to communicate with the wider community and will provide improved access to the ALC Board meeting minutes. These action items form part of ALC's response to recommendations 3 and 5 of the audit report.

The TO population on the Groote Archipelago is about 1600, and there is one degree of separation between the ALC Board members and the community and this presents the ALC with a unique operating context compared to other entities under ANAO's audit remit.

Even with consideration of the feedback received through the RDU and the opportunities for improvement, there is strong consultation with TOs, and their views are represented when the ALC carries out its duties and functions in accordance with ALRA and the *Public, Governance Performance and Accountability Act 2013 (PGPA)*.

The ALC consults extensively, and the audit report does not recognise the massive body of work that the ALC has carried out to negotiate, agree and implement the LDMA and the Implementation Plans, which involved hundreds of meetings.

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The ALC Strategic Plan and resultant LDMA and Implementation Plans have been the centrepiece of our engagement with Community, that has set up Anindilyakwa-control of key service and program areas. This has not been sufficiently recognised in the audit report.

Further, consultations and the transfer of the Groote Headlease over the local townships from the Executive Director of Township Leasing, an Australian Government function, to an Aboriginal Corporation is also not considered.

The extensive 2014-16 consultations over the GEMCO Eastern and Southern mining and exploration agreements are not considered.

Following the GEMCO/ALC agreements that were reached by late 2016, extensive community consultations were conducted from 2016-18 by Social Ventures Australia, for TOs to establish what kind of economy the community wanted in a post-mining future. This is not considered in the review either.

The ALC is concerned that given the central role of the ALC, non-TOs on the Groote Archipelago who have become unhappy when their agendas have been derailed in favour of TO's wishes, may have seen the ANAO audit as an opportunity to attack the ALC and its Officers, who are pursuing a strong TO self-determination agenda.

3. Conflict of Interests

ALC Board Members and Aboriginal Corporation Directors and employees:

The ALC Board consists of family members representing the 14 clans of the Groote Archipelago and family connections are an inherent characteristic of the ALC Board composition. Arguably there are almost no other entities that the ANAO has audited that possess this level of connection to their primary stakeholders.

The TO population of the Groote Archipelago is small, and it is admirable that men and women Elders are actively taking up ALC Board and Director positions in Aboriginal Corporations including across the LDMA areas of economic development, housing, education, and health and wellbeing etc...

The pool of TOs taking up these positions and who are skilled in working in leadership and corporate roles is relatively small. There are instances of entire families working in the same organisations. This is an inherent characteristic of TO self-determination and the early phases of active participation in employment and economic development in a remote and small community.

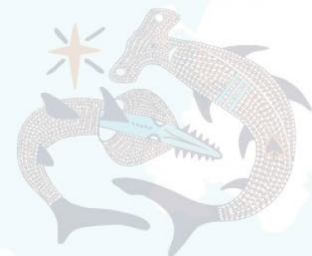
These TO Board members and Directors are role models, creating intergenerational change and their active involvement in the matters of their community should be supported and promoted. As capacity builds, the pool from which to draw Board and Director positions will grow. However, the current status of some Elders holding multiple decision-making positions must be acknowledged as acceptable and necessary.

The Independent Directors involved in the AMT, Anindilyakwa Royalties Aboriginal Corporation (ARAC) and GHAC, are eminent Australians. They bring a great breadth of expertise and wisdom to the governance of these very important organisations and should be recognised in the audit report.

They are:

AMT and ARAC

- Dr Simon Longstaff (OAM)
- John Cunningham (OAM)
- Adam Simpson





Anindilyakwa Land Council ANAO Governance Audit – Full Response

GHAC

- Peter Carroll
- Adam Kilgour

The ALC has effectively managed conflict of interests in the context of this operating environment and accepts that we have not always properly documented these practices. Therefore, instances of typographical errors have given the auditors a negative overall impression.

Non-TO officers of the ALC and Aboriginal Corporations:

In respect to conflicts of interest between non-TO officers of the ALC and of Aboriginal Corporations, again the context of living and working in small remote communities must be recognised, where families relocate to the Groote Archipelago and spouses must find gainful employment.

Often spouses bring with them valuable skills that are not readily available on the remote Groote Archipelago, and naturally they seek and find employment in organisations connected to their spouse's place of employment, including Aboriginal Corporations or the ALC itself.

Across the Groote Archipelago, there are several Pacific Islander families that are working both within the ALC and in multiple other Aboriginal Corporations that have been living and working in the Groote Archipelago since three generations. These are people who have earned a deep and enduring mutual respect with TOs and provide an invaluable contribution to the capacity and governance of the ALC and Aboriginal Corporations. The ALC is not alone in this feature of working in very remote areas. For example, the Tiwi Islands "Pikataramoor School" has student family houses run almost entirely by Pacific Island married couples.

There are also numerous families from a range of European cultures who have had long (+/- 40 years) histories of living and working on the Groote Archipelago that have made extensive similar contributions.

In the case of the ALC CEO's spouse, she was appointed as Chief Operations Officer by the GHAC Board and reports directly to them and not to her spouse. The same applies to her role in the ALC where she was appointed by the Board and reports to the Manager of the ALC RDU.

The ALC acknowledges that staff-wide declared conflicts of interest require improved management plans generally, and the ALC will address this.

ALC accountable authority and Aboriginal Corporations:

In the case of Winchelsea Mining, the ALC Chair and CEO dual leadership roles in both ALC and Winchelsea Mining are consistent with ALRA s23(1)(ea), and have been very carefully managed for conflict of interest over the past five years since Winchelsea Mining was established. Following detailed legal advice both those roles and their management of conflicts were declared to Minister Scullion and again with Minister Wyatt when Stimulus Funds were sought to support the development of the project. Included in this management arrangement, the ALC Board if deciding in regard to the Winchelsea Mining Project, requires both the Chair and the CEO to leave the room and the ALC Mining and Sustainability Manager facilitates the ALC Board's decision.

In the case of GHAC, the ALC CEO and Chair as consistent with ALRA s23(1)(ea) have provided leadership in developing major projects as defined in the ALC Strategic Plan.

GHAC and AAAC have been established to carry out major economic development for the region. Both Aboriginal Corporations are therefore significant recipients of royalty monies directed to deliver projects that are capital intensive, large scale and complex. It is with this in mind, that the ALC Chair and CEO have also placed significant attention and taken an interest in these organisations to provide stewardship, given the importance of the projects to the Future Groote Economy, which are for the benefit of all TOs on the Groote Archipelago.

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The ALC Board has had the option to turn over the ALC CEO and Audit Committee Chair when contracts ended and in the case of the ALC Chair when the newly elected ALC Board selects the Chair (and Deputy Chair). The Chair and Deputy Chair must first be successfully elected to the ALC Board during the triennial elections.

The community and the ALC Board have chosen repeatedly to maintain the leadership that have proven themselves and are trusted.

This choice provides a good indication of the performance of the leadership and the confidence that community and the ALC Board have in the incumbents.

The stable and longstanding leadership has provided the continuity of focus on the Strategic Plan which has required years of consultation and relationship building to implement and achieve desired outcomes, and there is now a large and significant culmination of outcomes impending over the next three years which aligns with the performance measures in the CEO's contract.

4. Chair of Audit Committee

Mr. Mark O'Shea was appointed to role of Chair of the Audit Committee in 2012. He was approached by the Department of Families, Community Services, and Indigenous Affairs in Canberra, to put forward a plan to re-start the ALC Audit Committee that had ceased to function for well over a year. Mr. O'Shea was selected due to his 16-year experience as Audit Partner in Deloitte and his familiarity with indigenous organisations. The external audit process was broken, with ANAO audit contractors refusing to attend Groote Eylandt, requiring paper records to be shipped to the auditor based in Darwin.

The ALC Board was keen to have a number of its well-educated and experienced Board members to be part of the Audit Committee and Mr. O'Shea was willing to enable this. The ALC was a small organisation with three finance staff covering the roles of:

- CFO
- payroll
- procurement
- asset management
- financial reporting and
- budgeting.

The members of the ALC board were wary of any person in the role of the Chair of the Audit Committee, and it took some two years for trust to develop and open dialogue at meetings to occur. Mr. O'Shea has the trust of the ALC Board and four TO's make up the committee with Mr. O'Shea as Chair.

In the following years, the ALC Audit Committee has made three visits to Canberra to discuss face to face the external audit process with the ANAO. They also met with representatives of funding bodies and with the Registrar for Indigenous Corporations. These have been integral to the learning and skill enhancement of the ALC Audit Committee members.

Since 2017 the ALC has lost five Chief Finance Officers (CFO) without notice, due to illness, fatigue, excessive travel burden and to better remunerated roles in Cairns. The limited resources available in the Finance Department resulted in the urgent need for Mr. O'Shea to be called upon at short notice to supervise the work of preparing the end of financial year workpapers and reporting packages whilst the recruitment process for a replacement CFO continued. While this is a departure from the usual role of a Chair of an Audit Committee, it was essential to maintain the stability of ALC operations at that time. On such occasions NIAA were advised that this was to occur, and that no delegation of authority was given to Mr. O'Shea at any time.

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Mr. O'Shea was appointed for three years under contract with the ALC Board. The ALC Board elected to renew the contract when each expired in 2015, 2018 and 2021. While the ALC accepts that it is usual best practice to rotate the Chair position every five years, it was deemed inappropriate and destabilising to do that in this case.

Moving forward the Audit Committee will broaden its focus on risks outside of financial risks, and also develop a succession plan to eventually manage the replacement of Mr. O'Shea as Chair while maintaining stability, oversight, and the engagement of the TO's as members of the Audit Committee.

Further, the ALC will seek funding to invest in a governance risk and compliance system to enhance risk management capabilities and commence an internal audit function to provide assurance over key processes and risks. Previous internal audits were done ad hoc to address specific concerns as they arose.

5. Conclusion

The ALC is a future forward land council committed to expressing the wishes of TOs and proactively supporting TOs to self-determine a prosperous, culturally informed future Grootte Archipelago economy and community that is in line with TOs vision and values. There is demonstrable positive change happening on the Grootte Archipelago and the ALC is proud of the significant role it has played as progress is made.

The ALC has undergone rapid change and growth in recent years and will continue to work diligently to ensure that our governance, risk, and compliance maturity grows to keep up with our activities and our operating context.

We acknowledge the findings of the audit report are administrative or procedural in nature, with the identified irregularities being addressed in our responses. We have accepted the 14 out of 15 recommendations of the audit report and have identified an additional 10 initiatives to enhance our governance arrangements that are not identified in the report. We hold the position that we mostly comply with our obligations.

We want to highlight that the ALC must be funded appropriately to carry out functional improvements and will seek to obtain the resources necessary to do that.



Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2022–23 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

Report paragraph no.	Actions observed during the course of the audit
3.10	The ALC published the method of choice on its website on 28 March 2023.
3.19	The CEO's contract was renewed in December 2022 after the previous contract expired in August 2021.
3.36	From August 2022 the ALC began submitting all royalty equivalent funding applications to Council's decision. (Prior to this, the Council received briefing on those applications that were supported by the Finance Committee.)
3.57	From mid-2021, the ALC's anthropology reports included a list of Traditional Owners of the land subject to the proposal.
3.79	The ALC developed an external complaints policy and register in July 2022, and added a complaints form to its website in September 2022.
4.3	In 2020 the ALC developed a Risk Management Policy, which was updated in January 2022.
4.5	The ALC developed an enterprise risk register in 2021–22.
4.9	From November 2022 the ALC implemented monthly monitoring and reporting on the status of actions arising from fraud, risk and other reviews.

Report paragraph no.	Actions observed during the course of the audit
4.11	The ALC undertook a significant review of its corporate policies and procedures from 2020 to 2022.
4.15	In August 2022 ALC employed a Business Improvement Coordinator to drive the implementation of policies.
4.30	A register of declared interests was established for key staff in June 2022.
4.35	A gift register for staff and Council members was established in April 2022.
4.60	The ALC created a role in May 2021, which includes the collation of the performance statements, using information provided by department managers.
4.65	In December 2022 the ALC endorsed an internal audit program covering 2022 to 2033 for the first time.
Table A.5	The ALC conducted an organisation-wide review of its fraud control arrangements in April 2022, which identified fraud risks and existing controls.

Appendix 3 Powers, functions and duties of the Land Councils

Land Councils' powers

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

Land Councils' functions

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

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

Land Councils' duties

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

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

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

Appendix 4 Decision-making authority

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

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

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

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

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

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

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

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

Land Councils as Native Title Representative Bodies	
Section 203AD	<p><i>Commonwealth Minister may recognise representative bodies</i></p> <p>(1) The Commonwealth Minister may, by legislative instrument, recognise, as the representative body for an area or areas, an eligible body that has applied under section 203AB to be the representative body for the area or areas if the Commonwealth Minister is satisfied that:</p> <ul style="list-style-type: none"> c) if the body is already a representative body — the body satisfactorily performs its existing functions; and d) the body would be able to perform satisfactorily the functions of a representative body. <p><i>Period of recognition</i></p> <p>(2) The recognition of the body as a representative body:</p> <ul style="list-style-type: none"> a) takes effect on the day specified in the instrument of recognition; and b) subject to subsection (3), ceases to have effect at the end of the day specified in that instrument unless the body’s recognition is earlier withdrawn under section 203AH. <p>(3A) The period of recognition specified in the instrument of recognition must be at least 1 year but not more than 6 years.</p>
Section 201A	<p><i>Definitions</i></p> <p>In this Part, unless the contrary intention appears:</p> <p>director, in relation to a representative body, means a member of the governing body of the representative body.</p>
Section 203EA	<p>(3) A director of the representative body who has a material personal interest in a matter that is being considered by the body’s governing body:</p> <ul style="list-style-type: none"> a) must not be present during any deliberation by the governing body on the matter; and b) must not take part in any decision of the governing body on the matter.
Section 5 (Instrument)	For subsection 203AD(1) of the Act, the Central Land Council is the recognised Representative Body for the area described in Schedule 1.
Section 5 (Instrument)	For subsection 203AD(1) of the Act, the Northern Land Council is the recognised Representative Body for the area described in Schedule 1.

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

Appendix 5 Delegation of ALRA powers and functions

1. Under section 28, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes that the Land Council may delegate its functions and powers, with some exceptions: to the Chair or another member of the Council; or to a member of staff.¹⁰³
2. Under subsection 28(2) and section 29A, the Council may also appoint one or more committees of its members to assist it in relation to the performance of any of its functions or the exercise of any of its powers¹⁰⁴, also with some exceptions.

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

Delegations under the <i>Aboriginal Land Rights Northern Territory Act 1976</i> (ALRA)	
Section 28	(1) A Land Council may, in writing under its common seal, delegate to the following: <ol style="list-style-type: none"> a) the Chair or another member of the Council; and b) a member of the staff of the Council; any of the Council's functions or powers under this Act other than the following:
Section 28	<ol style="list-style-type: none"> c) the giving or withholding of consent in relation to the acquisition or grant of an estate or interest in Aboriginal land under an agreement or agreements: <ol style="list-style-type: none"> (i) that will have effect for a period that exceeds, or for periods that together exceed, 2 years; or (ii) in respect of which the approval of the Minister is required by subsection 27(3); ca) the making of a request under section 21E; (variation of LC boundaries); d) the making of determinations under section 35; (application of money); e) the giving or refusing of a consent under subsection 42(1); f) the giving of a consent under section 48C; (exploration licence); g) any function or power prescribed by the regulations.
Section 28	(2) A Land Council may, in writing delegate to a committee appointed under section 29A any of the Council's functions or powers under this Act other than the following: <ol style="list-style-type: none"> aa) section 21E (varying the border); a) section 35 determinations (application of money); b) any function or power prescribed by the regulations.
Section 28	(4) If the Land Council delegates consenting to an act or things according to the section 23(3) standards then the delegate applies the same standards.
Section 29A	(1) A Land Council may, by notice in writing, appoint a committee or committees of its members to assist the Council in relation to the performance of any of its functions or the exercise of any of its powers.

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

103 The ALRA used to enable the delegation of all or some of the Land Councils' functions or powers to an Aboriginal corporation under section 28A. This was repealed on 13 December 2021.

104 Subsection 27(1) of ALRA also gives the Land Council the power to delegate a function conferred on the Land Council by another Act, provided that the delegation was necessary or convenient. For there to be an authorised delegation it must meet the requirement of conducting 'more effective administration'. The other Act has the capacity to exclude or limit the delegation of the function it confers on the Land Council. *Northern Land Council v Quall* [2020] HCA 33, 7 October 2020.

Appendix 6 Requirements for governance arrangements

Appointment of key governance positions

1. The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes how Council and Land Trust¹⁰⁵ members, including the Chair and Deputy Chair of the Council must be appointed.

- Land Trust members — ALRA (section 7) establishes that, unless the Minister for Indigenous Australians (the Minister) determines otherwise, the membership of Land Trusts will consist of a Chair and three other members, appointed by the Minister upon receiving from the Land Council nominations of Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register. Trust members are appointed for a maximum of five years and are eligible for re-appointment. It does not specify a method to nominate Land Trust members.
- Council members — ALRA (section 29) establishes Council members' eligibility criteria and that Council members shall be Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register, chosen by Aboriginal people living in the area of the Land Council in accordance with a 'method of choice'. The method of choice is to be approved by the Minister. Section 29 also establishes that a Land Council may, with the approval of the Minister, co-opt a maximum of five Aboriginal people living in the area of the Land Council as additional members of the Council. A range of disqualifying events apply to candidates for election or to elected members.¹⁰⁶
- Chair and Deputy Chair — ALRA (section 30) establishes that the Land Council shall elect two members of that Council as the Chair and the deputy Chair for a period of three years. The Chair and Deputy Chair are eligible for re-election.
- Land Council staff — ALRA (subsections 27(1) and 27(2)) establish that Land Councils have the power to employ staff and to determine the terms and conditions of the employment of Land Council staff. It is implied that this includes the Chief Executive Officer (CEO) of the Land Council.

Establishment of committees

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

Establishment of Council and Committee meeting rules

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

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

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

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

Compiling and maintaining registers


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



Appendix 7 Anindilyakwa Land Council compliance with the Commonwealth fraud rule

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

Table A.5: Anindilyakwa Land Council’s compliance with the Commonwealth fraud rule

Requirement		Rating
(a) Conduct fraud risk assessments regularly	<p>Some fraud risks are included in department risk registers which are to be reviewed annually.</p> <p>The ALC conducted an organisation-wide review of its fraud control arrangements in April 2022 (2022 fraud review), which identified fraud risks and existing controls. The review was conducted via interviews with the manager of each department. There were no high-rated residual risks once controls and actions were considered. The CEO approved the review report.</p>	◆
(b) Develop and implement a fraud control plan that deals with identified risks	<p>As at February 2023 the ALC did not have a fraud control plan or policy. A number of fraud controls are articulated in other ALC policies, for example for credit card use, travel, asset management and procurement. The 2022 fraud review identified additional controls that the ALC planned to implement. Actions to implement or strengthen controls are reported to the CEO and other managers in monthly Business Improvement Updates.</p>	▲
(c) Have an appropriate mechanism for preventing fraud, including making employees aware of what constitutes fraud	<p>The 2022 fraud review identified a number of controls to prevent fraud, for example:</p> <ul style="list-style-type: none"> • restricted access to procurement and payment systems; • software to check vendor details before payment; • secure storage of Council meeting minutes, to prevent unauthorised access or modification; and • withholding of royalty payments to Aboriginal corporations until the corporation’s board provides a written resolution to spend the funds for the intended purpose. <p>In 2021 and 2022 the Audit Committee Chair presented on fraud awareness to staff from four departments and other members of the Audit Committee. No other fraud awareness training has been provided.</p>	▲
(d) and (e) Have an appropriate mechanism for detecting and investigating fraud, including a confidential reporting process	<p>The ALC does not have systematic arrangements to detect fraud, including a confidential reporting process. However, the 2022 fraud control review identified controls for detecting fraud, and actions to address any deficiencies. These included:</p> <ul style="list-style-type: none"> • automated notifications to the Chief Financial Officer (CFO) when bank account records are modified; • reconciliation and cross-checking between records (manual and automated); • segregation of duties and requirements for management sign-off; and • inspection of goods and services procured. 	▲

Requirement		Rating
(f) Have an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud	The ALC does not have any formal mechanisms for recording or reporting incidents of fraud or suspected fraud.	

Key:  Fully compliant  Partly compliant  Not compliant

Source: ANAO analysis of ALC fraud review and other records.

Appendix 8 Conflict of interest management — Mining and other interests

Table A.6: Conflict of interest management — Anindilyakwa Advancement Aboriginal Corporation (AAAC), Groote Holdings Aboriginal Corporation (GHAC) and Winchelsea Mining

Interest	Declared?	Management plan?	Management plan implemented?
ALC Chair's position in GHAC	Yes — Declared in the ALC Board Register of Interests. ^a	There is no specific management plan. However, generally, Council and Finance Committee meeting rules state that members' conflicts should be managed during the conduct of meetings, by the member leaving the meeting unless an exception (see paragraphs 4.40 and 4.41) applies.	Unable to determine — The Chair is not recorded as having left the meeting when GHAC funding was discussed or decided upon during Finance Committee or Council meetings, and the meeting minutes do not specify whether an exception applied.
ALC CEO's position in GHAC	Yes — Declared in the ALC Declared Interests Register. ^b	The 'notes' section of the ALC Declared Interests Register provides further description of the interest, however no management plan is included in the register or elsewhere.	N/A
ALC CEO's spouse's position in GHAC	Yes — Declared by the CEO in the ALC Declared Interests Register.	The 'notes' section of the ALC Declared Interests Register is left blank, and no management plan is included in the register or elsewhere.	N/A
ALC Chair's and CEO's position in Winchelsea Mining	Partly — Declared in letters to the Minister dated 15 August 2018 and 6 September 2018.	<p>The proposed management plan in the letters to the Minister was to:</p> <ul style="list-style-type: none"> a) disclose the proposed details of these interests to one another as the accountable authority (as required by section 14 of the PGPA Rule); b) disclose the details of the interests to the Council; c) not participate in any discussion of, or decisions in relation to, Winchelsea Mining matters, unless the Council determines that the CEO and the Chair can be present and answer any questions the Council might have and, in the case of the Chair, vote; d) comply with any additional risk management strategies and procedures the ALC Council might reasonably require. 	<p>Partly —</p> <ul style="list-style-type: none"> a) Chair and CEO interests were mutually disclosed on 21 August 2018; b) interests were disclosed to the Council on 21 August 2018; c) the 2021–22 Finance Committee and Council meeting minutes do not record that: the Chair or CEO left the meeting when AAAC^d or GHAC funding was discussed or decided upon; or that the Council required the Chair and the CEO to remain present; and d) the CEO's base salary was reduced by 19 per cent in October 2018.

Interest	Declared?	Management plan?	Management plan implemented?
		<p>On 21 August 2018 the Council discussed whether the remuneration of the CEO and the Chair should be reduced proportionally to the time required to perform their functions for Winchelsea Mining and resolved:</p> <ul style="list-style-type: none"> – not to reduce the Chair's pay; and – to reduce the CEO's pay by 20 per cent; and revisit the matter in 12 months' time.^c 	The CEO's five-year contract signed in 2022 records a 17.5 per cent reduction of the base salary together with a proportional reduction of the working hours (see paragraph 3.21).
	Chair's interest not declared in ALC Board Register of Interests.	N/A	N/A
	CEO's interest declared in ALC Declared Interests Register.	The 'notes' section of the ALC Declared Interests Register is left blank, and no management plan is included in the register.	N/A
ALC CEO's spouse's position in Winchelsea Mining	Declared by the CEO in ALC Declared Interests Register.	The 'notes' section of the ALC Declared Interests Register is left blank, and no management plan is included in the register or elsewhere.	N/A

Note a: The ALC Board Register of Interests relates to ALC Council members (see paragraph 4.37).

Note b: The ALC Declared Interests Register relates to ALC staff (see paragraph 4.30).

Note c: The minutes of the 2019, 2020, 2021 and 2022 Council meetings when the 12-month CEO performance review was discussed do not record any further discussion of the CEO's role in Winchelsea Mining or whether the 20 per cent salary reduction should be revisited.

Note d: Winchelsea Mining is a subsidiary of AAAC.

Source: ANAO analysis.

Appendix 9 Anindilyakwa Land Council compliance with corporate plan, annual report and performance statements requirements

Corporate Plan

- Section 35 of the *Public Governance, Performance and Accountability Act 2013* (PGPA) requires the accountable authority of a Commonwealth entity to prepare a corporate plan in accordance with any prescribed rules and give the corporate plan to the responsible Minister and Finance Minister.
- Section 16E of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) sets out the relevant requirements for corporate plans which includes the period it is to cover, mandated topics, and presentation and publication requirements. The Department of Finance (Finance) also prepares guidance to assist entities to prepare their corporate plan.¹⁰⁷

Table A.7: Compliance of Anindilyakwa Land Council's 2021–2025 Corporate Plan with PGPA Rule 16E requirements

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

¹⁰⁷ Department of Finance, *Corporate plans for Commonwealth entities, Resource Management Guide No. 132* [Internet], Finance, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/corporate-plans-commonwealth-companies-rmg-133/what-include-corporate-plan> [accessed 9 March 2023].

PGPA Rule 16E	Requirement	Compliance assessment
	b) targets for each performance measure where it is reasonably practicable to set a target?	
Publication timeliness	Was the corporate plan published on the entity's website by 31 August?	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Source: ANAO analysis of Anindilyakwa Land Council 2021–22 Corporate Plan.

Annual report

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

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

Table A.8: Compliance of Anindilyakwa Land Council's draft 2021–22 Annual Report with PGPA Act, PGPA Rule and ALRA requirements

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

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

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

Annual performance statements

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

6. This audit examined whether, at a high level, the measures and targets provide meaningful performance information. It did not assess whether the Land Council’s performance statements met the requirements of the PGPA Rule, and in particular draws no conclusions about reliability, verifiability, potential bias or measurability over time. The Auditor-General’s functions include auditing the annual performance statements of Australian Government entities in accordance with the PGPA Act as set out in section 15 of the *Auditor-General Act 1997*. These audits apply a comprehensive methodology to the assessment of selected entities’ performance statements. See Auditor-General Report No.23 2021–22 *Audit of the Annual Performance Statements of Australian Government Entities — Pilot program 2020–21*.

Table A.9: Compliance of Anindilyakwa Land Council’s 2021–22 Annual Performance Statements with PGPA Rule section 16F requirements

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

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

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

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

Appendix 10 Anindilyakwa Land Council compliance with Audit Committee requirements and guidance

1. The purpose of an audit committee is to provide independent advice and assurance to the entity's accountable authority. Section 45 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) states that the accountable authority of a Commonwealth entity must ensure that the entity has an audit committee. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) states that the accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee for the entity, and that these must include reviewing the appropriateness of the accountable authority's financial and performance reporting; system of risk oversight and management; and system of internal control for the entity.¹⁰⁸ The PGPA rule also states that the audit committee of a corporate Commonwealth entity must consist of at least three persons who are not employees of the entity and who have appropriate qualifications, knowledge, skills and experience.

2. In September 2021, Department of Finance released a guide (Finance guidance) for corporate Commonwealth entities on the role of audit committees.¹⁰⁹ The Finance guidance sets out the better practice principles for the establishment and operation of a corporate Commonwealth entity audit committee, to help ensure that the committee provides independent advice and assurance to the entity's accountable authority. The Finance guidance states that:

Audit committees are integral to good corporate governance. They provide advice to accountable authorities, assist them to meet their duties and obligations, and support the development of key practice and capacity within corporate Commonwealth entities.¹¹⁰

Table A.10: Effectiveness of the Anindilyakwa Land Council Audit Committee Charter and member composition

Requirement/ Guidance	Detail	Compliance assessment
Charter		
Mandatory inclusions <i>PGPA Rule subsections 17(1) and (2)</i>	The accountable authority must, by written charter, determine the functions of the audit committee for the entity, which must include the review of the entity's financial reporting; performance reporting; system of risk oversight and management; and system of internal control.	◆
Other functions and matters <i>Finance guidance, p. 10</i>	The charter may also cover other functions and matters including: membership and tenure of the audit committee, administrative arrangements for the conduct of the audit committee, requirement to disclose conflict of interest and assessment of the audit committee performance.	◆

¹⁰⁸ *Public Governance and Performance Accountability Rule 2014*, section 17.

¹⁰⁹ Department of Finance, *A guide for corporate Commonwealth entities on the role of audit committees*, September 2021.

¹¹⁰ Department of Finance, *Resource Management Guide 202 – A guide for corporate Commonwealth entities on the role of audit committees*, Finance, 2021, p.5.

Requirement/ Guidance	Detail	Compliance assessment
Member characteristics		
Skills and experience <i>PGPA Rule subsection 17(3)</i>	The audit committee must consist of at least three persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions. The members of the audit committee must be persons who are not employees of the entity.	Unable to fully assess
Independence <i>Finance guidance, section 2.1</i>	To effectively deliver its function, the audit committee needs to be independent from management.	■
Remuneration <i>Finance guidance, section 2.4</i>	The remuneration of audit committee members should be commensurate with the importance of their responsibilities and the commitment required.	■
Rotation <i>Finance guidance, section 2.5</i>	It is important to rotate the audit committee members to allow for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.	▲

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant






Source: ANAO analysis of Anindilyakwa Land Council Audit Committee and other records.

3. Finance guidance states that the audit committee ‘should inherently have sound knowledge of the entity’s operating context ... In order to understand and review the entity’s processes and systems the committee also actively pursues information from relevant areas of the entity’.¹¹¹

Table A.11: Effectiveness of the Anindilyakwa Land Council Audit Committee operations

Requirement/ Guidance	Detail	Compliance assessment
Delivering the Audit Committee’s mandatory functions		
Financial reporting <i>PGPA Rule paragraph 17(2)(a)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority’s financial reporting. This could entail the audit committee reviewing the financial information systems and the entity’s compliance with the mandatory legislative and accounting standards requirements.	▲
Performance reporting <i>PGPA Rule paragraph 17(2)(b)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority’s performance reporting. To fulfil this function an audit committee must review the entity’s performance information, systems and framework and the completeness and appropriateness of performance reporting.	■

¹¹¹ Department of Finance, *Guide for corporate Commonwealth entities on the role of audit committees*, September 2019, p. 11.

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

Key:  Fully compliant  Partly compliant  Not compliant

Source: ANAO analysis, based on analysis of Audit Committee meeting minutes and papers for 2021–22, and discussions with the Audit Committee members and ALC officials.