



Central and Northern Land Councils



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14 February 2003

Australian National Audit Office (ANAO) Report on NT Land Councils and ATSIC's Management of the Aboriginals Benefit Account (ABA).

Background

In September 2001, the Minister Mr Ruddock approved a new plan for the financial management of the ABA. This plan allowed a modest increase to the Land Councils' budgets, but also set some other conditions :

- that the ANAO would conduct a performance audit of the Land Councils and ATSIC/ABA;
- that Land Council budgets would not increase for the next 2 years;
- that Land Council budgets have to be based on an 'outcomes based framework';
- that there be changes to the way the ABA community grants system operates;
- That Land Councils look at accessing more non-Government funding sources, including fee for service.

The ANAO were officially appointed to conduct the audit in March 2002. They spent some weeks in the NLC and CLC office, but were unfortunately only able to participate in a small number of bush meetings and visits to regional offices – the audit was largely based on the Land Councils' files, paperwork and systems.

All Land Councils provided extensive information to the audit team, co-operated fully with the audit process, and provided detailed responses to the Issues Papers and draft report.

The audit also includes an assessment of how ATSIC manages the Aboriginals Benefit Account (ABA).

Reason for the Audit.

The Land Councils agreed to the audit on the grounds that it would provide useful external review of the operations of the Land Councils and ATSIC's management of the ABA, and would hopefully produce some useful recommendations to improve the effectiveness of all organisations.

The Minister, however, specifically tied the Audit to his intention to propose amendments to the Land Rights Act. Despite this, he has repeatedly attempted to progress discussions regarding amendments to the Land Rights Act without even waiting for the audit report to be released. Land Councils have insisted that the findings and recommendations of the audit should inform any consideration of amendments to the Land Rights Act.

Findings of the Audit

The Land Councils welcome the audit findings which demonstrate that they are operating consistently with the Land Rights Act, consult extensively with traditional landowners and perform well at a project management level.

The recommendations and findings come as no surprise; however they are somewhat limited in scope – see below for more details.

The audit also finds that ATSIC needs to improve the management and accountability of the ABA.

Audit Conclusion

An excerpt from the ANAO's audit summary paper provides a reasonable summary statement regarding the findings;

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

Essentially the findings and recommendations of the Audit Report relate to improving reporting frameworks, performance and risk management, and communication with stakeholders. The Land Councils agree that improvements can and should be made in these areas, and work is already underway. However, it should be acknowledged that overhauling performance management systems will take time and resources.

Weakness of the Audit

The audit does not even attempt to understand or assess the indigenous governance and traditional law basis of the Land Councils. The report fails to properly acknowledge that the Land Councils are indigenous organisations which seek to successfully balance indigenous and non-indigenous needs, values, cultural contexts, performance and accountability measures. Essentially the audit looks at the 'whitefella' side of the Land

Councils only - compliance with legislative obligations, and Commonwealth management frameworks. It does not even try to come to grips with the indigenous law and governance dynamics of the Land Councils or the work that we do.

A specific example of this is;

- the audit report refers to traditional owners as ‘stakeholders’ – the Land Councils consistently told the ANAO that the relationship between traditional land owners and the Land Council is not a service organisation/customer relationship. Traditional landowners are not simply ‘stakeholders’ in the business of the Land Council, they are the Land Councils – it cannot perform functions without their instruction.

These flaws in the audit report are not an excuse for the Land Councils to ignore the recommendations, but it is important to understand the limitations of the report. The management recommendations will be acted upon and the Land Councils will continue to strive to improve performance and accountability.

Specific Recommendations from the ANAO Report

These are the specific recommendations from the report;

1. The ANAO recommends that, following consultation with the Land Councils, ATSIC amends its financial plan for the ABA to include a clear statement defining the objective of the plan and the purpose of the minimum level of equity.
2. The ANAO recommends that ATSIC revise its investment strategy and investment operations to better identify opportunities for improved investment returns on available ABA moneys. Performance indicators should also be developed that would provide benchmarks to assess the performance of ABA investments for the benefit of all stakeholders.
3. The ANAO recommends that the Central Land Council (CLC) and the Anindilyakwa Land Council (ALC) establish an Audit Committee as required by the *Commonwealth Authorities and Companies Act 1997*. The ANAO recognises that the ALC is a very small organisation and the Audit Committee function could be incorporated into an existing committee, as it is in the Tiwi Land Council (TLC).
4. The ANAO recommends that the Land Councils put in place a formal risk management process including procedures to identify, assess, treat and manage risks including those related to traditional owner identification. The oversight of risk management could be the responsibility of an audit committee. If this oversight function is considered appropriate, the Land Councils should seek to have the membership of their audit committees reflect this broader role.
5. The ANAO recommends that the Land Councils finalise the development of an outcomes and outputs framework that reflects their overall strategic direction, in consultation with the Minister and ATSIC. The framework should provide the basis for preparing budget estimates and reporting on performance in their annual reports. As well, it should:
 - assist proper monitoring of performance against established indicators and targets;
 - assist management to ensure that resources are efficiently utilised; and

- reflect strategic, operational and individual project plans based on a comprehensive risk assessment.

6. The ANAO recommends that as part of their accountability to stakeholders, the Land Councils develop an appropriate service charter, as well as a practical strategy to obtain the views of key stakeholders on their level of satisfaction with the Land Council's service delivery. The charter should include service standards and be used in performance assessment and management decision processed to achieve greater efficiency and effectiveness.
7. The ANAO recommends that Land Councils regularly monitor and review the performance of their key business processes, and use the results to assist in decision-making and for reporting to external stakeholders. This approach should ultimately be part of a wider performance information system, which provides for assessment to be made in a systematic way across the organisation, rather than just for isolated activities.

CLC NLC response to recommendations

Largely, the Land Councils agree with the intent of the recommendations, and will work to systematically address the issues raised. Not only will this take time and resources, but will need to be managed to ensure that the new performance management systems are culturally appropriate and useful in the environment in which Land Councils operate.

ANAO Positive Comments (a short selection)

The Minister has made public statements which, in our view, misrepresent the findings of the audit. Here are some selected positive comments from the report. Anyone can play the game of 'selective quoting' – the fact is that the ANAO did not find any 'skeletons in the closet'.

- 1.6 Land Councils provide a key service for traditional Aboriginal landowners and other Aboriginals with an interest in land in the NT. A critical role of the Land Councils is to consult with traditional Aboriginal owners and to obtain their consent on matters affecting their land before any action is taken. This informed decision-making process requires the input of skilled people in the administrative arm of a Land Council.
- 1.7 The Land Councils face a number of obstacles associated with indigenous service delivery. (eg: distance, literacy, contacting people)
- 4.5 The ANAO found that the Land Councils consulted extensively with traditional owners to obtain their wishes and opinions and to make informed decisions regarding the use of their land. As well, traditional owners and other Aboriginals have a direct influence on the decision-making process within the Land Councils.
- 5.6 ANAO found that key business areas had adequate procedures in place to assist staff to comply with legislation, identify traditional owners' needs and manage individual projects.

5.13 The ANAO considers that the Land Councils are performing their advocacy and representation functions as required by the ALRA.

5.42 At the individual project level, the ANAO found that staff of the Land Council had good project management skills and developed policies and procedures to guide land management projects.

The Minister's response

The Audit has not found any actual problems with the Land Councils, or any hint of mismanagement. In this sense the audit report has failed to provide the Minister with ammunition for many of his desired proposed amendments to the Land Rights Act (see detail below).

Publicly, the Minister has relied on selective extracts from the ANAO report. He has called on the Land Councils to “accept the recommendations of the ANAO report and to embrace the rationale underlying the recommendations”. Land Councils have already accepted the recommendations, and begun the process of implementing them.

The Minister also states that “The Land Council system in the NT has received around \$280 million for administration since its inception.” This figure is completely misleading. As far as can be ascertained, that figure was arrived at by adding together the budgets of the 4 land councils PLUS the 30% royalty equivalents from mining, which are distributed to traditional owners through the Land Councils. This gives the erroneous impression that this is money which the Land Councils have used: in fact the royalty equivalents are passed directly to traditional landowners; the Land Councils’ only role is ensuring that it goes to the right people.

How does this fit with the proposed amendments to the Land Rights Act?

The audit report in fact makes very few direct references to amendments to the Land Rights Act, and most are actually recommendations from ATSIC to the audit process. They are listed below.

Page/Para	ANAO Issue
P 52 para2.22	Without a clear ability to obtain independent third party verification in these matters, ATSIC is unable to confirm that the royalty equivalent amounts advised to it are correct... <u>ATSIC should consider</u> whether it includes these matters in the current consideration of amendments to the ALRA.
P54 Para 2.31	<u>.. ATSIC has indicated to the ANAO</u> that the repeal or appropriate amendment of subsection 35(1) would represent a useful ‘workability amendment’ to the Act. [re budget surpluses]
P 56 Para 2.43	[re 64(4) arrangements) ATSIC has indicated to the ANAO that it acknowledges the arrangements are unwieldy and emphasises that they are only interim/transitional arrangements. <u>ATSIC considers</u> that the provisions of the ALRA relating to these payments need to be revised to allow for a proper

	framework to be put in place which may include allowing terms and conditions to be attached to grants.
p. 56 Para 2.44	The ANAO concluded that, under the current arrangements, ATSIC has difficulty ensuring the timely consideration and distribution of grant payments from the ABA. <u>ATSIC advised that in its view</u> these matters should be addressed as part of the current consideration of amendments to the ALRA.
Page 63 Para 2.81	In addition, the CLC and NLC request funding in annual estimates which is greater than the amount of their allocation of the 40% of royalty equivalents provided under the ALRA. Consequently, the Minister approves payments for additional administrative expenses more often than may have been intended when the ALRA was drafted. The ANAO notes that the ALRA has not been substantially amended since 1987.