



REVIEW OF AUDITOR-GENERAL'S
AUDIT REPORT No. 20, 1993-94
EFFICIENCY AUDIT—
NORTHERN LAND COUNCIL

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON ABORIGINAL
& TORRES STRAIT ISLANDER AFFAIRS

APRIL 1994

The Parliament of the Commonwealth of Australia

Review of Auditor-General's
Audit Report No. 20, 1993–94

Efficiency Audit—Northern Land Council

House of Representatives
Standing Committee on Aboriginal and
Torres Strait Islander Affairs

April 1994

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Abbreviations

ABTA	Aboriginals Benefit Trust Account
ALR Act	Aboriginal Land Rights (Northern Territory) Act 1976
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
NLC	Northern Land Council

EXTRACTS FROM THE VOTES AND PROCEEDINGS
No. 41 dated Tuesday, 14 December 1993

AUDITOR-GENERAL'S REPORTS—PUBLICATION OF PAPERS
— REFERENCE TO THE COMMITTEE

Mr Speaker presented the following papers:

Audit Act—Auditor General—Audit Reports of 1993-94—
No. 20—Efficiency audit—Northern Land Council
Mr Beazley (Leader of the House), by leave, moved—That:

- (3) Audit Report No. 20 of 1993-94 be referred to the Standing Committee
on Aboriginal and Torres Strait Islander Affairs

Question—put and passed

MEMBERSHIP OF THE COMMITTEE

37th Parliament

<i>Chairperson</i>	Mr Garrie Gibson MP
<i>Deputy Chairperson</i>	Mr Garry Nehl MP
<i>Members</i>	Hon Bob Brown MP Mr Peter Dodd MP Mr Richard Evans MP Ms Marjorie Henzell MP Mr Bob Horne MP Mr Christopher Pyne MP Mr Les Scott MP Mr Barry Wakelin MP
<i>Secretary to the Committee</i>	Mr Allan Kelly
<i>Inquiry Staff</i>	Ms Trish Carling Mr Craig Dukes Ms Penne Humphries Mr Peter Ratas

AUDIT REPORT No. 20, 1993-94, NORTHERN LAND COUNCIL

1.1 Audit Report No. 20, 1993-94 results from an Efficiency Audit of the Northern Land Council. The report makes seven key points and fifty-two recommendations. The Audit Report was referred to the Committee by the House of Representatives on 14 December 1993. In undertaking this review, the Committee has taken into account the responses by the Northern Land Council (NLC) and the submissions made by other government agencies concerned and evidence given at public hearings, at which the following agencies appeared:

The Northern Land Council;

The Australian National Audit Office;

The Department of Finance; and

The Department of Industrial Relations.

1.2 A public hearing was held on the inquiry on 28 February 1994. The list of witnesses who appeared at the public hearing is at Appendix 1. A written submission was also received from the Aboriginal and Torres Strait Islander Commission. Written responses from the respective organisations are included in the transcript of evidence.

1.3 The Audit Report recommendations and agency responses are at Appendix 2.

1.4 The audit was undertaken in response to a request from the Minister for Aboriginal and Torres Strait Islander Affairs, the Hon Robert Tickner MP, under section 63P of the *Audit Act 1901*. The Minister's request, which was dated 16 June 1993, was made in response to concerns about the financial administration of the NLC.¹ Senator Grant Tambling raised concerns in the Senate Estimates Committee process in November 1992 and May 1993 about aspects of the financial operations of the NLC. In his media release on the release of the Audit Report the Minister stated:

Even before allegations were made in the Senate, I had independently sought advice from the Auditor General on the need for an investigation into the financial administration of the NLC.²

¹ Media Release, Hon Robert Tickner MP, 14 December 1993

² Media Release, Hon Robert Tickner MP, 14 December 1993

In a statement made in the Senate on 25 May 1993, by Senator Evans on his behalf, Mr Tickner announced that he would ask the Auditor-General to undertake the audit. He said:

I would emphasise that I have reached no final conclusion on the accuracy or substance or otherwise of Senator Tambling's concerns. In the interests of my continuing commitment to open and accountable government, however, I have decided to take (these) steps It is in the interests of Aboriginal people in the Northern Territory, including staff and Councillors of the Northern Land Council, that urgent action be taken to clarify concerns and, where appropriate, to remedy any deficiencies and shortcomings.

The Auditor-General agreed to conduct an efficiency audit under section 48C of the *Audit Act 1901*.

1.5 The terms of reference of the audit, agreed between the Minister and the Australian National Audit Office (ANAO), were to address, but not necessarily be limited to, the following matters:

- 1 Whether there have been any improprieties in the administration of royalty trust accounts operated by the NLC on behalf of beneficiaries.
- 2 Whether the practice of the NLC of advancing moneys to Council members is lawful and/or appropriate in the light of accepted practice in other Commonwealth statutory authorities.
- 3 Whether the utilisation of fringe benefits tax schemes by the NLC is proper and appropriate in light of accepted practice in other Commonwealth statutory authorities.
- 4 Whether the level of use of consultants by the NLC is appropriate and whether, in giving consultancies, the NLC follows appropriate procedures.
- 5 What action might be taken in respect of audit qualifications contained in the NLC's 1991-92 Annual Report.
- 6 What action might be taken generally in terms of the NLC's management structure and administrative processes to improve the Council's financial and administrative performance.
- 7 Whether the present application of section 64 of the Aboriginal Land Rights Act, especially in relation to the use of sub-section 64(7) payments to supplement the budgets of the Council, is in accordance with the intentions of the Act and facilitates responsible and efficient financial management by the NLC.

1.6 The key points identified by the audit report are listed below.

- 1 *Administration of Royalty Trust Accounts*
Accounting and administrative arrangements for trust moneys limit the NLC's ability to exercise its statutory trustee responsibilities effectively and efficiently. Practices did not comply with the provisions of the ALR Act in several respects.
- 2 *Advances to Council Members and Chairman*
Advances of the type undertaken are not accepted in other Commonwealth authorities and contravene a resolution of the Full Council. It results in additional administrative costs and the write off of uncollectable advances.
- 3 *Use of Fringe Benefit Tax Arrangements for Staff*
Flexible remuneration packages involving significant fringe benefits for certain senior NLC staff were implemented without the required approval of the Department of Industrial Relations and the Department of Finance. The appropriateness of the packages should be reviewed and guidelines developed should they continue to be applied.
- 4 *Use and Engagement of Consultants*
Controls over the selection and management of consultants provided insufficient assurance that value for money and accepted public contracting practices were pursued. Current practices and levels of usage of legal consultants should be reviewed.
- 5 *Control of Expenditure*
Inadequacies were found in the application of expenditure control procedures by project staff in the scrutiny of estimates and the monitoring and review of expenditures by NLC management. There is no effective mechanism to balance priorities, total allocated resources and external funding constraints.
- 6 *Funding Arrangements and Distribution of Surpluses*
Excess administrative funds were distributed against the express wishes of the Minister and have contributed to a significant reduction in Aboriginals Benefit Trust Account (ABTA) funds.
- 7 *General Improvements in Financial and Administrative Performance*
Notwithstanding the complexity and high cost of the land claims process and recent measures taken by the NLC, further improvements could be made, among other things, by:
 - . establishing a corporate planning, monitoring and review process;
 - . revising the management structure and enhancing staff development;

- . better controlling the purchase, use and disposal of motor vehicles;
- . reviewing information technology needs and costs;
- . supporting the withdrawal of Payroll Tax and Mining Withholding Tax;
- . applying Department of Finance Guidelines for Financial Statements; and
- . more consultation with ATSIC regional councils.

Background

1.7 The Northern Land Council (NLC) was established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALR Act) with the following primary functions:

- . to ascertain and express Aboriginal wishes concerning land;
- . to protect Aboriginal interests regarding the management of land;
- . to consult on proposals for the use of land;
- . to negotiate with people interested in using land; and
- . to assist Aboriginal land claims.

1.8 The Council is chiefly funded from mining royalty equivalents paid from the Consolidated Revenue Fund to the Aboriginals Benefit Trust Account and distributed to land councils and other Aboriginal organisations in the Northern Territory in proportions or amounts determined by the Minister for Aboriginal and Torres Strait Islander Affairs in accordance with the ALR Act.

1.9 The NLC is the largest of the four land councils presently established under the ALR Act. The Council's expenditure totalled approximately \$9.4m in 1992-93. The NLC estimated that 37.5% of its 1993-94 expenditure will be spent on land acquisition and 40.8% on land managements and mining matters. In early August 1993 ninety staff were employed by the NLC.

1.10 Aboriginal land in the area of the Northern Land Council, including land under Northern Territory as well as Commonwealth title, presently covers 162 150 km². Approximately 14,500 Aboriginal people are estimated by ATSIC to live on this land, representing about 65% of the total Aboriginal population of the area of the NLC's operations.

Audit recommendations

1.11 The NLC's response to the Audit states that it welcomed the ANAO efficiency and audit report, but stressed that the results of the audit reveal no evidence of serious illegal or improper action on their part.

1.12 The NLC accepts the report's findings that there are areas in which administrative systems and management practices can be improved and have already taken action to address a number of these issues. The NLC has initiated a strategic and corporate planning process and taken action to address some of the immediate organisational and operational issues. The NLC believes that many of the report's recommendations will be accommodated within the review process and restructuring which these initiatives have created.³ The Minister has indicated that he will be monitoring closely the NLC's implementation of the Plan.⁴ He has also announced that a follow-up audit will be conducted by ANAO after 12 months.

1.13 The Audit Report makes 52 recommendations. At the time of the Audit Report the NLC had agreed with 49 of these recommendations, although 12 of these were with qualified agreement. ATSIIC and the Minister have agreed with the 12 recommendations which required action on their part.

1.14 The Committee notes that:

- . the Northern Land Council has agreed with the vast majority of the recommendations;
- . ATSIIC has agreed with all of the recommendations affecting it;
- . the relevant agencies have agreed to work together; and
- . the Australian National Audit Office will conduct a follow-up audit in 12 months time.

In view of these matters the Committee has confined its report to examining the 3 recommendations on which there was disagreement and several other issues on which there was only qualified agreement by the Northern Land Council.

Recommendation 3 - Administration of Trust Accounts

1.15 The ANAO recommended that the NLC incorporate the financial reporting of trust account moneys in a note to its financial statements since they are funds of the Land Council while held in trust. The accounts should also include a statement concerning compliance with section 35 during the year.

1.16 The NLC initially disagreed with this recommendation. The NLC claimed that as this information could be commercially or socially sensitive it published global financial statements. The ANAO commented:

³ Audit Report, p xvii

⁴ ATSIIC submission, p2

*The ANAO believes a level of disclosure similar to that in the Central Land Council's 1991-92 financial accounts would be appropriate. This would include receipts and payments by ALR Act source and a listing of balances at 30 June by royalty association, etc.*⁵

The Minister indicated to the NLC that he had difficulty accepting the NLC's response to recommendation 3.

1.17 The NLC advised in its submission to this Inquiry that its original disagreement was to the publication of the details of individual transactions of the royalty trust associations. The NLC has now agreed to publish the income and expenditure statements of the trust accounts.⁶ This has been given effect in the NLC's 1992-93 Annual Report. The Audit Office indicated that it believed Recommendation 3 has now been implemented.⁷

Recommendation 18 - Control of expenditure

1.18 The ANAO recommended that the NLC implement a time allocation mechanism to allow the project based expenditure control system to allocate salaries and administrative overhead costs to project tasks.

1.19 The NLC disagreed with this recommendation saying:

The NLC questions the practicability of this recommendation especially in small sections working on complex inter-related issues. Time allocation may be appropriate in relation to projects which are or could be externally funded. This issue is being reviewed.

1.20 The NLC said that its disagreement to this recommendation was on the basis of the unknown practicality and consequences of time allocation for staff time on all projects. It objected to implementing this recommendation without first establishing the benefits. ATSIC accepts the NLC's argument that the practicality of the proposal is questionable.⁸ The NLC advises that it will review the proposal and, if it appears beneficial, will implement it on a trial basis.⁹

⁵ Audit Report No. 27, 1993-94, p 15

⁶ NLC submission, 16 February 1994, p2

⁷ Evidence, p44

⁸ ATSIC submission, p1

⁹ NLC submission, p2

1.21 The NLC advised that its 1994-95 budget will allocate salaries and overheads to departmental areas to more accurately reflect the costs associated with each department.¹⁰

1.22 The ANAO has indicated that it supports the NLC's move to allocating salaries and administrative overheads to departments and the review of time allocation.¹¹

1.23 The Committee notes the changes being made by the NLC for the more accurate allocation of administrative costs and its willingness to evaluate and trial time allocation to project tasks. The Committee is satisfied with the NLC's response on this issue.

Recommendation 24 - Funding and distribution of surpluses

1.24 The ANAO recommended that ATSIC recommend to the Minister that he apply section 34 of the Aboriginal Land Rights Act, where appropriate, to include any sub-section (64(1) surpluses of administrative funds from the preceding year in the approved estimates of expenditure for the current year.¹²

1.25 Following the receipt of mining royalties by the Commonwealth or Northern Territory governments, mining royalty equivalents are paid from Commonwealth Special Appropriation to the Aboriginal Benefits Trust Account (ABTA) which, in turn, makes payments to the land councils under section 63. These arrangements result in land councils receiving in excess of 70% of their sub-section 64(1) income payments in August and February each year. As the NLC's requirements for funds vary between \$600,000 and \$900,000 per month, this creates cash management problems. The decline in mining royalties and their equivalent payments to the ABTA has resulted in land councils requiring more supplementary sub-section 64(7) funding to meet their administrative costs in pursuit of their statutory functions.¹³

1.26 The Audit Office was concerned that the drain on ABTA reserves be minimised. It pointed out that the Central Land Council had offset administrative surpluses against next year's budget and decreased their draw on the ABTA.¹⁴

¹⁰ Audit Report, p40

¹¹ Audit Report, p 42

¹² Extracts from the Aboriginal Land Rights (Northern Territory) Act 1976 are at Appendix 3

¹³ Audit Report, p47

¹⁴ Evidence, p60

1.27 The NLC disagreed with this recommendation:

NLC cannot agree with this recommendation. What circumstances would be considered 'appropriate'? The effect of this recommendation is likely to render meaningless section 35(1) requirements to distribute surplus administrative funds.¹⁵

1.28 ATSIC agreed that there may be circumstances in which it could be desirable to carry forward a surplus but is uncertain about how it could be included if land council budgets have to be approved before the end of the financial year as indicated in Recommendation 21.¹⁶

1.29 The ANAO commented on the NLC response:

The appropriateness of an approach to a surplus is a matter for resolution between the Minister and the Land Council. This would result in a carry forward of surplus administrative funds under section 34 and/or a distribution to land council constituents under sub-section 35(1).

In situations where a surplus for the preceding year is possible, the Minister may wish to approve a land council's budget subject to revision when the surplus is declared.¹⁷

1.30 In a letter to the NLC following the release of the Audit Report the Minister, the Hon Robert Tickner MP, indicated his support for the recommendation. ATSIC has also supported the recommendation.¹⁸ The NLC said that it will make a submission to the Minister on its interpretation of the legal position.¹⁹

1.31 The Committee strongly believes that surpluses of administrative funds should be carried over to the following year wherever possible, to avoid further drawing on ABTA reserves.

¹⁵ Audit Report, p 50

¹⁶ Audit Report, p 50

¹⁷ Audit Report, p 51

¹⁸ ATSIC submission, p1

¹⁹ ATSIC submission, p2

1.32 The Minister has written to the four Land Councils in the Northern Territory, since the Audit Report was tabled, saying that it would be appropriate to roll-over a surplus when it was evident that funds would be required to meet the administrative costs of the Land Councils in the following year.²⁰

1.33 The parties agree that resolution of this issue can be achieved through negotiations between the Land Councils and the Minister. The Committee believes that this is the appropriate way to resolve this issue, with amendment to the legislation being used only as a last resort.

1.34 The Committee now provides comment on some other items subject to qualified agreement by the NLC.

Recommendation 5 - Advances to Council Members

1.35 The ANAO recommended that the NLC cease the practice of providing advances to the Chairman and Council members and recover all outstanding amounts forthwith.

1.36 The NLC gave only qualified agreement to this recommendation. It stated:

*the NLC is placing greater scrutiny on advances but reserves the right to provide advances under extenuating circumstances.*²¹

1.37 The NLC makes advances to Council members of travelling and mileage allowances. The Audit Office comments that payment of such advances is common practice in Commonwealth statutory authorities.

1.38 Other advances are made to Council members for non-council related expenses when requested. These moneys are advanced on the grounds that the Council members will become entitled to sitting fees at some time in the future and that moneys advanced to them can be recovered from these sitting fees.

1.39 The Remuneration Tribunal determines the level of sitting fees provided for under section 77A of the Aboriginal Land Rights Act. These fees are paid to the approximately 70 members of the Council for their attendance at Council meetings. However, the Remuneration Tribunal determination provides that the Chairman must certify attendance before payment is made.

1.40 The Audit Report states that although the Council, at its 42nd Full Meeting in June 1987, resolved that the practice of making advances to members for non-council related expenses was to cease, it has been the continuing practice of the NLC to advance moneys to Council members for such purposes. The total amount

²⁰ ATSIC supplementary submission, p2

²¹ Audit Report, p 19

owed by Council members as 30 June 1993 was approximately \$13 000. The ANAO was advised that the Central Land Council has a policy not to advance moneys to Council members but on rare occasions in the past has done so in extenuating circumstances.²²

1.41 The Audit Report also states that:

The ANAO considers that the provision of cash advances and payment of the Chairman's personal credit card accounts by the NLC (subject to later repayment by the Chairman) and the making of advances to Council members is inappropriate and in contravention of the Full Council resolution prohibiting advances to members. It is also inconsistent with accepted practice for Commonwealth statutory authorities and involves NLC staff in additional administrative work. Advancing moneys in respect of sitting fees is inconsistent with the purpose of sitting fees (which are based on attendance at council meetings) and results in avoidable costs to the NLC such as write off of uncollectable advances and administrative costs.²³

1.42 The Minister has expressed concern at the NLC only giving qualified agreement to this recommendation. He believes that the NLC should adopt a clear and unambiguous practice of prohibiting such advances for non-council related expenses.²⁴ The Committee agrees that this recommendation should be fully implemented.

1.43 The Committee understands that the full council of the NLC considered this matter at its meeting in mid-March. It deferred making a decision until its next full meeting but affirmed that, in the meantime, the decision of the Full Meeting of June 1987, to cease advances, should stand.

Recommendation 6 - Use of Fringe Benefit Tax arrangements for staff

1.44 The ANAO recommended that the NLC seek the advice of the Department of Industrial Relations and the Department of Finance as to the appropriateness of its present flexible remuneration arrangements and develop guidelines for their continuing application.

1.45 The Audit Office queried the propriety and appropriateness of the use of flexible remuneration packages by the NLC when, as a public benevolent institution, it is exempt from paying the Fringe Benefits Tax.²⁵ The Department of Industrial

²² Audit Report, p17

²³ Audit Report, p18

²⁴ ATSI submission, p 2

²⁵ Audit Report, p22

Relations advised that the benefits included in the NLC's flexible remuneration packages are not significantly different from those applied by other Commonwealth statutory authorities to their senior executives and other senior staff.²⁶ Treasury in a letter to the Department of Industrial Relations dated 15 February 1994²⁷ again confirmed the public benevolent institution status of the NLC; its exemption from the Fringe Benefits Tax and the Government's policy intention that this should be the case.

1.46 The Audit Report also points out that:

Prior to implementing the flexible remuneration packages the NLC did not consult with, nor gain the approval of the Department of Industrial Relations, as was required by the Aboriginal Land Rights Act at the time.

In addition, the NLC did not consult the Department of Finance regarding superannuation arrangements for those staff in receipt of the packages. As this has not been approved by the Minister for Finance it may constitute an unapproved superannuation arrangement which, under section 7 of the Supervisory Mechanisms Act, is void in law. The NLC may also be acting in contravention of its superannuation trust deed if it does not allow increased contributions.

The NLC operates under a paid rates award - the Public Service Union (Central and Northern Land Councils) Award 1990 - which specifies salary range for staff. Flexible packaging may be negotiated with the Union in the context of work place bargaining. However, the NLC has not done this. By implementing the flexible remuneration packages without consultation with the Union the NLC may be acting in contravention of the Award.²⁸

1.47 The NLC has undertaken to consult with the Department of Industrial Relations and the Department of Finance and review its guidelines. The NLC is into its second round of bargaining with the Public Service Union on its enterprise agreement.²⁹

²⁶ Audit Report, p22

²⁷ Evidence, p S38, (Attachment to the submission of the Department of Industrial Relations)

²⁸ Audit Report, p23

²⁹ Evidence, p25

1.48 Advice to the Committee from the Department of Finance was inconclusive but indicated that the majority of the amendments to the superannuation arrangements are technical in nature or have been made to keep pace with the changes in the occupational superannuation environment. The Department further advised:

*In all likelihood, we would have recommended approval by the Minister had the NLC followed the procedure laid down in their Trust Deed.*³⁰

1.49 On the evidence provided, the Committee believes that the NLC should be able to negotiate acceptance of these remuneration arrangements. While these negotiations may take some time, their effective resolution will be able to be assessed in the follow-up audit.

Recommendation 52 - Relationship with ATSIC

1.50 The ANAO recommended that ATSIC encourage regional councils to consult extensively with land councils especially in relation to the development of their regional plans.

1.51 The Audit Report notes:

The relationship between land councils and ATSIC are unclear. Both organisations have statutory responsibilities to represent and assist Aboriginal communities and their organisations in a wide range of functions. Under their respective legislation both organisations are to act as facilitators and to have little direct involvement in the delivery of services to Aboriginal communities. The policies of both organisations emphasise that community development is a responsibility of local self governing community organisations.

*The NLC has extended assistance or support to areas which are also the responsibility of ATSIC.*³¹

It goes on to say:

In the ANAO view, there would be significant benefits from a closer partnership between the two organisations:

³⁰ Department of Finance, Supplementary Submission, p2

³¹ Audit Report, p 80

- . *the NLC gaining access to additional funding sources, and*
- . *ATSIC regional councils benefiting from the extensive expertise and experience of the NLC.*³²

1.52 The NLC agreed with this recommendation but claimed that this process could be enhanced if ATSIC were to fund regional meetings with land council regional members and their constituents.³³

1.53 ATSIC also supported the recommendation saying that the recommendation will be put to all of the recently elected Regional Councils in the Northern Territory for their consideration. ATSIC noted however that the NLC's suggestion that ATSIC fund regional meetings with Land Council members will need careful consideration given ongoing budgetary constraints.³⁴

1.54 In its response ATSIC states that there may be advantage in the development of a formal protocol between the land councils and ATSIC which would detail the specific roles and responsibilities of the respective organisations.³⁵ ATSIC intends to approach the Northern Territory Regional Councils about developing a formal protocol as soon as its resources permit.³⁶

1.55 The Committee recognises that both bodies have their own statutory objectives and responsibilities. The Committee agrees with the Audit Office that a closer relationship and improved coordination would benefit the effectiveness of both organisations. The proposal by ATSIC for the development of a formal protocol which would detail the specific roles and responsibilities of the respective organisations is strongly endorsed by the Committee.

Conclusions

1.56 The Committee believes that there is now almost total agreement on the 52 recommendations of the Audit Report. The Northern Land Council has recognised the need to improve its administrative systems and management practices and has made considerable progress towards achieving these improvements. The NLC has initiated a strategic and corporate planning process and taken action to address some of the immediate organisational issues. The NLC's Action Plan for the implementation of the Auditor-General's recommendations indicates a strong commitment to improving the effectiveness of the Council.

³² Audit Report, p 80

³³ Audit Report, p 81

³⁴ ATSIC submission, Attachment A, p4

³⁵ Audit Report, p 81

³⁶ ATSIC submission, Attachment A, p4

1.57 The Committee believes that the implementation of these changes will result in a stronger, more effective Council to the greater benefit of its constituents. The follow-up Audit will provide an objective assessment of the success of the changes.

GARRIE GIBSON
Chairperson

29 April 1994

Public Hearings Held and Witnesses Heard

28 February 1994 - CANBERRA

AUSTRALIAN NATIONAL AUDIT OFFICE

BOWDLER, Mr CE	Senior Director
GOLIGHTLY, Ms M	Executive Director, Performance Audit
MEERT, Mr J	Group Director

DEPARTMENT OF FINANCE

DAL SANTO, Mr RN	Director, Special Superannuation Arrangements Section
DARCY, Mr ME	Director, Accounting Development Section
MILLAR, Mr GJ	Assistant Secretary, Retirement Benefits Branch
O'NEIL, Mr PJ	Chief Finance Officer, Aboriginal and General Branch
SHUM, Mr JG	Assistant Director, Financial Administration Advisory Branch

DEPARTMENT OF INDUSTRIAL RELATIONS

FISHER, Mr T	Assistant Secretary, Government Authorities Advisory Branch
SUTHERLAND, Mr LF	Section Manager, Government Authorities Advisory Branch

NORTHERN LAND COUNCIL

MIDENA, Mr BI

Principal Legal Adviser

MILLER, Mr W

Corporate Services Manager

PEARCE, Mr DD

Director

ROBERTS, Mr JW

Senior Policy Officer

Recommendations and Responses

Adoption of the following recommendations should enable the NLC to rectify the problems identified in the audit and to substantially improve the Council's financial and administrative performance, to the benefit of its constituents and to the longer term viability of the Aboriginals Benefit Trust Account.

Administration of trust accounts

Nº1 The ANAO *recommends* that the NLC cease advancing funds to royalty associations or to individual royalty recipients in anticipation of future mining royalty equivalents.

NLC response

Agree. Advancing funds to royalty associations has been the exception. These advances were made under extenuating circumstances related to Aboriginal social needs in remote communities or the on-going commercial obligations of royalty associations. Advances made were small relative to the level of subsequent income forecast by ABTA. Advancing funds to royalty associations and individual royalty recipients has now ceased.

Nº2 The ANAO *recommends* that the NLC replace its royalty trust fund accounting system with a more effective and efficient system.

NLC response

Agree. The royalty trust fund account system is to be reviewed. A comprehensive systems analysis has been carried out on the royalty trust system culminating in a report recommending a new system. Officers from the ANAO have reviewed this document favourably and the document has been ratified by management. The author of this document will be returning to the NLC in December and will begin implementation of the new system at that time.

Nº3 The ANAO *recommends* that the NLC incorporate the financial reporting of trust account moneys in a note to its financial statements since they are funds of the Land Council while held in trust. The accounts should also include a statement concerning compliance with section 35 during the year.

NLC response

Disagree. The NLC cannot agree with publishing details of trust account monies in financial statements. This information can be commercially or socially sensitive. NLC has published global financial statements. We assume the ANAO recommendation for a statement of compliance with section 35 refers to a statement from

the auditor. Previous auditors have accepted this practice. Comment will be made by way of a note to the accounts in relation to the compliance with section 35 and the furnishing of financial statements.

ANAO comment

The ANAO believes a level of disclosure similar to that in the CLC's 1991-92 financial accounts would be appropriate. This would include receipts and payments by ALR Act source and a listing of balances at 30 June by royalty association, etc.

Nº4

The ANAO *recommends* that the NLC consider establishing a royalty associations management unit to enable it to more satisfactorily fulfil the statutory obligations under sections 35 and 35A of the Act. To fund the operation the NLC should consider the introduction of a fee for service.

NLC response

Qualified agreement. The precise obligations of the NLC under sections 35 and 35A are unclear. Fee for service arrangements may be resisted in the NLC region because of historical factors. NLC is reviewing its royalties' area and a fee for service option will be considered.

Advances to Council members

Nº5

The ANAO *recommends* that the NLC cease the practice of providing advances to the Chairman and Council members and recover all outstanding amounts forthwith.

NLC response

Qualified agreement. The NLC is placing greater scrutiny on advances but reserves the right to provide advances under extenuating circumstances.

ANAO comment

The resolution of the Full Council does not allow the NLC administration to provide advances in any circumstances.

Use of Fringe Benefit Tax arrangements for staff

Nº6

The ANAO *recommends* that the NLC seek the advice of DIR and DOF as to the appropriateness of its present flexible remuneration arrangements and develop guidelines for their continuing application.

NLC response

Qualified agreement. NLC is preparing more precise guidelines for the application of flexible remuneration packages. The NLC has sought advice regarding any conflict with the Award. Advice from Department of Industrial Relations and Department of Finance will be sought as to continuing the application.

Level of use and engagement of consultants

Nº7

The ANAO *recommends* that the NLC review the present level of usage of legal consultancies to ascertain the scope for:

- (a) estimating more accurately future consultancy requirements, and
- (b) making greater use of its own legal staff in representations at hearings before the Aboriginal Land Commissioner.

NLC response

Qualified agreement. The ANAO states that 'existing use of legal and anthropological consultants did not seem excessive' (paragraph 6.9). The engagement of counsel is a matter considered in each particular circumstance having regard to:

- the nature of the proceedings, including its importance and legal complexity
- the experience of employed lawyers and their availability
- any interests of the relevant Aboriginal groups extending beyond the particular proceeding itself, and
- the cost-effectiveness and efficiency of engaging counsel.

Any review will retain these criteria.

Nº8

The ANAO *recommends* that the NLC develop and circulate to all project coordinators comprehensive guidelines on NLC policies and procedures for the engagement of consultants.

NLC response

Qualified agreement. Accept some scope for improving guidelines but remind the ANAO that existing procedures have not lead to any identified serious problems.

Nº9

The ANAO *recommends* that the NLC train project coordinators in the effective application of these guidelines and best buying techniques.

NLC response

Agree with training recommendations. We can all learn more about our work, but it is a matter of priority to determine the amount of training required in this area. There is no evidence that NLC is not getting value for money, in fact the report states the contrary.

Nº10

The ANAO *recommends* that the NLC ensure branch managers scrutinise more closely requests for the engagement of consultants, paying particular attention to consultancy objectives and expected outcomes.

NLC response

Qualified agreement. This recommendation does not reflect the body of the report and appears to be contradictory to the findings. The NLC anthropologists audit anthropology consultancies and research through external and qualified anthropologists.

ANAO comment

The ANAO found that decisions as to the level of usage of consultants did not appear to be subjected to sufficient scrutiny by more senior management (paragraph 6.10) and that consultancy objectives or tasks were not well defined in a significant number of cases examined (paragraph 6.23).

Nº11

The ANAO *recommends* that the NLC adopt modified public tendering procedures for most of its consultancies along the lines suggested by the ANAO (paragraph 6.29).

NLC response

Qualified agreement. The ANAO tendering suggestion for anthropologists and legal consultants is not practical. In both disciplines there is a limited field of appropriate expertise. Tendering for legal consultancies of the nature which the NLC requires, is not the industry norm. NLC is establishing a data base on appropriately qualified consultants through advertising and this will be updated annually.

Control of expenditure

Nº12

The ANAO *recommends* that the NLC establish more effective strategic, priority setting mechanisms which would take into account overall resource availability, subject expenditure bids to closer scrutiny against internally set priorities and revise estimates in the light of external funding constraints.

N^o13 The ANAO *recommends* that the NLC involve branch managers and the Management Committee more actively in monitoring and reviewing budgets and expenditure trends to avoid the crisis management mode required late in the 1992-93 financial year.

NLC response to Recommendations 12 and 13

Agree. NLC's senior management committee and a Council appointed finance committee are reviewing budget priorities.

N^o14 The ANAO *recommends* that the NLC make individual project coordinators more accountable for managing the financial resources at their disposal and provide appropriate training in financial management in this regard.

NLC response

Agree. Training of Project Managers will be provided on a one to one basis coinciding with the distribution of monthly reports which occurs on the tenth day of the ensuing month. An annual budget seminar will be held in future to inform all project officers of the budgeting process and the importance of procedure in this regard.

N^o15 The ANAO *recommends* that the NLC place the onus on project coordinators and branch managers to find offsetting savings for any budget overruns on projects under their control.

NLC response

Qualified agreement. There are limits to the extent which budget over-runs can be met with offsets. This recommendation assumes that the over-runs are the result of mismanagement. Many over-runs are the result of circumstances outside the control of the project coordinator. Offsets are a collective responsibility and can be managed under the response to recommendations 12 and 13.

N^o16 The ANAO *recommends* that the NLC consider enhancing the computerised financial management information system to permit the more efficient generation of monthly expenditure reports.

NLC response

Agree. The financial/budgetary system is constantly being developed to more effectively cater to the needs of the organisation.

N^o17 The ANAO *recommends* that the NLC consider requiring project coordinators to input expenditure estimates to the financial management system directly.

NLC response

Agree to consider direct inputs. No agreement on implementation until implications are better understood.

Nº18

The ANAO *recommends* that the NLC implement a time allocation mechanism to allow the project based expenditure control system to allocate salaries and administrative overhead costs to project tasks.

NLC response

Disagree. The NLC questions the practicability of this recommendation especially in small sections working on complex inter-related issues. Time allocation may be appropriate in relation to projects which are or could be externally funded. This issue is being reviewed.

ANAO comment

The ANAO supports the NLC's move to allocating salaries and administrative overheads to departments (paragraph 7.37), and the review of time allocation.

Nº19

The ANAO *recommends* that ATSIC recommend to the Minister that land council budgets be approved on the basis of gross program expenditure with a small number of heads of expenditure for the purposes of sub-section 34(3), thus allowing the land councils more flexibility in varying individual program budgets within the 20% limit.

NLC response

Agree. The 1993-94 estimates submission was based on five heads of expenditure but subsequently extended to ten by the Minister.

ATSIC response

ATSIC agrees to consider the scope for achieving this consistent with ensuring proper accountability.

Nº20

The ANAO *recommends* that the Minister provide land councils in March each year with three year forward expenditure ceilings for use in preparing their budget estimates. (Expenditure ceilings should be determined by the investment and distribution policies of the ABTA).

NLC response

Agree with three year forward estimates but need to qualify the basis for setting expenditure ceilings, especially how ABTA investment and distribution policies are determined. The current advice to the Minister from the Walter & Turnbull report (on a net investment strategy for the ABTA) does not inspire confidence. The functions

and programs of the NLC must be a principal consideration in determining any budget. Flexibility must be retained to deal with uncontrollable and exceptional circumstances.

ATSIC response

ATSIC agrees that land councils be provided with three year forward estimates on a global basis.

Nº21

The ANAO *recommends* that ATSIC ensure that land councils' composite estimates expenditure ceilings for the forthcoming financial year are submitted to the Minister for approval by no later than 30 June each year.

NLC response

Agree. To be effective, however, prompt Ministerial approval is required. Past delays have caused serious difficulties.

ATSIC response

ATSIC will seek to do this and considers that it is desirable that budgets be approved before the start of the following financial year. However, it is dependent on the timely submission of estimates by the land councils.

Nº22

The ANAO *recommends* that ATSIC recommend to the Minister that any revisions to land councils' approved expenditure ceilings be limited to exceptional and unforeseen expenditure needs or unforeseen and significant variations in ABTA income.

NLC response

Agree, with a qualification about who and how exceptional or unforeseen needs are determined. The unpredictability of the environment in which land councils operate, demand flexibility to meet unforeseen and exceptional needs.

Mid-term downward revisions cannot be accepted. Land councils' operations must be buffered against short-term fluctuations in ABTA income reflected by short-term commodity trends.

ATSIC response

ATSIC supports this approach while noting that the Minister may need to define what is meant by unforeseen and exceptional expenditure when he asks that revised estimates be submitted.

Funding and distribution of surpluses

Nº23

The ANAO *recommends* that ATSIC recommend to the Minister that he advise land councils that the level of surplus administrative funds

determined under sub-section 35(1) should be calculated in accordance with the method which is used as the basis of the annual estimates of expenditure approved by the Minister under section 34.

NLC response

Agree. In both years where the NLC has had surplus funds, the distributable amount has been calculated in an acceptable manner which has in each year been checked and ratified by the NLC's external auditor.

ATSIC response

ATSIC recognises that this recommendation has been put forward by the ANAO to resolve long-standing legal and administrative uncertainty. Accordingly, ATSIC is prepared to agree to this recommendation.

Nº24

The ANAO *recommends* that ATSIC recommend to the Minister that he apply section 34, where appropriate, to include any sub-section 64(1) surpluses of administrative funds from the preceding year in the approved estimates of expenditure for the current year.

NLC response

Disagree. NLC cannot agree with this recommendation. What circumstances would be considered 'appropriate'? The affect of this recommendation is likely to render meaningless section 35(1) requirements to distribute surplus administrative funds.

ATSIC response

ATSIC agrees that there may be circumstances in which it could be desirable to carry forward a surplus but is uncertain about how it could be included if land council budgets have to be approved before the end of the financial year as indicated in Recommendation 21.

ANAO comment

The appropriateness of an approach to a surplus is a matter for resolution between the Minister and the Land Council. This would result in a carry forward of surplus administrative funds under section 34 and/or a distribution to land council constituents under sub-section 35(1).

In situations where a surplus for the preceding year is possible, the Minister may wish to approve a land council's budget subject to revision when the surplus is declared.

Corporate planning

- Nº25 The ANAO *recommends* that the NLC address in the proposed corporate planning consultancy the need to implement:
- (a) effective operational planning processes
 - (b) practical and realistic performance indicators and performance targets or standards, and
 - (c) a cost effective and efficient management information system.
- Nº26 The ANAO *recommends* that the NLC link the proposed corporate planning processes to the NLC's annual budgeting process. (The new processes should be put in place for the preparation of the NLC's 1994-95 expenditure estimates.)
- Nº27 The ANAO *recommends* that the NLC introduce a regular activity and performance reporting system for all project coordinators, section heads and branch managers.
- Nº28 The ANAO *recommends* that the NLC, as part of the corporate planning project, establish a program of internal reviews of key programs and functions for report to the Director. The reviews could be performed by seconded staff or by consultants.

NLC response to Recommendations 25-28

Agree, but with the qualification that implementation of these recommendations must be in the context of budget constraints. The NLC has commenced its comprehensive organisational, management and corporate restructure.

Management structure

- Nº29 The ANAO *recommends* that the NLC review its management structure with a view to adopting a structure with a greater program focus.
- NLC response*
- Agree. The NLC's strategic and corporate planning process is addressing these issues.
- Nº30 The ANAO *recommends* that the NLC, in the context of this review, reduce the present span of responsibilities of the Operations Manager.

NLC response

Agree. Operations Branch has been restructured.

Staffing

Nº31

The ANAO *recommends* that the NLC implement formal staff appraisal and staff development planning systems covering all NLC staff. The systems should pay attention to good practices elsewhere, for example Commonwealth policy and practice, and emphasise the responsibilities of supervisors and managers.

NLC response

Agree, with qualification. Aboriginal land councils are unique organisations and deal with both European and Aboriginal issues. This Commonwealth policy may not be the most appropriate benchmark for Aboriginal organisations.

Nº32

The ANAO *recommends* that the NLC, in the light of (31) above, review the justification of continuing the present policy of three year employment contracts and develop career pathways for junior Aboriginal staff.

NLC response

Agree. Career path options are being investigated, but this will require innovative responses to address issues of Aboriginal needs rather than the non-Aboriginal mainstream notion of career.

Nº33

The ANAO *recommends* that the NLC develop a policy and procedures manual providing comprehensive guidance on financial, personnel and other resource management matters for use by all NLC staff.

NLC response

Agree. This is currently being done.

Nº34

The ANAO *recommends* that the NLC give high priority in future staff training to training in NLC policies and procedures, financial management, staff management skills and personal skills.

NLC response

Agree.

Leave airfares

Nº35 The ANAO *recommends* that the NLC implement policy and procedures in relation to leave airfares that align with APS provisions as required by the *PSU (Central and Northern Land Councils) Award 1990*.

NLC response

Qualified agreement. The NLC's leave airfares policy and procedures are being reviewed, however, the APS provisions may not be the most appropriate ones to adopt. The principle of enterprise bargaining will facilitate a more appropriate resolution.

Regional offices

Nº36 The ANAO *recommends* that the NLC, as part of the current corporate planning project, develop and implement a plan for the further decentralisation of NLC services.

Nº37 The ANAO *recommends* that the NLC ensure that further decentralisation proceeds in step with the implementation of more effective strategic planning mechanisms and other internal controls.

NLC response to Recommendations 36 and 37

Agree. Regionalisation is NLC policy. Procedures for further decentralisation and details of delegated powers are being developed through the strategic planning process.

Debt recovery

Nº38 The ANAO *recommends* that the NLC develop and promulgate policy and procedures for the prompt recording, collection and, where necessary write off, of outstanding debts.

Nº39 The ANAO *recommends* that the NLC make available sufficient resources for the effective and efficient performance of the debt collection function.

NLC response to Recommendations 38 and 39

Agree. Debt collection procedures are being reviewed. Cost effectiveness of allocating more resources will be assessed as part of the review. A new position of Assistant Accountant will take over these functions.

Advances to staff and consultants

Nº40 The ANAO *recommends* that the NLC develop and document policy and procedures for the management and control of advances to staff and consultants for field assignments and ensure all advances outstanding more than two weeks are acquitted immediately.

NLC response

Agree. There are documented policies and procedures. These will be incorporated into a policy manual.

Control of non-current assets

Nº41 The ANAO *recommends* that the NLC update the fixed assets register and ensure it is updated on a continual basis.

NLC response

Agree.

Purchase, use and disposal of motor vehicles

Nº42 The ANAO *recommends* that the NLC develop and implement policies, strategies and procedures for the purchase, use and disposal of motor vehicles.

NLC response

Agree; although past procedures, whilst not documented to the satisfaction of the ANAO, have according to the ANAO, 'resulted in purchases being carried out in an acceptable manner'.

Nº43 The ANAO *recommends* that the NLC introduce fuel cards for its motor vehicles to replace the use of fuel requisition books.

NLC response

Agree. This is being implemented.

Information technology

Nº44 The ANAO *recommends* that the NLC develop an IT strategic plan.

NLC response

Agree. This has been commenced.

Nº45 The ANAO *recommends* that the NLC review its computing requirements to determine whether a more efficient and cost effective solution is available.

NLC response

Agree. An analysis has been undertaken. NLC is reviewing options for solutions.

Property management

Nº46 The ANAO *recommends* that for future accommodation requirements the NLC adopt tendering and purchasing procedures which ensure value for money and fair dealing are both achieved, and seen to be achieved.

NLC response

Agree in principle but reject the implications that past practice has not been 'fair' or achieved 'value for money'.

Nº47 The ANAO *recommends* that ATSIC and the land councils clarify the legal position concerning the holding of shares and controlling interests by land councils in companies.

NLC response

Agree.

ATSIC response

ATSIC agrees that clarification is required and notes that legislation may be necessary.

Payroll Tax

Nº48 The ANAO *recommends* that ATSIC make representations to the NT Commissioner of Taxes to have land councils exempted from Payroll Tax on the basis of their recognition as public benevolent institutions.

NLC response

Agree.

ATSIC response

ATSIC believes that representations should be made to the NT Commissioner of Taxes to have land councils exempted from Payroll Tax and believes that the matter should be pursued by both ATSIC and the land councils.

Mining Withholding Tax

Nº49

The ANAO *recommends* that ATSIC approach the Australian Taxation Office to seek the early finalisation of its review of the application of Mining Withholding Tax to ABTA payments.

NLC response

Agree.

ATSIC response

ATSIC supports this recommendation. The Treasurer has recently written to the Prime Minister and the Minister for Aboriginal and Torres Strait Islander Affairs on this issue and we expect a meeting of officers from relevant agencies including ATSIC to meet in the near future. ATSIC will be seeking a review of the application of the tax to the ABTA having regard to the comments made by the ANAO and Walter and Turnbull in its recent report commissioned by ATSIC outlining a financial management strategy for the ABTA.

Financial accountability

Nº50

The ANAO *recommends* that ATSIC recommend to the Minister that he require land councils, in accordance with sub-section 37A(1) of the ALR Act, to apply the *Guidelines for Financial Statements of Public Authorities and Commercial Activities*.

NLC response

Qualified agreement. Arrangements were negotiated with ATSIC, ABTA and land councils in 1991. Land councils are still awaiting the Minister's final response.

ATSIC response

ATSIC supports this recommendation.

Nº51

The ANAO *recommends* that ATSIC recommend to the Minister that he clarify estimates of expenditure under section 34 by separating expenditure sourced from mining royalty equivalents and expenditure of a self funding nature where the NLC provides assistance for a fee.

NLC response

Qualified agreement. Separating expenditure of 'self-funding' (fee for service) income should not lead to disincentives for cost recovery, e.g. through off-setting this income against a reduced approved budget.

ATSIC response

ATSIC supports this recommendation.

Relationship with ATSIC

Nº52

The ANAO *recommends* that ATSIC encourage regional councils to consult extensively with land councils especially in relation to the development of their regional plans.

NLC response

Agree. This process could be enhanced if ATSIC were to fund regional meetings with land council regional members and their constituents.

ATSIC response

This recommendation is supported. There may be advantage in the development of a formal protocol between the land councils and ATSIC which would detail the specific roles and responsibilities of the respective organisations.



EXTRACTS FROM THE
ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

Estimates of expenditure by Land Council

34. (1) A Land Council shall prepare estimates, in such form as the Minister directs, of its expenditure to meet its administrative costs for each financial year and, if the Minister so directs, for any other period and the Land Council shall submit those estimates to the Minister for his approval not later than such date as the Minister directs.

(2) Subject to subsection (3), moneys of the Land Council shall not be expended to meet its administrative costs otherwise than in accordance with estimates of expenditure approved by the Minister.

(3) The amount of the expenditure by a Land Council in relation to the matter or matters covered by an item in the estimates approved by the Minister may exceed the amount specified in the item by an amount not exceeding 20% of the amount so specified.

(4) A reference in this section to the administrative costs of a Land Council shall be read as including a reference to the cost of paying remuneration and allowances that are payable under this Act to a member of the Council or of a Land Trust holding land, or established to hold land, in the area of the Council.

Application of money of Land Council

35. (1) Moneys paid to a Land Council under subsection 64 (1) shall be applied by the Land Council in meeting its administrative costs in accordance with section 34, and, to the extent that they are not required for that purpose, shall be paid, within 6 months after the end of the financial year in which they are received by the Land Council, to:

- (a) Aboriginal Councils the areas of which are in the area of the Land Council; and
- (b) any Incorporated Aboriginal Association whose members live in the area of the Land Council; and
- (c) any association of Aboriginals, or company whose shareholders are all Aboriginals, incorporated under a law of the Northern Territory:
 - (i) whose members or shareholders live in the area of the Land Council; and
 - (ii) that has been declared by the Minister to be eligible to receive payments under this subsection;

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Incorporated communities or groups to lodge financial records with Land Councils

35A. (1) An incorporated Aboriginal community or group that has, before the day of commencement of this section, been paid an amount under section 35, or that is, on or after that day, paid an amount under that section:

- (a) in a case where the community or group first received such an amount before the end of the financial year preceding the financial year in which this section commences—shall, as soon as practicable after the day of commencement of this section, and as soon as practicable after the end of each subsequent financial year, give to the Land Council in the area of which the members of the community or group live a copy of the relevant financial statements in respect of that financial year;
- (b) in a case where the community or group first received or first receives such an amount before the end of the financial year in which this section commences—shall, as soon as practicable after the end of the financial year in which this section commences, and as soon as practicable after the end of each subsequent financial year, give to the Land Council in the area of which the members of the community or group live a copy of the relevant financial statements in respect of that financial year; and
- (c) in a case where the community or group first receives such an amount during a financial year after the financial year in which this section commences—shall, as soon as practicable after the end of the financial year in which that amount is received, and as soon as practicable after the end of each subsequent financial year, give to the Land Council in the area in which the members of that community or group live a copy of the relevant financial statements in respect of that financial year.

(2) In subsection (1), “relevant financial statements”, in relation to an incorporated Aboriginal community or group and to a particular financial year, means the financial statements that that community or group is required, under the law under which it is incorporated, to lodge in respect of that financial year.

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in such proportions as the Land Council determines having regard to the needs of the Aboriginals concerned.

(2) Moneys paid to a Land Council under subsection 64 (3) shall be paid, within 6 months of their receipt by the Land Council, to:

- (a) Aboriginal Councils the areas of which are, whether in whole or in part, included in the area affected by the mining operations by reason of which the moneys have been paid to the Land Council; and
- (b) any Incorporated Aboriginal Associations the members of which live in, or are the traditional Aboriginal owners of, the area affected by those mining operations;

in such proportions as the Land Council determines.

(2A) Moneys paid to a Land Council under subsection 64 (7) shall be applied by the Land Council in meeting its administrative costs in accordance with section 34.

(3) Within 6 months after moneys are paid to a Land Council under an agreement made under section 42, 43, 44, 46, 48A, 48B or 48D, they shall be applied by the Land Council in accordance with the agreement or, if the agreement makes no provision in relation to the application of the moneys, shall be paid to:

- (a) Aboriginal Councils the Aboriginals in the areas of which are affected by the agreement; and
- (b) any Incorporated Aboriginal Associations the members of which are affected by the agreement;

in such proportions as the Land Council determines.

(4) Where a Land Council receives a payment in respect of Aboriginal land, including a payment under section 15 or 16 or under a lease or licence under section 19 or 20 but not including a payment under section 64, the Land Council shall, within 6 months after that payment is received, pay an amount equal to that payment to or for the benefit of the traditional Aboriginal owners of the land.

(5) Where a Land Council has not, before the expiration of the period specified in subsection (1), (2) or (3), disbursed any amount that it is, under that subsection, required to disburse because it has not been able to make a determination under that subsection, the Land Council shall, as soon as practicable after the expiration of that period, but not later than one month after the expiration of that period, give to the Minister a report, in writing, setting out its reasons for not having made that determination.

(6) Where the Minister receives a report from a Land Council under subsection (5), the Minister may, after having regard to the matters set out in that report and to any other matters that the

Minister considers relevant, make a determination in relation to the amount to which the report relates, being a determination that could have been made by the Land Council, and, upon the Minister's so doing:

- (a) the determination shall have effect, for all purposes of this Act, as if it were a determination that had been duly made by the Land Council; and
- (b) the Land Council shall cause the amount to which the determination relates to be disbursed forthwith in accordance with the determination.

(7) Where a Land Council determines that an amount of money is an amount that is required to be distributed under subsection (1), the Land Council shall, as soon as practicable after it has so determined, hold that amount in trust for the bodies to which that amount is eventually to be paid in accordance with this section until that amount is so paid.

(8) Each amount of money that is paid to a Land Council under subsection (2), (3) or (4) shall be held in trust for the bodies to which or persons to whom that amount is eventually to be paid in accordance with this section until that amount is so paid.

(9) Where an Aboriginal Council, an Incorporated Aboriginal Association or the traditional Aboriginal owners of an area of Aboriginal land to which or to whom an amount of money would, but for this subsection, be required to be paid by a Land Council in accordance with subsection (1), (2), (3), (4) or (6) requests or request the Land Council, in writing, before that amount is so paid, to hold, or to continue to hold, that amount in trust for it or for them, the Land Council shall, notwithstanding that subsection, hold, or continue to hold, that amount in trust accordingly until that request is revoked.

(10) While an amount of money referred to in subsection (7), (8) or (9) is held in trust in accordance with that subsection, the Land Council shall cause that amount to be invested in accordance with section 62B of the *Audit Act 1901*.

(11) Where a Land Council pays out an amount of money that it has held in trust and invested in accordance with this section, the Land Council shall, so far as is practicable, pay to the body or person to whom that amount is paid the interest received by the Land Council in respect of the investment of that amount.

(12) Where an Aboriginal community or group that is not an Incorporated Aboriginal Association was, before the commencement of this subsection, entitled to be paid an amount under this section, the community or group is taken, for the purposes of this section, to be an Incorporated Aboriginal Association.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

Payments out of Trust Account

64. (1) There shall be paid out of the Trust Account from time to time, for distribution between or among the Land Councils in such proportions as the Minister determines having regard to the number of Aborigines living in the area of each Council, an amount equal to 40% of the amounts paid into the Trust Account in accordance with subsection 63 (2) or (4).

(2) Where the distribution referred to in subsection (1) is between 2 Land Councils only, the Minister shall determine the proportions for the purposes of that distribution as 50% for each Council.

(3) There shall be paid out of the Trust Account, from time to time, to each Land Council in the area of which a mining interest referred to in subsection 63 (2) is situated, or mining operations referred to in subsection 63 (4) are being carried on, an amount equal to 30% of any amounts:

(a) paid into the Trust Account in accordance with subsection 63 (2) in respect of that mining interest; or

(b) paid into the Trust Account in accordance with subsection 63 (4) in respect of those mining operations;

as the case may be.

(4) There shall be paid out of the Trust Account such other amounts as the Minister directs to be paid or applied to or for the benefit of Aborigines living in the Northern Territory.

(4A) A payment of an amount out of the Trust Account under subsection (4) may be by way of a loan (whether secured or unsecured) by the Commonwealth on such conditions as the Minister thinks fit.

(5) There shall be paid out of the Trust Account such amounts to meet the expenses of administering the account as the Minister directs.

(6) Amounts that the Minister directs to be paid out of the Trust Account under subsection (4) or (5) shall be paid or applied in accordance with the direction.

(7) Where, at any time, the Minister is satisfied that a Land Council is, or may be, unable to meet its administrative costs, in accordance with section 34, from moneys that are, or may become, available to it for the purpose, the Minister may direct that such amounts as the Minister specifies in the direction shall be paid to the Land Council out of the Trust Account for the purpose of meeting those costs.