



Anindilyakwa Land Council (ALC) Independent Review:
ANAO Recommendation Implementation Progress

Final Report
27 August 2024

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Limitations

Our Independent Review work was limited to that described in this report and was performed in accordance with International Standards for the Professional Practice of Internal Auditing from the Institute of Internal Auditors. It did not constitute an examination or a review in accordance with generally accepted auditing standards or assurance standards. Accordingly, we provide no opinion or other form of assurance with regard to our work or the information upon which our work was based. We did not audit or otherwise verify the information supplied to us in connection with this engagement, except to the extent specified in this report or our approved objectives and scope.

This report is intended solely for the Anindilyakwa Land Council and National Indigenous Australians Agency internal use and may not be relied on by any other party. This report may not be distributed to, discussed with, or otherwise disclosed to any other party without our prior written consent. BellchambersBarrett does not accept any responsibility to any other party to whom this report may be shown or into whose hands it may come.

1. Executive Summary

1.1 Background

The Anindilyakwa Land Council (ALC) was the subject of an Australian National Audit Office (ANAO) performance audit into the governance of the ALC. The Auditor General Report No.29 2022-23 *Governance of the Anindilyakwa Land Council* (the audit report) was tabled in May 2023.¹

The audit examined:

- the effectiveness of decision-making authority delegations in ALC
- whether the ALC has effectively governed its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), and
- whether the 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 associated Rules.

The audit concluded the ALC's arrangements were only partly effective in meeting these objectives and made fifteen recommendations to improve governance effectiveness. The ALC agreed with fourteen of these recommendations and disagreed with one recommendation, proposing an alternative response to address the deficiencies noted in relation to the related finding.

Since issuance of the audit report, the ALC has been undertaking a program of activities to address the recommendations made in the report.

1.2 Objective

The objective of this independent review was to assess progress of the Anindilyakwa Land Council's response to the ANAO audit report and the management of identified potential conflicts of interest to provide confidence to key stakeholders that the governance arrangements at Anindilyakwa Land Council were effective and appropriate.

¹ <https://www.anao.gov.au/work/performance-audit/governance-the-anindilyakwa-land-council>

1.3 Scope² and Summary Assessment

The table below details the three scope areas for independent review, with a summary assessment and supporting comments. Details for the assessment of progress against ANAO recommendations (scope point 1 and 2) are provided in **section 2**. Details for opportunities to enhance governance arrangements (scope point 3) are provided in **section 3**.

Scope	Summary Assessment	Comments								
<p>1. Whether the completed / planned responses to the agreed ANAO recommendations adequately addressed the governance deficiencies on which the recommendations were made, including whether the ALC had arrangements in place to effectively identify and manage actual and perceived conflicts of interest within the organisation, particularly as they related to ALC Board members, the ALC CEO, and related organisations.</p> <p>Refer to Section 2 - Detailed Assessment of Progress Against Recommendations.</p>	<p>The independent review has found that while the ALC has commenced a program of work to address the 14 accepted recommendations, no agreed recommendations have been assessed as fully implemented or closed. The review has determined that more work is required to demonstrate that the recommended changes have been adopted as standard practice in the ALC.</p>	<p>The ALC have commenced and has made progress to address and implement each of the 14 ANAO recommendations that had been agreed by the ALC. Up to the completion of fieldwork for the Independent Review in late May 2024, the ALC had noted a status of:</p> <ul style="list-style-type: none"> • “Open” for 2 / 14 recommendations • “Closed” for 13 / 14 recommendations <p>The independent review team has provided the following assessment of implementation progress based on ALC stakeholder consultations and review of evidence supporting progress for implementation or closure of the recommendations.</p> <table border="1" data-bbox="1274 855 1899 1075"> <thead> <tr> <th data-bbox="1279 858 1523 935">No of agreed recommendations</th> <th data-bbox="1527 858 1895 935">Independent Review Assessment</th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 938 1523 979">2</td> <td data-bbox="1527 938 1895 979">Largely Implemented</td> </tr> <tr> <td data-bbox="1279 983 1523 1024">11</td> <td data-bbox="1527 983 1895 1024">Partly Implemented</td> </tr> <tr> <td data-bbox="1279 1027 1523 1069">2</td> <td data-bbox="1527 1027 1895 1069">Implementation Ongoing</td> </tr> </tbody> </table> <p>Noting the ANAO performance report tabled in May 2023, six recommendations have been identified by the Independent Review as high priority for implementation as soon and possible to strengthen ALC’s governance, Board roles, Board support, transparency for decisions, conflict of interest management and independence of the audit committee. A summary of ALC’s status, Independent Review Assessment and Priority for</p>	No of agreed recommendations	Independent Review Assessment	2	Largely Implemented	11	Partly Implemented	2	Implementation Ongoing
No of agreed recommendations	Independent Review Assessment									
2	Largely Implemented									
11	Partly Implemented									
2	Implementation Ongoing									

² Refer to **Appendix A** for full details of the internal audit scope and approach. Refer to **Appendix B** for the assessment criteria used for implementation progress.




Scope	Summary Assessment	Comments
		<p>Implementation against each recommendation is provided in section 1.5 below.</p> <p>Further actions have been identified to assist the ALC to fully implement the recommendations and enhance the ALC's work that is already in progress. The further actions to support implementation for the recommendations are documented in section 2 of this report.</p>
<p>2. Whether the completed / planned response to the recommendation that was not agreed adequately addressed the governance deficiency noted in the audit report.</p> <p>Refer to Section 2 - Detailed Assessment of Progress Against Recommendations – Recommendation 10.</p>	<p>The independent review has assessed there is not clear evidence, based on the March 2024 royalty distribution process, that the alternative approach proposed by the ALC will address the risks associated ANAO finding, specifically:</p> <ul style="list-style-type: none"> • 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. 	<p>The independent review noted:</p> <ul style="list-style-type: none"> • There are no detailed criteria as to how the royalty distribution assessment has been made included in the Annexure's to the key governance documents supporting the royalty distribution recommendations (ALC Finance Committee Meeting Minutes) or royalty distribution decision (ALC Board Meeting Minutes). • A variance of \$9.496m was observed between the ALC Finance Committee royalty distribution recommendations to the ALC Board for decision (\$51.285m), and the documented decision in the ALC Board Meeting Minutes (\$60.781m). The variance was explained as additional funding being sought by the Anindilyakwa Royalties Aboriginal Corporation (ARAC) in excess of the March 2024 royalty application process from the Anindilyakwa Mining Trust (AMT) which the ALC Board requested on behalf of ARAC. The value of additional funding being sought was not documented as part of the Finance Committee recommendation process. <p>Further actions have been identified to assist the ALC to address the associated risk and enhance the ALC's work that is already in progress. The further actions to support implementation for Recommendation 10 are documented in section 2 of this report.</p>

Scope	Summary Assessment	Comments
<p>3. Whether there were other opportunities available to ALC to further enhance its governance arrangements beyond those noted in the ANAO report.</p> <p>Refer to Section 3 – Identified Enhancements for Governance Arrangements.</p>	<p>The independent review identified four areas to further enhance governance arrangements in addition to the actions taken by the ALC in response to the 15 ANAO recommendations.</p> <ul style="list-style-type: none"> • Strengthening conflict of interest assessment, monitoring and management strategies for roles with ALC and other related party entities / Indigenous Corporations (ORICs) • Improving visibility of all remuneration, benefits and related party transactions, including ORICs for Board, Management and staff to support transparency. • Enhancing support for the ALC Board with an Independent Board Advisor Role, supported by an interpreter to provide additional support for the ALC Board. • Formalising the closure process for ANAO recommendations, including independent assessment and ALC Board decision on closure. 	<p>Observations noted for the four areas for the ALC to enhance governance arrangements include:</p> <ul style="list-style-type: none"> • Conflict of interest – ALC has established a register for Board members, the CEO, Management and staff to declare conflicts but there is limited evidence of monitoring and assessment that management strategies are operating effectively. ALC Board members and ALC Management support a number of related party entities / ORICs through Board and Management roles. Some conflicts, perceived or actual, are unlikely to be able to be effectively managed, an example being the current dual remunerated CEO positions for ALC and Winchelsea Mining Pty Ltd, noting <ul style="list-style-type: none"> ○ a public official role (ALC CEO) in comparison to a commercial activity management role (Winchelsea Mining CEO) ○ time and attention needed for both roles, and ○ the ALC makes funding decisions and Winchelsea Mining Pty Ltd is a beneficiary of ALC funding decisions. • The ALC Board currently does not have visibility of the complete picture of all remuneration, benefits and related party transactions, for ALC Board members, ALC Management and related party entities, including ORICs and immediate family members. • The ANAO found governance arrangements were partly appropriate, including Board training and support, with work still progressing by the ALC to enhance Board support. • The ALC has not established a formal closure process subject to independent assessment and Board decision. <p>Additional details of the opportunities to enhance governance arrangements, the four recommendations are documented in section 3 of this report.</p>

The period of coverage included ALC activities that addressed the audit report recommendations from the period 31 May 2023 (the audit report tabling date) to the completion of the Independent Review fieldwork in late May 2024, and completion of follow up queries in late July 2024 and other relevant business and operational activities within the scope of the review, being approximately 13 months.

1.4 Positive Observations

The following positive observations were noted in relation to ALC's progress on the implementation of the ANAO recommendations:

	<p><i>Governance, Risk and Compliance (GRC) system</i> – The ALC implemented a GRC system, Protech, that is used to manage, track activity and progress, and store records of supporting evidence for each recommendation. The system has enabled the ALC to clearly assign owners to ensure accountability for each recommendation, facilitate the collation of evidence supporting progress against recommendations, and provide a central source and reporting capability to monitor progress.</p>
	<p><i>Meeting minutes</i> – Improvements to the quality of Committee meeting minutes have been observed. Minutes have also captured instances of the CEO and other committee members leaving the meeting during a matter that posed a conflict of interest if they were present during discussion.³</p>
	<p><i>Establishment of an Internal Audit Function</i> – The ALC has engaged an internal audit service provider from November 2023⁴. This will assist the ALC in strengthening governance practices, mitigate risks and provide assurance over controls and processes.</p>

1.5 Summary of ALC recommendation implementation status and independent review assessment

The following table provides a summary of the ANAO performance audit recommendation theme, ALC's response as agreed or disagreed, ALC's assessed status for implementation, the independent review assessment and priority for implementation. The priority for implementation has been assessed based on key ANAO recommendations to support ALC strengthening its governance, transparency and the management of conflicts of interest.

³ Finance Committee meeting – March 2024, ALC Board Meeting March 2024

⁴ Announced in the November 2023 Audit Committee meeting.

No	ANAO Recommendation Theme	ALC Response	ALC Status	Independent Review Assessment	Priority for Implementation
1	Delegations	Agreed	Closed	Largely Implemented	Lower - within 3-6 months
2	Governance arrangements documented	Agreed	Closed	Partly Implemented	High - as soon as possible
3	Council roles and responsibilities and training	Agreed	Closed	Partly Implemented	High - as soon as possible
4	CEO recruitment, employment conditions, performance management and remuneration.	Agreed	Closed	Partly Implemented	High - as soon as possible
5	Accessibility of Council and Finance Committee meeting rules and minutes	Agreed	Closed	Largely Implemented	Lower - within 3-6 months
6	Conduct Council and Finance Committee meetings in accordance with the rules to support effective discussions and decision-making	Agreed	Closed	Partly Implemented	Lower - within 3-6 months
7	Administration and monitoring of Section 19 and Part IV agreements	Agreed	Closed	Partly Implemented	Lower - within 3-6 months
8	ALC and Anindilyakwa Royalties Aboriginal Corporation (ARAC) assurance mechanisms for contracted employees	Agreed	Closed	Partly Implemented	Lower - within 3-6 months
9	Explanation of the risks, costs and benefit of land use proposals to stakeholders	Agreed	Closed	Partly Implemented	Lower - within 3-6 months
10	Royalty equivalents distribution process	Disagreed	Closed	Partly Implemented	High - as soon as possible
11	Regular and mandatory training on governance functions	Agreed	Open	Implementation Ongoing	Lower - within 3-6 months
12	Comply with the Commonwealth fraud rule	Agreed	Closed	Partly Implemented	Lower - within 3-6 months
13	Conflict of Interest Management Plans for staff Assessment of management plans for the former Chair's and CEO's interests	Agreed	Closed	Partly Implemented	High - as soon as possible
14	Enhance the performance measures framework	Agreed	Open	Implementation Ongoing	Lower - within 3-6 months
15	Independence of the Audit Committee Chair Effectiveness of the Audit Committee	Agreed	Closed	Partly Implemented	High - as soon as possible

1.6 ALC Board / Management Response

Summary management response (provided 26 August 2024):

The ALC is a forward-looking Land Council committed to reflecting the wishes of the Traditional Owners (TOs) and proactively supporting Anindilyakwa self-determination for a prosperous, culturally informed future in the Groote Archipelago. This vision is aligned with the values and aspirations of the TOs, particularly as we prepare for the transition from mining operations over the next 7-10 years.

In recent years, the ALC has undergone significant changes to support the TOs' wishes, demonstrating leadership in self-determination. The ALC believes that the positive impact of these efforts and the governance improvements made in recent years should be recognised within the context of this Independent review.

The ALC is committed to transforming governance arrangements on the Groote Archipelago. This transformation includes leading the Local Decision-Making Agreements (LDMA) across key areas of health, education, justice and economic development. To support the success of these, the ALC have established a dedicated data unit to lead Anindilyakwa data governance, providing the ALC Board with the information needed for informed decision-making. These efforts are all aimed at ensuring a sustainable future post-mining. Self-determination remains central to our governance framework, guiding our operations and supporting other Aboriginal Corporations.

The ALC has been strongly committed to implementing the ANAO performance report recommendations and identifying further opportunities to enhance our governance. Since the report's release in May 2023, we have proactively addressed the ANAO's recommendations and committed to an additional 33 improvement initiatives identified in the report. Furthermore, we have implemented a Governance, Risk, and Compliance (GRC) system, which is now effectively managing and documenting our progress against the audit recommendations and further governance improvements. In late 2023, the ALC secured funding to establish a dedicated governance and compliance function, further supporting our efforts to improve governance across our operations.

The Independent review on the status of implementing the ANAO recommendations highlight that significant progress has been made since May 2023 across all recommendations. While we recognise that embedding new policies and practices into business operations takes time, the ALC remains fully committed to the ongoing phases of implementation. We acknowledge the additional actions identified in Section 2, which review the progress made on the 15 ANAO recommendations, and will integrate these into the Governance, Risk, and Compliance (GRC) system to support further implementation.

The ALC also acknowledges the draft Independent reviews assessment of the prioritisation of ANAO recommendations outlined in Section 1.5. The ALC will undertake the necessary actions to address these recommendations as a priority, enhancing governance practices at the ALC. It is important to recognise that change, in response to recommendations, takes time, and we are on track to continue the implementation of recommendations within the advised two-year timeframe. The ALC is aligned with the standard schedule for governance recommendation completion.

We welcome the four recommendations identified in the draft Independent Review Section 3 to further enhance governance arrangement. The specific approaches the ALC will take to address these are detailed in Section 3. The ALC notes that these additional opportunity recommendations align with the ongoing work already being undertaken by the ALC to support implementation and ongoing changes.

Additional Context

Royalty Distribution Processes

The impact of tropical cyclone Megan earlier this year has significantly affected royalty equivalent distributions on the Groote Archipelago due to its impact on the GEMCO mine. Consequently, the ALC's Finance Committee, responsible for administering the 64.3 ALRA royalty equivalents, has had to focus on reviewing other funding opportunities for Aboriginal Corporations during this unexpected drop in royalties, which support their operations and future programs. This broader focus, beyond the usual duties, has been necessary to ensure continued support for these corporations.

Since May 2023 the ALC has considerably improved the documentation of recommendations related to royalty equivalent monies discussed at Finance Committee Meetings and presented to the Board. Our strategic plan is well-known to Finance Committee members and guides all recommendations to the Board. While we acknowledge that our current process for documentation may not fully capture the breadth and complexity of applications, we are committed to improving this process, particularly when applications are referred to other funding sources.

Conflict of Interest

The ALC Board is composed of family members from the 14 clans of the Groote Archipelago, and family connections are an inherent characteristic of the Board's composition. Connections to primary stakeholders, such as Aboriginal Corporations, are inevitable given the small population and governance structures across the Eylandt stakeholders.

In a small population, key leaders often hold multiple leadership positions, including within Local Decision-Making Agreements (LDMAs) and Aboriginal Corporations. Active participation is a fundamental characteristic of self-determination, and these Traditional Owner members and directors serve as role models whose involvement should be supported and promoted. As capacity builds, the pool of individuals available for Board and Director positions will grow, but this process takes time.

The ALC has effectively managed conflicts of interest within this operating environment and has significantly improved the documentation of these practices, including more frequent and robust declarations, since the ANAO performance report in May 2023.

Furthermore, as noted above, leadership across the many corporations presents evolving conflicts (whether real or perceived) and these are managed over time and continue to evolve. The ALC is committed to ensuring that management strategies, when required, are continually improved. In Section 3 the ALC details its strong approach to improving the ongoing review of the effectiveness of management strategies in place at the ALC.

ALC Accountable Authority and Aboriginal Corporations

In the case of Winchelsea Mining, the dual leadership roles held by the ALC CEO in both the ALC and Winchelsea Mining are consistent with ALRA Section 23(1)(ea) and have been carefully managed for conflicts of interest over the past five years since Winchelsea was established. Following detailed legal advice, these roles and their management of conflicts were declared to Ministers Scullion and Wyatt. As part of this management arrangement, when the ALC Board discusses Winchelsea Mining projects, the CEO is required to leave the room, and the Mining and Sustainability Manager facilitates the Board's decision.

In the case of GHAC, the ALC CEO, consistent with ALRA Section 23(1)(ea), has provided leadership in developing major projects as defined by the strategic plan. It is well known that GHAC and AAAC were established to carry out major economic development projects for the region and are significant recipients of royalty monies directed to deliver capital-intensive, large-scale, and complex projects. The ALC CEO, along with the late ALC Chair, has placed significant attention on and taken an active interest in these organisations to provide stewardship, given the importance of these projects to the future Groote economy and the ALC's strategic plan, which benefits all TOs on Groote Archipelago.

Without detracting from the legal position expressed above, on 22 August 2024 the ALC Board resolved to give in principle support to the draft Independent review finding that the ALC CEO no longer also be the CEO of Winchelsea Mining. Specifically, in an ordered way, the ALC Board resolved to give in principle support to the current ALC CEO's proposal that he cease in the ALC CEO role and commence as a consultant for Winchelsea Mining and Groote Holding Aboriginal Corporation matters, which consultancy is anticipated to include other pressing matters particularly the GEMCO mine closure and Transition Steering Committee. A final decision about the current CEO's proposal will be made by the incoming ALC Board (ie after current elections) after receiving the NIAA's final Independent review.

2. Detailed Assessment of Progress Against Recommendations

The table below provides the independent review assessment of progress against ANAO recommendation implementation:

No	ANAO Recommendations and report reference	ALC Response	ALC Status	Independent Review Assessment ⁵	Evidence / Rationale / Observations
Exercise of decision-making authorities					
ANAO Finding					
<p><i>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.</i></p>					
1	<p>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.</p>	<p>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.</p>	<p>Closed As at 11/12/23</p>	<p>Largely Implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ul style="list-style-type: none"> i. ALC002 Delegations Policy (Approved 8 December 2023) ii. Annexure C: Instrument of Delegation under Common seal (Signed 14 December 2023) iii. Annexure D: Instrument of authorisation (Signed 14 December 2023) iv. ALC002 Delegations Policy RL TRACKED 10 NOVEMBER 2023.docx <p><u>Rationale / Observations</u></p> <p>ALC provided evidence of legal advice being sought on the Delegations Policy, with evidence of lawyer review in track changes in a draft version of the Delegations Policy.</p>

⁵ Refer to Appendix C for the Assessment Criteria used based on the ANAO Assessment Criteria for implementation of recommendations.

				<p>The Independent Review Team noted evidence of <i>Instrument of Delegation under Common Seal</i> and <i>Instrument of Authorisation</i> which establishes a delegation instrument and authorisation for section 28 of the ALRA.</p> <p>There is no delegations instrument authorised from the Accountable Authority for PGPA Act delegations, which is noted in the ANAO finding, but not specifically referenced in the ANAO recommendation.</p> <p>It was noted that the Delegations Policy does not include specific references to the relevant PGPA Act or ALRA delegated sections, as noted in the ANAO finding.</p> <p>ALC Management provided further clarification on the purpose of the Delegations Policy on 5 June 2024, which noted:</p> <p><i>The Delegations Policy has nothing to do with a formal delegation under s 28(1) of the Land Rights Act. Rather, it records ALC staff arrangements under employment law and the law of agency, but is entitled 'Delegations' since it is commonplace in organisations (including the public sector) for that language to be used for such a document.</i></p> <p><i>Additional information obtained since issue of the Draft Report on 6 June 2024</i></p> <ul style="list-style-type: none"> • <i>Further information and input provided by ALC and ALC's Legal Advisor regarding the complexity and intersections between ALRA and PGPA Act – 20 June 2024</i> • <i>Input obtained from NIAA regarding the Land Council Delegations Working Group (with the ALRA Policy Forum) – 15 July 2024</i> <p><i>Summary assessment update based on additional information:</i></p>
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					<ul style="list-style-type: none"> • The PGPA Act silent on delegation powers from an Accountable Authority for Corporate Commonwealth Entities, which include Land Councils. • The Land Council Delegations Working Group is progressing a best practice delegations' model for Land Councils within existing ALRA and PGPA Act obligations, with planned timeframes for finalisation in September 2024 <p><u>Further Actions to Support Implementation</u></p> <ol style="list-style-type: none"> 1.1 Re-open the recommendation until evidence supports full implementation. 1.2 Engage with the Land Council Delegations Working Group on the best practice delegations' model for Land Councils. 1.3 Once the best practice delegations model is established, review the delegations policy to ensure alignment.
<p>ANAO Finding</p> <p><i>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.</i></p>					
2	<p>2.20 - The Anindilyakwa Land Council establish a governance document setting out:</p> <ol style="list-style-type: none"> (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 	<p>Agreed – 2.21 The ALC will modify existing governance documents to set out:</p> <ol style="list-style-type: none"> (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 	<p>Closed</p> <p>As at 29/11/23</p>	<p>Partly Implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ol style="list-style-type: none"> i. ALC001 Organisational Design - 29 November 2023 ii. ALC002 Delegations Policy (Approved 8 December 2023) <p><u>Rationale / observations:</u></p> <ol style="list-style-type: none"> a) Partly implemented – Excerpt from the Organisational Design (i) states: <i>The ALC has broken down the responsibilities for the accountable authority as:</i>

	<p>the role of the Council under the ALRA.</p>	<p>and the role of the ALC Board (Council) under the ALRA</p>			<ul style="list-style-type: none"> • <i>Chair – Board and community matters</i> • <i>CEO – implementation of the strategic plan and administration of the ALC’</i> <p>No information or references on the decisions requiring joint authority were articulated in this document, or the Delegations Policy (ii).</p> <p>b) Partly implemented – The Organisational Design document has guidance for the Accountable Authority for the PGPA Act, but no reference to the ALRA. Further, the role of the ALC Board, under the ALRA and any reference to specific legislation is not articulated within the Organisational Design document or Delegations Policy, noting the Board delegation to “Approve” are captured under section 6 <i>Board Authorities</i> and section 7 <i>Financial Authorities</i>, which include:</p> <ul style="list-style-type: none"> 6.1 - <i>Mining Rents and Royalties Distribution Framework</i> 6.2 - <i>Register of Traditional Owners</i> 6.3 - <i>Rulebook for Community Support</i> 6.5 - <i>Execute ALRA s19 Agreements</i> 7.1.1d - <i>General expenditure within budget >\$250,000</i> 7.1.2c - <i>Capital expenditure within budget > \$250,000</i> 7.1.3c - <i>Repurposing budgeted capital to purchase a different capital item > \$250,000</i> <p>The Delegations Policy does not clearly articulate the role of the Accountable Authority under the PGPA Act, which broadly notes:</p> <p><i>The Public Governance, Performance and Accountability Act 2013 (Cth) identifies the Chair and CEO as the “accountable authority” of the ALC. The statute imposes general duties upon an accountable authority, particularly in relation to proper governance, sound administration, financial sustainability,</i></p>
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					<p><i>cooperation with other entities, and keeping the responsible Minister informed.</i></p> <p><u>Further Actions to Support Implementation</u></p> <p>2.1 Re-open the recommendation until evidence supports full implementation.</p> <p>2.2 Clearly set out the roles pertaining to respective legislation, including references to specific delegated legislative powers or roles for the Council, Chair and CEO, including joint decision making, within the key governance documents.</p>
Governance under the Aboriginal Land Rights (Northern Territory) Act 1976					
<p>ANAO Finding</p> <p><i>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.</i></p>					
3	<p>3.14 The Anindilyakwa Land Council:</p> <p>(a) clearly define and document the roles and responsibilities of the full Council, Chair, Deputy Chair and committee members; and</p> <p>(b) implement regular and mandatory training on roles and responsibilities for new and continuing Council members.</p>	<p>Agreed – 3.15 The ALC will:</p> <p>(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</p> <p>(b) implement regular and mandatory training on roles and responsibilities for new and continuing ALC Board (Council)</p>	<p>Closed</p> <p>As at 16/5/2024</p>	<p>Partly Implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <p>i. ALC001 Organisational Design - 29 November 2023</p> <p>ii. Training Update Report.docx</p> <p>iii. ALC Board Member Training Matrix Template</p> <p><u>Rationale / Observations</u></p> <p>a) Partly implemented – The Organisational Design (i) document does not clearly define the roles and responsibilities of the full Council (Board), Chair, Deputy Chair and committee members. While the document has a <i>Board</i> section, it describes who the Board represents (e.g. Traditional Owner’s (TOs) of the Groote</p>

		members. Governance training commenced on 18 April 2023			<p>Archipelago and the clan groups), election cycle, the Board's strategic objective, and the Board appointed accountable authority roles and responsibilities are not documented.</p> <p>b) Partly implemented – Training update report (iii) provided on 22 May 2024 explained that the ALC is in the process of seeking a consultant to co-design a training course focussed on the roles and responsibilities of board members. Further, the ALC has implemented a learning management system (LMS), Learn Centre, in May 2023, and is progressively digitising mandatory and other training offerings available to the Board members and for all staff. Learn Centre will also facilitate recording and monitoring training completion. The Board member training matrix (iii) lists out the training courses that are available, the frequency of training completion, and record of training completion by the Board members.</p> <p><u>Further Actions to Support Implementation</u></p> <p>3.1 Re-open the recommendation until evidence supports full implementation.</p> <p>3.2 The ALC should ensure that all roles and responsibilities for the Board, Chair, Deputy Chair and Committee Members have been clearly defined and documented.</p> <p>3.3 The ALC should ensure that relevant training course(s) on roles and responsibilities has been developed and a process established (or integrated into Learn Centre) that facilitates regular and mandatory training completion for new and continuing Council members.</p>
4	3.22 The Anindilyakwa Land Council establish formal arrangements, endorsed by the Council, to determine and manage the recruitment,	Agreed – 3.23 The ALC will establish formal arrangements, endorsed by the ALC Board (Council), to determine and manage	Closed As at 28/11/23	Partly implemented	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <p>i. 04 CEO Recruitment [Policy]</p>

	<p>employment conditions, performance management and remuneration of the CEO.</p>	<p>the recruitment, employment conditions, performance management and remuneration of the CEO.</p>			<ul style="list-style-type: none"> ii. CEO recruitment policy resolution - November Board Meeting iii. HR Policy DRAFT (Updated 24 April 24) iv. Ad. SIGNED Board Minutes – 16 November 2023 v. Schedule 2 – 2021/22 Key Performance Indicators (Extract of CEO Contract) vi. CEO KPI <p><u>Rationale / Observations:</u></p> <p>Overall assessment: Partly implemented</p> <p><i>Board Minutes – 16 November 2023</i></p> <ul style="list-style-type: none"> • Sighted the endorsement by the Board of the CEO recruitment process at item 17, and documented at section 17 of the HR Policy. • Item 11b. Continuation of CEO performance review, and Annexure C – <i>CEO Performance Review August 2022-2023</i>, is evidence of the CEO performance review being conducted at this meeting. The CEO provided self assessment responses against the following criteria: <ol style="list-style-type: none"> 1. ALC Administration 2. ALC supported Administration 3. Specific Projects 4. Community / Local Decision Making Consultations and Agreements 5. Personal Development • The self assessment was discussed (with the attendance of the Audit Committee Chair) and agreed to by the Board. <p><i>CEO Key Performance Indicators (KPI)</i></p> <ul style="list-style-type: none"> • The criteria documented in the CEO KPI (vi) are mostly aligned (wording differences noted) with the criteria used in the self assessment documented at Annexure C above. • The extract of the CEO KPI's (v) states <i>Key performance indicators linked to ALC strategic plan.</i>
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					<p>While there are elements in the CEO KPI (vi) identified in the Strategic Plan 2023-33 (e.g. Aquaculture), the linkage is unclear as the documented measures within the CEO KPI which are limited in detail or specificity, and do not include the use of metrics to support assessment.</p> <p><i>CEO Performance Review process</i></p> <p>It was noted in section 15.3 of the HR Policy (iii) that the Chair of the Audit Committee is prescribed the duty of facilitating the performance review. This is not common practice or duties of an Audit Committee Chair. The Australian Institute of Company Directors (AICD) states that CEO performance reviews and evaluations should be facilitated by the Board Chair, or an external facilitator⁶.</p> <p><u>Further Actions to Support Implementation</u></p> <ul style="list-style-type: none"> 4.1 Re-open the recommendation until evidence supports full implementation. 4.2 To align with recommended practices, update the CEO’s performance review responsibility to the ALC Board. The Board should document whether support from an external facilitator is required for this process. 4.3 To enhance accountability, ALC should ensure future CEO KPI plans clearly align with the Strategic Plan, are agreed with the CEO, and are endorsed by the Board. 4.4 Ensure the CEO’s KPIs have clearly articulated measures and include metrics where appropriate to support an objective and documented assessment.
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⁶ Performance review and appraisal of the CEO, Australian Institute of Company Directors, [performance-review-and-appraisal-of-the-ceo.pdf \(aicd.com.au\)](https://www.aicd.com.au/performance-review-and-appraisal-of-the-ceo.pdf) [Accessed 29 May 2024].

5	<p>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).</p>	<p>Agreed – 3.27 The ALC will provide instructions on how to access minutes (i.e. viewing access only at the ALC offices) as follows:</p> <ul style="list-style-type: none"> • 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. <p>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).</p>	<p>Closed As at 26/10/23</p>	<p>Largely Implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ol style="list-style-type: none"> 'Access to minutes' section on ALC website, which includes Finance Committee Minutes as a selection option⁷ Finance Committee Rules - 18 October 2023 – available on the ALC website⁸ <p><u>Rationale / Observations</u></p> <p>Overall assessment – Largely implemented</p> <p><i>Minute access via ALC website</i></p> <ul style="list-style-type: none"> • The ALC have established an access to minutes request form on the ALC website, which states: <p><i>The Aboriginal Land Rights Act (NT) 1976 mandates that Traditional Aboriginal owners of Aboriginal land in the area of the ALC, and any Aboriginal living in the area of the ALC are allowed to inspect the minutes of its meetings (other than any part of the minutes that relates to an excludable matter).</i></p> <p><i>If you need help with this, please feel free to visit the ALC Community Support Office at Angurugu.</i></p> <p><i>Within 10 days of receiving the application, the ALC will be in contact with you to make an appointment inspect the minutes at the ALC Alyangula office.</i></p>
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⁷ <https://anindilyakwa.com.au/access-to-minutes/> - accessed 1 May 2024 and 6 June 2024

⁸ <https://anindilyakwa.com.au/app/uploads/2024/04/ALC032-Finance-Committee-Rules.pdf> - accessed 6 June 2024

					<p><i>The appointment will be for 1 hour and you are permitted to take notes. Making copies or taking photographs/filming the minutes is not permitted.</i></p> <p><i>The minutes will be redacted to remove excludable matter before being provided for inspection.</i></p> <p><i>The minutes may not be taken with you.</i></p> <p><i>To inspect the minutes of a meeting, please complete the form below to book an appointment to inspect minutes of meetings.</i></p> <p><i>Finance Committee Rules</i></p> <ul style="list-style-type: none"> • Inconsistencies in terminology used for excludable matters. The term 'Confidential matter' is used instead. While the definition mostly aligns with the definition prescribed in the ALRA, inconsistent use of terminology may cause confusion to readers. • 'defaulting' was used instead of divulging (per ALRA). The words have different meanings and should be updated to align with the ALRA. <p><i>Availability of meeting minutes</i></p> <ul style="list-style-type: none"> • A scan (word search of minutes, meetings) of ALC's Facebook page have not found evidence of announcements being made of the availability of minutes, noting there has been a Finance Committee meeting conducted in 17 October and 4 December 2023 and 5-8 March 2024. • 'Access to Minutes' section on the ALC website used excludable matter, while the Finance Committee Rules use 'Confidential'. Terms should be used consistently as per ALRA. <p><i>Accessibility of Minutes</i></p> <p>ALC advised there's been no request to review the Finance Committee minutes.</p>
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					<p>It was noted that the conditions⁹ established to allow Traditional Owners living in the area of the ALC to inspect the minutes may be restrictive, due to:</p> <ul style="list-style-type: none"> minutes are in English, access is on-site at the ALC office. <p><u>Further Actions to Support Implementation</u></p> <p>5.1 Re-open the recommendation until evidence supports full implementation.</p> <p>5.2 When Minutes are requested for review, the ALC should offering interpretation services to assist non-english readers in reading and understanding the Minutes.</p> <p>5.3 The ALC should consider adding a forward calendar of Board and Finance Committee meetings to the Minutes access page to provide information to the Traditional Owners on when meetings are scheduled and also information on when Minutes are available for each meeting.</p> <p>5.4 In reference to the potential restrictons on access, the ALC could provide a meeting minutes summary on the agenda and key decisions from each meeting that can be accessed via the ALC website or used at local community engagement events and spoken to in Anindilykwa language.</p>
6	<p>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:</p>	<p>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</p>	<p>Closed As at 14/12/23</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ol style="list-style-type: none"> Finance Committee Rules - 18 October 2023 ALC Board Rules – DRAFT 12-10-23 Finance Committee meeting minutes

⁹ <https://anindilyakwa.com.au/access-to-minutes/>

	<p>(a) conducting Finance Committee meetings at the prescribed frequency;</p> <p>(b) annually reviewing key governance documents; and</p> <p>(c) implementing meeting rules aimed at facilitating member understanding of matters discussed.</p>	<p>every three years which aligns to the ALC Board election cycle. Additional funding will be sought from NIAA for corporate secretarial services.</p>			<p><u>Rationale / Observations</u></p> <p>Overall assessment – Partly implemented</p> <p>This because the Board Rules require Minister approval, which has not yet been obtained, noting advice and review is ongoing between ALC and NIAA which commenced in November 2023.</p> <p>Specific observations as follows:</p> <p>a) Implemented – Meeting frequency for the Finance Committee has been changed to at least twice a year. Evidence (minutes) have been provided as evidence of the Finance Committee being held in October 2023, December 2023 and March 2024. Further inquiry noted Finance Committee meetings are planned for 31 May and 17 June 2024.</p> <p>b) Implemented – The frequency of review of key governance documents have been changed to every three years per section 2 of the Finance Committee and Board Rules. Noting the review of register of interest is an annual standing agenda item in section 5.3.1 of the Draft Board Rules.</p> <p>c) Partly implemented – The Board Rules (para 5.4) and the Finance Committee (para 7.3) were updated and state:</p> <p><i>As required, the CEO will cause to provide Members with briefing papers, presentations, and reports to facilitate background and understanding of the matters discussed.</i></p> <p>Further inquiry noted ‘information is provided on the day at the start of the meeting via print outs, including the agenda and annexures. Members preferred contact method prior to meetings are phone’. It is unlikely to provide sufficient time for members to read and understand the matters to be discussed.</p>
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				<p><i>Additional information obtained since issue of the Draft Report on 6 June 2024 (information provided 2 July 2024)</i></p> <ul style="list-style-type: none"> <i>The board reviewed Action 6.2 and deliberated on how to enhance the receipt of information prior to board meetings. Concerns were raised about the potential risk of sensitive papers falling into the wrong hands if circulated before the meetings. To mitigate this risk, the board proposed the introduction of pre-board meetings. These meetings, scheduled in the days prior to each board meeting, will allow members to review and contribute to the proposed agenda, and request additional information if needed. Relevant papers will be distributed during these pre-board meetings or displayed on the big screen.</i> <i>The board resolved to request ALC management to begin pre-board meetings starting from July 1st, noting the next board meeting scheduled for the third week of July.</i> <p><i>Summary assessment update based on additional information:</i></p> <p><i>No update to the overall assessment or the further actions to support implementation have been made as the proposed actions resolved by the Board are still to be implemented and assessed as effective.</i></p> <p><u>Further Actions to Support Implementation</u></p> <p>6.1 Re-open the recommendation until evidence supports full implementation.</p> <p>6.2 Information should be provided more than one day ahead of meetings to allow members to read and understand. Common practice is to circulate Board papers at least a week before the meeting. The ALC could consider organising a pre-committee meeting to allow members to read and understand the information ahead of the committee meeting and ensure key</p>
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					<p>papers are available for Board members to consider up to the date of the Board meeting.</p> <p>6.3 The ALC could establish an annual meeting work plan for each of the Committees to facilitate forward planning and preparation for committee papers and agenda items.</p>
<p>ANAO Finding <i>The ALC has partly appropriate governance arrangements to exercise its key legislative functions.</i></p> <ul style="list-style-type: none"> <i>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.</i> <i>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.</i> <i>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.</i> 					
7	<p>3.43 The Anindilyakwa Land Council establish:</p> <p>(a) a policy and procedures for administering Part IV agreements; and</p> <p>(b) systematic monitoring against section 19 and Part IV agreements to detect and address non-compliance with agreement conditions.</p>	<p>Agreed – 3.44 The ALC will establish:</p> <p>(a) a policy and procedures for administering Part IV agreements; and</p> <p>(b) systematic monitoring against ALRA s19 agreements and Part IV agreements to detect and address non-compliance with agreement conditions.</p> <p>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.</p>	<p>Closed</p> <p>As at 16/5/2024</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ol style="list-style-type: none"> ALC - Template s19 Lease Audit Plan 01.05.2024 BMLA Master Register 01.05.2024 ALC041.01 ALRA Part IV Agreement Procedure ALC041 ALRA Part IV Agreement Policy Findings and Issues Management_1007265 09 Part IV Agreements <p><u>Rationale / Observations:</u></p> <ol style="list-style-type: none"> Implemented – A Policy and procedural document has been developed and sighted. Partly implemented – the Review Team noted the progress update on 2 May 2024 in Protecht which describes an approach to systematic monitoring against s19 and Part IV agreements to be established within Protecht. The implementation is planned for FY25, therefore has not been fully implemented.

					<p><u>Further Actions to Support Implementation</u></p> <p>7.1 Re-open the recommendation until evidence supports full implementation.</p> <p>7.2 Once its developed in Protecht, a summary of the s19 and Part IV agreements monitoring plan should:</p> <ul style="list-style-type: none"> • be included in a relevant governance document • be provided to the Board for approval, and • progress updates should be provided on a regular basis.
8	<p>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:</p> <p>(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</p> <p>(b) staff contracted to Anindilyakwa Royalties Aboriginal Corporation are not performing work for the Anindilyakwa Land Council.</p>	<p>Agreed – 3.54 The ALC will put in place mechanisms to provide assurance that:</p> <p>(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</p> <p>(b) staff contracted to Anindilyakwa Royalties Aboriginal Corporation are not performing work for the ALC.</p>	<p>Closed</p> <p>As at 29/3/24</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <p>i. Allocations assessment</p> <p>ii. ALC Wages and Funding Sources 5 March 24</p> <p>iii. Allocation of costs ARAC to ALC (provided 1 June 2024)</p> <p><u>Rationale / Observations:</u></p> <p>Overall assessment: Partly implemented</p> <p>Progress has been made to address the recommendation. However, further work is required to meet the intent of the recommendation. Specific observations as follows:</p> <p><i>Review of initial evidence</i></p> <ul style="list-style-type: none"> • The allocation assessment (i) document explains ALC’s approach to addressing the recommendation. • As at 5 March 2024 – A spreadsheet (ii) had been developed that lists ALC staff members, and allocated percentages of work performed for the ALC and other Aboriginal Corporations. The assumptions applied in the spreadsheet (e.g. average salary of \$100,000), were not supported by underlying data. For example, there is no data supporting the percentage of time allocated to each entity. The calculation did not have

					<p>evidence to support consideration of expected inputs such as:</p> <ul style="list-style-type: none"> ○ Analysis of timesheets (or a staff timesheeting process). ○ Staff's actual salary figures to support calculations. ○ Assessment against the general service deeds and how this information informs the analysis and allocation of costs. <p><i>Additional evidence provided.</i></p> <ul style="list-style-type: none"> • As at 1 June 2024 – The Review Team received a revised version of the calculation spreadsheet (iv) on 1 June 2024, ALC Management advised that actual salary figures were being used to calculate the average salary rather than assumptions. Note: <i>The Review Team has not undertaken detailed review of the updated calculation spreadsheet provided post-fieldwork completion (31 May 2024).</i> • The Independent Review Team noted that the issue with the process in estimating percentage of work still remained and would require further action to support full implementation of the recommendation. Refer to observations below. <p><i>Cost estimation process</i></p> <p>Further consultation with key ALC Management on 29 and 31 May noted the following:</p> <ul style="list-style-type: none"> • The relevant staff managers are asked to give an estimate of the percentage of work provided to ARAC (or other Indigenous Corporations) on a biannual basis. The percentage is then multiplied against the total actual annual salary of the staff to calculate the cost of the services. The ALC invoices the ARAC on a weekly basis to recoup the cost of services. • Since staff are not required to record the time spent on ARAC, and the frequency of review of the percentage
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					<p>applied is biannual, there is a risk that the estimates do not provide an accurate basis to calculate the cost of services.</p> <p><u>Further Actions to Support Implementation</u></p> <p>8.1 Re-open the recommendation until evidence supports full implementation.</p> <p>8.2 ALC should leverage established timesheet processes to facilitate accurate calculations for reimbursement of expenses of staff costs between ALC and ARAC (and other ORICs as necessary) on a regular basis (e.g. weekly or monthly) .</p> <p>8.3 ALC should establish a regular (e.g. monthly) reconciliation process to compare actual employee costs based on actual time and effort, and the amount invoiced for staff costs between ARAC and ALC (and other ORICs as necessary).</p>
9	<p>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.</p>	<p>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.</p> <ul style="list-style-type: none"> 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 	<p>Closed As at 10/5/2024</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed</u></p> <ol style="list-style-type: none"> Findings and Issues Management_1006613 ALC024 Consultation Policy Southern Leases Minutes 29.04.24 Consult Mar 24 ELA 31247 31248 & 31249 ver3 Job Number 2324176950 Interpreter_ Sylvia Cynthia TKAC 12 Records of Consultations <p><u>Rationale / Observations</u></p> <p>Overall assessment: Partly implemented</p> <ul style="list-style-type: none"> The Consultation Policy (ii) does not contain specific requirements to explain risks, costs and benefits There is evidence (v) that an interpreter has been engaged. Evidence within the minutes (iii) captures the interpreter’s attendance and service being provided.

		<p>performed by consultants and an in-language presentation prepared for TO consultations.</p> <ul style="list-style-type: none"> • 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 			<ul style="list-style-type: none"> • Review of an example land use proposal (iv) noted risks have not been clearly documented to explain the cost of continuing or ceasing GEMCO's license. While the minutes (iii) noted 'financial benefits to clans' if the Traditional Owners vote yes, it does not contain any further explanation of <u>cost</u> or <u>risks</u>. <p><i>Additional information obtained since issue of the Draft Report on 6 June 2024 (information provided 20 June 2024)</i></p> <ul style="list-style-type: none"> • <i>Further action to support implementation (9.2). It was noted that during the review period, the second follow up consultation meeting relating to the Moratorium on the Southern Lease was held (9 May 2024). The meeting minutes clearly documented the discussion of cost, risks and benefits to meeting attendees and the flow chart used to explain the risks, costs and benefits.</i> <p><i>Summary assessment update based on additional information:</i></p> <ul style="list-style-type: none"> • <i>ALC has provided an example of stakeholder engagement on a land use proposal where benefits, costs and risks were addressed in two separate meetings.</i> • <i>No further update to the overall assessment or the further actions to support implementation have been made noting ALC will need time to demonstrate that stakeholder engagement on a land use proposal is embedded and operating effectively.</i> <p><u>Further Actions to Support Implementation</u></p> <p>9.1 Re-open the recommendation until evidence supports full implementation.</p> <p>9.2 The land use proposal presentations should clearly cover the sections identified within the ANAO's recommendations and ensure that costs and risks are specifically explained and documented.</p>
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10	<p>3.87 The Anindilyakwa Land Council strengthen the royalty equivalents distribution process by:</p> <p>(a) developing an assessment method that includes funding priorities;</p> <p>(b) communicating the assessment method to potential applicants and informing all applicants of outcomes;</p> <p>(c) applying the assessment method to all decisions; and</p> <p>(d) keeping adequate records of the basis for funding decisions</p>	<p>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.</p> <p>The ALC will however take the following steps:</p> <ul style="list-style-type: none"> • 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 	<p>Closed</p> <p>As at 9/4/24</p>	<p>Partly implemented –</p> <p><i>For ALC’s Response, noting ALC Disagreed with the ANAO Recommendation</i></p>	<p>Evidence reviewed:</p> <ol style="list-style-type: none"> Ad. FinCom applicant information ALC web Ad. Strategic Plan Overview Presentation for FINCOM Ad. FinCom 8 Mar 2024 Strategic Plan evidence 10.2. RDU Funding Requests 01-08-2024 Ad. ALC011.02 Royalty Grant Application (64-3) <p>Rationale / Observations:</p> <p>Overall assessment: Partly implemented</p> <p>There is not clear evidence that the alternative approach proposed by the ALC will address the risks associated ANAO finding, specifically:</p> <ul style="list-style-type: none"> • <i>Processes to distribute the ALC’s largest category of land use monies (royalty equivalents) lack transparency.</i> • <i>The rationale for assessment outcomes is not clearly documented.</i> <p>Status updates for implementation noted that the Strategic Plan was scheduled for discussion at the 5-8 March 2024 Finance Committee meeting.</p> <p>ALC Management provided additional evidence on 23 May 2024, supporting the royalty equivalents distribution process conducted in March 2024, including:</p> <ol style="list-style-type: none"> ALC: Sources of Funding and the Rents/Royalties Distribution Model (Issued 1 January 2024) 5-8 March 2024 Finance Committee Meeting Minutes (unsigned), including Finance Committee Recommendations to the Board for the applications (Annexure 1) 22 March 2024 Board Minutes Example of letter to funding recipients <p><i>Assessment of Applications and Finance Committee Recommendations</i></p>
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				<p>The 5-8 March 2024 Finance Committee Meeting Minutes note that 71 applications totaling \$51.285m for royalty equivalent funding were received for assessment.</p> <p>The Finance Committee recommendations for royalty distributions in March 2024 totalled \$23.051m, with \$3.386m recommended to defer.</p> <p>Applications included that were not recommended by the Finance Committee for royalty distributions totalled \$5.983m.</p> <p>The 5-8 March 2024 Finance Committee Meeting Minutes (unsigned), including Finance Committee Recommendations to the Board for the applications (Annexure 1), were provided to the ALC Board to make decisions on the royalty distribution process. The Board resolved on 22 March 2024:</p> <p><i>The Board resolved to pay (GST free) the amounts indicated in column E of that table to the applicants referred to in column B, for the purposes described in columns D and H [Annexure 1 from the 5-8 March 2024 Finance Committee Minutes]</i></p> <p>Board decisions for the royalty distribution from 22 March 2024 Board Meeting Minutes discussion – (confirmed 17 June 2024)</p> <ul style="list-style-type: none"> • <i>Total value of 71 applications \$51.285m</i> • <i>Board approval for 52 applications for 64(3) royalty allocations for \$23.051m with \$3.386m deferred (Board paper Item 14 & Attachment 3)</i> • <i>Board rejected 8 applications for \$5.983m (Board paper Item 14 & Attachment 4).</i> • <i>Anindilyakwa Mining Trust (AMT) support to be requested with Board to give a reasonable direction totalled 11 projects and \$28.361m (Board paper Item 16 & Attachment 5).</i> <p>The Finance Committee Recommendations to the Board for the applications (Annexure 1), includes a summary</p>
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				<p>assessment “Finance Committee (FINCOM) Comments/Recommendations and ALC Board Decision” that supports the recommendation. There are no detailed criteria included in the Annexure 1 as to how the assessment has been made.</p> <p><i>Additional information obtained since issue of the Draft Report on 6 June 2024 (information provided 17 June 2024 and 29 July 2024)</i></p> <p>A variance of \$9.496m was noted between:</p> <ul style="list-style-type: none"> • <i>the ALC Board Meeting Minutes from 22 March 2024 where a total of \$60.781m was included in decisions for approvals, rejection or request for funding from AMT, and</i> • <i>the Finance Committee Meeting Minutes 5-8 March 2024 for recommendations to the Board for the royalty distributions where a total of \$51.285m was included in decisions for approvals, rejection or request for funding from AMT. It was noted no list of applications or value assessed to request funding from AMT was included in the Finance Committee meeting Minutes 5-8 March 2024.</i> <p>ALC Management provided the following explanation for the variance noted by the Independent Review Team (29 July 2024):</p> <p><i>[Anindilyakwa Royalties Aboriginal Corporation] ARAC identified the variance amount to cover ongoing project costs beyond the 64.3 applications, including co-commitments and changing building costs. This was discussed at their respective meetings and communicated to ALC Management to present to the board.</i></p> <p><i>Conflict of Interests for Royalty Decisions</i></p> <p>The Board minutes demonstrated Conflict of Interests were declared and abstaining of decisions by members/CEO where they were chair, directors or employees for Indigenous Corporations where royalty allocation decisions were made.</p>
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					<p><i>Summary assessment update based on additional information:</i></p> <p>The assessment has been updated based on clarification of the information. No updates have been made to the further actions to support implementation based on the overall assessment.</p> <p><u>Further Actions to Support Implementation</u></p> <p>10.1 Re-open the recommendation until evidence supports full implementation.</p> <p>10.2 ALC should ensure appropriate criteria is documented to support the assessment and decisions on the royalty distribution process. Assessment criteria may include:</p> <ul style="list-style-type: none"> • Alignment to the ALC Strategic Plan • Traditional Owner priorities or Local Decision Making agreement priorities • Economic, Social Development and/or Cultural Preservations. <p>10.3 ALC should ensure that:</p> <ul style="list-style-type: none"> • Finance Committee meeting minutes include assessment for all applications and the total number and value of applications received for each royalty distribution process, including approvals, rejections or requests for other funding sources (e.g. Anindilyakwa Mining Trust (AMT)). • Recommendations to the Board to provide royalties or refuse funding should reconcile to all applications received for each royalty distribution round, including approvals, rejections or requests for other funding sources (e.g. Anindilyakwa Mining Trust (AMT)).
<p>Arrangements to promote the proper use and management of resources</p>					

ANAO Finding					
<p><i>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.</i></p>					
11	<p>4.17 The Anindilyakwa Land Council implement regular and mandatory training on governance functions for all staff, including risk management, key policies and fraud.</p>	<p>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.</p>	Open	Implementation Ongoing	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <p>i. 18 Governance Training.pptx</p> <p><u>Rationale / Observations</u></p> <p>Overall assessment: Implementation ongoing</p> <p>Evidence provided supports the status that implementation is still in progress. The ALC has implemented a learning management system (LMS), Learn Centre, in May 2023, and is progressively digitising mandatory and other training offerings available to the Board members and for all staff. Learn Centre will also facilitate centralised recordkeeping and monitoring of training completion.</p> <p><u>Further Actions to Support Implementation</u></p> <p>N/A</p>
<p>ANAO Finding</p> <p><i>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.</i></p>					
12	<p>4.21 The Anindilyakwa Land Council comply with the Commonwealth fraud rule, including by developing and</p>	<p>Agreed – 4.22 The ALC has internal controls designed to prevent and detect fraud. This includes financial authorisations, separation of duties,</p>	Closed As at 23/11/23	Partly implemented	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p>

	<p>implementing a fraud control plan and mechanisms to record and report fraud.</p>	<p>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.</p> <p>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.</p>			<ul style="list-style-type: none"> i. 12.4 BB. ALC036 Fraud Management Policy ii. Ad. ALC Annual Business Plan_Finance Master iii. 12.1. ALC Fraud Register iv. 12.2-3 ANAO Audit Action 19 - Fraud - Briefing Note (Gap Analysis) 05-10-2023 <p><u>Rationale / Observations</u></p> <p>Overall assessment: Partly implemented</p> <p>While we note work has progressed to identify gaps between the ALC’s fraud process against the Commonwealth fraud rules (iv), further work is required to comply with the Commonwealth fraud rule.</p> <p>Our assessment of evidence reviewed noted:</p> <ul style="list-style-type: none"> i. The ALC 036 Fraud Management Policy contains principles, definitions of fraud, reporting and recording process, and responsibilities of ALC staff. Section 3.4 explains how to report fraudulent activity, and includes a number to call, and a flow chart of the fraud control procedure. ii. However, there's no mention of fraud control plans, risk management plans, or how risk will be managed. Further, the Fraud Management Policy does not reference s10 of the PGPA Rule, which states the requirements of the accountable authority in preventing, detecting and investigating with fraud. iii. ALC Annual Business Plan (ii) includes one line item relating to fraud, which is to monitor compliance with policy requirement, however no further details provided on how this will be operationalised. iv. 12.2-3 ANAO Audit Action 19 - Fraud - Briefing Note (Gap Analysis) 05-10-2023 - contains a gap analysis of ALC's fraud processes against the Commonwealth fraud rules. It also includes recommended actions and evidence.
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					<p>v. Development of training is still in progress (based on status reports)</p> <p><i>Additional evidence provided.</i></p> <p>Additional information related to Fraud Risk Assessment, obtained 24 May 2024, including:</p> <ul style="list-style-type: none"> Fraud Review 2021-2022 (dated 27 April 2022) includes detailed fraud risk assessment, controls and additional treatments which supports alignment to section 10(a) and 10(b). However the current obligation is to have a current FRA within 2 years, which has just expired. Additionally, the updated Commonwealth Fraud and Corruption Control Framework effective 1 July 2024 has additional obligations for assessing the effectiveness of controls and also identified treatments. <p><u>Further Actions to Support Implementation</u></p> <p>12.1 Re-open the recommendation until evidence supports full implementation.</p> <p>12.2 Review and update the Fraud Risk Assessment (FRA) as soon as practical and also consider and reference corruption and developing of a fraud and corruption controls testing regime.</p>
13	<p>4.51 The Anindilyakwa Land Council:</p> <p>(a) develop and implement effective management plans for interests declared in the staff and Council registers of interest; and</p> <p>(b) assess whether management plans for the Chair's and CEO's interests in Winchelsea Mining and Groote Holdings Aboriginal Corporation are effective.</p>	<p>Agreed 4.52</p> <p>(a) The ALC will ensure management plans for staff and ALC Board (Council) declared conflicts of interest provide sufficient detail in all cases.</p> <p>(b) The ALC will assess whether the management plans for the Chair and CEO's interests in Winchelsea Mining and GHAC are effective.</p>	<p>Closed</p> <p>As at 23/12/23</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed</u></p> <p>i. 13.4 Register of Staff Interests incl. UNDER REVIEW 030524</p> <p>ii. 13.4. Board Register of Interests - 22 April 2024</p> <p>iii. 13.3. CEO&ALC Chair Mgnt</p> <p>iv. 13.3. Annexure B Mark Hewitt Declarations of Interest Form</p> <p>v. 13.3. Annexure A Declaration of interests - Tony Wurramarra 05.12.23 - Signed1</p> <p>vi. 13.2. 19-10-2023 FW Declarations of Interests Form (</p>

					<p>vii. 13.1. 20 Conflicts of Interest viii. Board Register of Interests 30May24 ix. EMAIL - Re ALC - Conflict of Interest Management Plans x. EMAIL - Re Proposed amendments to ALC Board Rules</p> <p><u>Rationale / Observations</u></p> <p>Overall assessment: Partly implemented</p> <p>a) Partly implemented - Specific observations as follows:</p> <p>i. While a Staff Register of Interest (i) exists, the Staff's Register of interest contains comments of management plans are 'under review'. The recommendation is not considered closed until these management plans have been completed, approved by the relevant delegate, and subject to monitoring.</p> <p><i>Note: Upon further enquiry, the Review Team was advised and provided with a final version of the Staff's Register on 30 May 2024. The Review Team noted the Register does not have any management plans 'under review'. However, this document has not been reviewed in detail to confirm appropriateness or effectiveness of proposed managements plans, as it was provided post-fieldwork.</i></p> <p>ii. The ALC Board Registers of Interest (ii) lists the Board members and their interests. However, it does not contain management plans. The ALC advised that Board members are required to follow conflict of interest clauses in the ALC Board Rules. Noting the revised Board Rules are subject to advice and review is ongoing between ALC and NIAA since November 2023. The Board Rules are also subject to Minister approval. The ALC's legal adviser has been assisting in the</p>
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					<p>revision as evidenced in email correspondences (x).</p> <p>iii. Review Team sighted evidence (vi) of the ALC tracking staff's declaration of interest forms and follow-up activity for missing forms (information in November 2023).</p> <p>b) Implemented –The Review Team have sighted email correspondence (x) between the ALC and their legal adviser that evidences advice and review of the CEO's Declaration of Interest. The CEO and Chair's declaration of interest forms and management plans were presented to the Board by their legal adviser. Screenshot from the Board meeting (December 2023) minutes (iii) evidences endorsement by the Board, and also of the CEO and Chair leaving the meeting for this discussion.</p> <p><u>Further Actions to Support Implementation</u></p> <p>13.1 Reopen recommendation until the Board Rules have been approved by the Minister. Where appropriate, obtain updated Declarations of Interest from each of the Board members.</p> <p>13.2 Establish a process to monitor conflict of interest management strategies and periodically assess appropriateness of management strategies for the Board, CEO and Staff</p> <p>Refer to section 3 for an additional recommendation for conflict of interest management.</p>
<p>ANAO Finding</p> <p><i>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.</i></p>					

<p>14</p>	<p>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:</p> <p>(a) each measure is clearly explained, including the underlying methodology;</p> <p>(b) each measure has a target where practicable;</p> <p>(c) each measure is consistently expressed in the corporate plan and annual performance statements; and</p> <p>(d) a process exists to provide assurance over the completeness and accuracy of the performance results published in annual reports</p>	<p>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:</p> <p>(a) is clearly explained, including the underlying methodology;</p> <p>(b) has a target where practicable; and</p> <p>(c) is consistently expressed in the corporate plan and annual performance statements; and that</p> <p>(d) a process exists to provide assurance over the completeness and accuracy of the performance results published in annual reports</p>	<p>Open</p>	<p>Implementation ongoing</p>	<p>Evidence support progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <ul style="list-style-type: none"> i. Rec 14 Status Report ii. Template for Responses_3.1 Compliance with Mining Agreements iii. Response Template_Preserving Culture Performance Statement 4.2 iv. Template response for Protect and Manage the IPA Performance Statement v. Template for Responses_3.2 Landform and Rehabilitation Work vi. Response Template_Preserving Culture Performance Statement 4.1 vii. Community and Economic Development Performance Statements viii. 20240502_Response to audit query_EFerdinandez ix. Performance Measures x. ALC Corporate Plan 2023-24 xi. ALC Corporate Plan 2022-23 <p><u>Rationale / Observations</u></p> <p>Overall assessment: Implementation ongoing</p> <p>Further work is required to enhance corporate and annual performance statement reporting proceses. ALC’s process for corporate and performance reporting is managed through ALC’s SharePoint, and the responsibility is with reporting areas. The Independent Review Team provided ALC with an example template of a performance framework methodology document, and guidance from the ANAO¹⁰. As a result, we have sighted draft methodology document templates developed for the performance measures. The</p>
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¹⁰ Audit Insights: Reporting Meaningful Performance Information, ANAO, 29 June 2023 [Accessed: 24 April 2024]

					<p>ALC should formalise this document and use it as part of their performance framework. Further, the Review Team was advised by ALC that they have engaged a consultant to assist with the process.</p> <p>Assessment against the recommendations:</p> <ul style="list-style-type: none"> a) Performance measures have significantly changed from 2022-23 Corporate Plan (xi), and the current year Corporate Plan (x) does not include an explanation of these changes, as required by the PGPA Rule 16EA(f)¹¹. In the absence of this, the ALC should ensure the annual report clearly explains these changes. A summary of the underlying methodology have been included for each of the performance measures in the 2023-24 Corporate Plan. While this is appropriate for the Corporate Plan, the detailed methodology to derive the performance result should be clearly articulated and sufficiently detailed in the methodology documents. b) Targets have been set for each measure, except for measure 4.2¹². The way the performance measure is described indicates a target could be set. Without further information provided for this measure, the practicality of having a target has not been assessed. c) Unable to assess – Reporting of annual performance results reporting cycle has not yet occurred for 2023-24. d) In progress – An assurance process has not been established and documented. This should be clearly articulated with sufficient detail in the methodology document.
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¹¹ The performance measures meet this requirement when they provide a basis for an assessment of the entity's performance over time.

¹² Number of sites of cultural significance that are recorded, and/or where development is proposed, protected.

					<p><u>Further Actions to Support Implementation</u></p> <p>14.1 ALC could consider a recurring assurance review of corporate performance reporting to enhance maturity in performance reporting processes and alignment with better practice and whole of government legislation and policy.</p> <p>14.2 ALC should ensure the narratives supporting the annual performance results in the annual report, clearly explain and justify the changes in performance measures from prior year.</p> <p>14.3 ALC should consider establishing a formal target(s) for Performance Measure 4.2.</p>
<p>ANAO Finding</p> <p><i>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.</i></p>					
15	<p>4.83 - The accountable authority of the Anindilyakwa Land Council:</p> <p>(a) ensure the Audit Committee Chair is independent;</p> <p>(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;</p> <p>(c) annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions; and</p> <p>(d) implement an effective secretariat to support the operation of the Audit Committee.</p>	<p>Agreed – 4.84 The ALC will:</p> <p>(a) ensure the Chair is independent;</p> <p>(b) 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;</p> <p>(c) annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions; and</p> <p>(d) implement an effective secretariat to support the</p>	<p>Closed</p> <p>As at 19/12/23</p>	<p>Partly implemented</p>	<p>Evidence supports progress, however further action(s) required to support full implementation.</p> <p><u>Evidence reviewed:</u></p> <p>i. 15.1. Audit Comm Meeting FY24 02 Agenda</p> <p>ii. 15.2 Audit Committee Minutes 20 22 Nov 2023</p> <p>iii. 15.3. Report of Audit Committee to Board Dec 2023</p> <p>iv. 15.4. Finance Audit Risk Committee endorsement by board Dec 2023</p> <p>v. 15.5. Audit Committee Charter</p> <p>vi. Ad a) ALC019.01 Declarations of Interests Form - Mark O’Shea 270224</p> <p>vii. Mamarika Ida – Register of Interest Declaration</p> <p>viii. Wurrawilya Chelle – Register of Interest Declaration</p> <p>ix. Bara Serena – Register of Interest Declaration</p> <p><u>Rationale/ Observations:</u></p> <p>Overall assessment: Partly implemented</p> <p>a) Partly implemented – The Audit Committee Chair’s Conflict of Interest Declaration have limited details of</p>

		<p>operation of the Audit Committee.</p> <p>Specifically, and additionally, the ALC is:</p> <ul style="list-style-type: none"> • 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. 			<p>the Enmark arrangements. The ANAO report noted that an Enmark employee is engaged within one of the Aboriginal Corporations as the CFO. The current Audit Committee Chair’s Conflict of Interest Declaration has limited details of this related engagement. To enhance transparency, the findings from the ANAO report and the issues outlined should be disclosed within the Audit Committee Chair’s Conflict of Interest Declaration. There are no management strategies within the COI and no evidence of endorsement by the Board. Further, a member rotation policy, specifying the the maximum number of appointment terms has not been established.</p> <p>b) Partially implemented – Updates made to the ALC005 Finance, Audit & Risk Committee Charter 6 December 2023 (v) has not explicitly prescribed all of the specific requirements outlined in the recommendation. For example, relevant sections states ‘...the Committee will review and advise to the ALC Board..’, but not the specific requirement ‘to provide written statements to the Council.’ The Charter should be explicit with the written reporting requirement of the Committee.</p> <p>c) Partially implemented – While the requirement to annually assess the Committee’s performance is documented in the Charter, it is not clear when this is scheduled to occur or what performance criteria will be used to support assessment.</p> <p>d) Implemented – ALC has filled the Governance and Compliance Officer position from October 2023 to perform secretariat duties for the Audit Committee.</p> <p>Other observations</p> <p><i>Declaration by other Audit Committee members</i></p> <p>Register of Interest declarations made by the other audit committee members are incomplete. Specifically:</p>
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					<ul style="list-style-type: none"> • 3 of the 3 members have not documented their role as an audit committee member for the ALC. • There is no mitigation strategies articulated for any of the audit committee members, noting each of them declared positions held in other corporations. <p><u>Further Actions to Support Implementation</u></p> <p>15.1 Re-open the recommendation until evidence supports full implementation.</p> <p>15.2 Declaration by the Chair is updated and the proposed management plans for the declared interest has been reviewed and approved by the Board.</p> <p>15.3 Declarations by the other audit committee members are updated, and includes management plans (where required) and evidence of review and approval</p> <p>15.4 Update / develop the Audit Committee Work Plan to clearly identify when the performance of the Audit Committee will be undertaken and how it will be assessed against its required functions.</p> <p>15.5 Appoint an Independent Audit Committee Chair as soon as possible and develop a transition plan for the current Audit Committee Chair due to the identified independence issues noted by the ANAO with other services provided to the ALC or supported Indigenous Corporations / ORICs.</p>
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3. Identified Enhancements for Governance Arrangements

The following themes and recommendations to enhance governance arrangements have been identified through the independent review of the ALC's progress to implement the ANAO recommendations.

Theme	Recommendation to enhance governance arrangements
<p>1. Conflict of interest – Assessment, monitoring and management strategies for roles with ALC and other related party entities / ORICs.</p> <p><i>Background</i></p> <p>The ALC Board has a key responsibility to make decisions to provide funding to ORICs, which can be related party entities. A key role of the CEO is to provide support and information to the Board to assist with the Board responsibilities and decision making. ALC Board members and ALC Management support a number of related party entities / ORICs through Board and Management roles. The ALC Board is representative of Anindilyakwa / Groote Eylandt Traditional Owners, where funding decisions could have perceived or actual conflicts.</p> <p>The Australian Institute of Company Directors (AICD) notes:¹³</p> <p><i>At its simplest, a conflict of interest occurs when a person is in a position to be influenced, or appears to be influenced, by their private interests – or other interests – when doing their job.</i></p> <p>The ANAO had noted findings related to the management of conflicts of interest which included:</p> <p><i>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.</i></p> <p><i>[Para 4.50] Given the influence of the Chair and CEO over the ALC's funding and management decisions; the financial benefit that [Anindilyakwa Advancement Aboriginal Corporation] AAAC, [Groote Holdings Aboriginal Corporation] 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.</i></p>	<p>1. The ALC Board and Management should review all roles for Board members and ALC Management and assess whether:</p> <ol style="list-style-type: none"> It is possible to effectively manage identified conflicts of interest for: <ol style="list-style-type: none"> the dual remuneration CEO positions for ALC and Winchelsea Mining Pty Ltd. related party entities / ORICs that are beneficiaries of funding decisions made by the ALC Board. Management strategies for declared conflicts by ALC Board members or Management, including conflicts relating to immediate family members, are appropriate and operating effectively. <p>Where a conflict of interest cannot be effectively managed, or management strategies are assessed as ineffective, the ALC Board should determine actions to avoid the conflict of interest.</p> <p><i>Key principles to support the assessment by the ALC Board in assessing paid roles and conflicts of interest should include:</i></p> <ul style="list-style-type: none"> <i>Whether it is appropriate for ALC Board members, the CEO or other Senior Management to have other roles (paid or unpaid) with related party entities / ORICs, noting the ALC makes decisions on funding and the related party entities / ORICs are funding recipients.</i> <i>Should roles supporting key services (e.g. health, housing, community justice) be assessed differently from commercial activities (e.g. mining) for conflicts of interest and associated management strategies.</i> <i>Confirmation that the ALC Board has ultimate responsibility for assessing that management strategies for identified conflicts are acceptable and how the management strategies will be monitored for effectiveness.</i>

¹³ <https://www.aicd.com.au/organisational-culture/business-ethics/issues/managing-conflicts-of-interest.html>

Theme	Recommendation to enhance governance arrangements
<p>See ANAO Recommendation 13 in Section 2 above.</p> <p>The ALC CEO and former Board Chair had declared conflicts of interest related to paid roles with Winchelsea Mining Pty Ltd to the ALC Board and the Minister for Indigenous Affairs (15 August 2018 and 6 September 2018).</p> <p>Noting the ALC is established under the <i>Aboriginal Lands Rights (NT) Act 1976</i> (ALRA), including powers to employ the CEO, relevant guidance issued by the Australian Public Service Commission (APSC) for conflicts of interest includes:¹⁴</p> <p><i>[Para 5.9.1] APS employees should consult their agency's policy when considering whether to engage in outside employment, including directorships of an organisation. Outside employment includes paid work, such as running a business, maintaining a professional practice, or acting as a tax agent, as well as unpaid work. Generally, employees are able to work outside the APS if it does not conflict with their official duties.</i></p> <p><i>[Para 5.9.5] The interests of an agency can never be the same as the interests of a company with which it is in contractual relations. Agencies may need to take steps to ensure that an APS employee does not become a director of such a company. Company directors have duties under the Corporations Act 2001 that may conflict with an employee's obligations under the Public Service Act 1999.</i></p> <p>The Independent Review noted the declared conflict of interest related to dual CEO roles for ALC and Winchelsea Mining Pty Ltd is unlikely to be able to be managed effectively, due to:</p> <ul style="list-style-type: none"> • a public official role (ALC CEO) in comparison to a commercial activity management role (Winchelsea Mining CEO) • time and attention needed for both roles, and • the ALC makes funding decisions and Winchelsea Mining Pty Ltd is a beneficiary of ALC funding decisions. 	
<p>ALC Board / Management Response – Independent Review Recommendation 1</p> <p><i>The ALC acknowledges and accepts the recommendation to review all roles for Board members and Senior management, with a focus on assessing and managing identified conflicts of interest, including dual remuneration and relationships with related party entities/ Aboriginal Corporations that are beneficiaries of funding decisions.</i></p> <p><i>Declared interests will be thoroughly reviewed with the incoming Board. The review by the board will include an assessment of current conflict management strategies and, where it is determined that a conflict cannot be effectively managed or that strategies are ineffective, the ALC will take necessary actions to avoid such conflicts.</i></p> <p><i>The Board has commenced this review for the ALC CEO position. On 22 August 2024 the Board resolved to give in principle support to the draft NIAA report finding that the ALC CEO no longer also be the CEO of Winchelsea Mining. Specifically, in an ordered way, the ALC Board resolved to give in principle support to the current ALC CEO's proposal that he cease in the ALC CEO role and commence as a consultant for Winchelsea Mining and Groote Holding Aboriginal Corporation matters, which consultancy is</i></p>	

¹⁴ <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice/section-5-conflict-interest>

Theme	Recommendation to enhance governance arrangements
<p><i>anticipated to include other pressing matters particularly the GEMCO mine closure and Transition Steering Committee. A final decision about the current CEO's proposal will be made by the incoming ALC Board (ie after current elections) after receiving the NIAA's final Independent review report.</i></p>	
<p>2. Remuneration, benefits and related party transactions, including ORICs – Board and Management visibility</p> <p><i>Background</i></p> <p>The ALC Board is representative of the Anindilyakwa / Groote Eylandt Traditional Owners. The ALC Board makes decisions on distribution of royalties to a range of related party entities / ORICs.</p> <p>ALC Board members and ALC Management support a number of related party entities / ORICs through Board and Management roles. ALC Board members and ALC Management may also receive other benefits including accommodation or use of vehicles. ALC Board members and ALC Management may also have immediate family members employed or in receipt of services provided by ALC or related party entities / ORICs.</p> <p>The ALC Board currently does not have visibility of the complete picture of all remuneration, benefits and related party transactions for ALC Board members, ALC Management and related party entities / ORICs.</p>	<p>2. The ALC should collate information for all remuneration, benefits and related party transactions for ALC Board members, ALC Management, immediate family members and related party entities / ORICs to support enhanced transparency and information for Board members. The remuneration, benefits and related party transactions should be subject to periodic review and update and used to ensure that all remuneration, benefits and related party transactions are appropriately authorised and monitored.</p>
<p>ALC Board / Management Response – Independent Review Recommendation 2</p> <p><i>The ALC acknowledges the intent of the recommendation is to support transparency and accountability. However, the recommendation to specifically collate information on all remuneration, benefits, and related party transactions for both related and unrelated entities present the following challenge. The ALC can approach entities (Aboriginal Corporations) that utilise funds to gain insights into their financial practices. The ALC does not have the authority to compel these entities to disclose detailed remuneration or benefits information. This limitation restricts our ability to maintain a fully comprehensive register of information as recommended.</i></p> <p><i>Whilst considering these limitations, the ALC will enhance the internal interest declaration processes by including the reviewing and monitoring of remuneration, benefits, and related party transactions where individuals disclose. This collation of remuneration, benefits and related party transactions will be done at commencement of the new ALC board and subject to periodic review, including:</i></p> <ul style="list-style-type: none"> • <i>Quarterly review of the Register and Board and Senior Management could be asked to confirm any changes.</i> • <i>Annual (at least) declarations and collection of remuneration, benefits and related party transactions, including immediate family members and related party entities / ORICs.</i> 	
<p>3. Independent Board Advisor Role</p> <p><i>Background</i></p> <p>The ANAO found governance arrangements were partly appropriate, including Board training and support, which included:</p> <p><i>Council members do not receive training or adequate guidance on how to discharge their duties, which are not clearly documented.</i></p> <p><i>Council and committee meeting rules are established appropriately but not fully implemented.</i></p>	<p>3. The ALC should establish an Independent Board Advisor Role with direct responsibilities to the Board including:</p> <ol style="list-style-type: none"> a. Understanding Board matters, papers and forward workplan agenda b. Governance matters, including monitoring of conflict of interests and associated management strategies c. Governance training d. Supporting attendance / participation by the full Board.

Theme	Recommendation to enhance governance arrangements
<p><i>The Finance Committee does not provide briefings to the Council that allow it to make fully informed decisions.</i></p> <p>See ANAO Recommendations 3 and 6 in Section 2 above.</p>	<p>The Independent Board Advisor Role should be able to communicate in Anindilyakwa language or an interpreter be available to provide support to the ALC Board Members and the Independent Board Advisor.</p> <p><i>Refer also to further actions to support implementation of Recommendation 6 in Section 2 above.</i></p>
<p>ALC Board / Management Response – Independent Review Recommendation 3</p> <p><i>The ALC acknowledges and in principle accepts the recommendation to establish an Independent Board Advisor Role with direct responsibilities to the Board, including governance matters, conflict of interest monitoring, governance training, and supporting full Board participation. A final decision about this proposal and its collaborative implementation will be made by the incoming ALC Board (ie after current elections) after receiving the NIAA’s final Independent review report.</i></p> <p><u>Drafted Action Option</u></p> <p><i>The ALC notes that larger Land Councils have a formal secretariat branch responsible for providing independent advice on board issues. The ALC proposes to follow a similar approach and seek funding to support an Independent Board Advisor Role who functions independently of staff and provides direct advice and support to the Board. The Independent Board Advisor Role would provide support and advice to the ALC Board on relevant board matters, including:</i></p> <ul style="list-style-type: none"> • <i>Understanding Board matters, papers and forward workplan agenda</i> • <i>Governance matters, including monitoring of conflict of interests and associated management strategies</i> • <i>Governance training</i> • <i>Supporting attendance / participation by the full Board.</i> 	
<p>4. Closure process for ANAO recommendations</p> <p><i>Background</i></p> <p>ALC has implemented the Governance, Risk and Compliance (GRC) system, used to manage, track activity and progress, and store records of supporting evidence for each recommendation.</p> <p>The ALC has not established a formal closure process subject to independent assessment and Board decision.</p>	<p>4. ALC should establish a formal closure process for the ANAO recommendations (and other recommendations where relevant), including independent review and recommendation to the Board for closure. This should include:</p> <ol style="list-style-type: none"> a. Preparation of a closure pack, including evidence supporting closure, noting the Governance, Risk and Compliance system established to assist with tracking progress and evidence for recommendation implementation b. Review of closure pack by the ALC Internal Audit Function and the Audit Committee, with recommendation to the Board c. Formal Board decision on closure.

Theme	Recommendation to enhance governance arrangements
<p>ALC Board / Management Response – Independent Review Recommendation 4</p> <p><i>The ALC has been actively managing the implementation and monitoring of ANAO recommendations. The ALC acknowledges and accepts the recommendation to formalising a process for the closure of audit recommendations.</i></p> <p><u>Option</u></p> <p><i>The ALC will utilise the Finance, Audit, and Risk Committee as the independent review body within the formal closure process for the ANAO governance recommendations. This approach aligns with established practices, where an Entity Audit Committee plays a key role in reviewing and recommending the closure of audit-related recommendations.</i></p> <p><i>The Finance Audit Risk Committee will be provided with a closure pack prepared from the ALC GRC system and review all recommendations for closure. The Committee will advise the board of reviewing closure of recommendations during its quarterly reports to the board. A formal Board decision will be sought on the closure of each recommendation.</i></p>	

4. Review Report Sign-off

This independent review report for the ALC's progress for implementation of ANAO recommendations has been approved by:




Cherelle Wurrawilya
Board Chair
Anindilyakwa Land Council

Date: 29 August 2024



Sean Worth
Group Manager, Integrity
National Indigenous Australians Agency

Date: 28 August 2024



Russell Livermore
Partner
BellchambersBarrett

Date: 28 August 2024

Appendix A – Independent Review Approach

Audit Approach

To address the objective and scope, the independent review team undertook the following approach. It was proposed that the Independent Review would be conducted remotely with the ALC from Canberra, ACT, using a combination of video conferencing, phone calls, e-mail and when required, secure document transfer applications.

Subsequent to commencing fieldwork, an on-site visit to ALC was undertaken by the Review Team Partner, Russell Livermore, accompanying the General Manager – Integrity NIAA, Sean Worth on 27 – 28 May 2024.

(i) Planning

An initial planning meeting was held with key stakeholders from the ALC and NIAA to discuss the Independent Review and confirm the objective, scope and approach for the review.

The planning stage involved:

- conducting interviews with key ALC Officers and staff to understand:
 - the ALC’s progress for addressing the fourteen (14) agreed recommendations and one (1) alternative response to address the identified deficiencies noted in relation to the recommendation that was disagreed.
 - key business and operational activities with potential for conflicts of interest to occur.
 - systems, processes and controls associated with identifying and managing conflicts of interest, whether perceived, potential or actual conflicts of interest.
- obtaining and reviewing relevant documentation and other background information to support detailed planning and understanding, which included:
 - The Auditor General Report No.29 2022-23 *Governance of the Anindilyakwa Land Council* (the audit report), with reference to the fifteen (15) recommendations and the ALC’s response.
 - ALC’s implementation plan or similar that supported the activities to address the recommendations made in the audit report.
 - ALC’s documentation supporting progress for the activities to address the recommendations made in the audit report.
 - ALC documentation supporting the management of perceived, potential or actual conflicts of interest, which may include:
 - > ALC policies related to managing conflicts of interest
 - > ALC Board Minutes or related board papers
 - > ALC conflict of interest registers.
 - Other relevant documentation identified in the planning stage interviews.
 - Relevant legislative obligations or better practice guidance supporting the effective management of perceived, potential or actual conflicts of interest.¹⁵

¹⁵ Relevant legislative obligations or better practice guidance include requirements under *the Aboriginal Land Rights (Northern Territory) Act 1976*, guidance issued by the Australian Public Service Commission and Australian Institute of Company Directors.

- developing a detailed plan supporting the Independent Review fieldwork and achieve the review objective.

(ii) Fieldwork

The fieldwork stage involved:

- evaluating documentation and other evidence to independently assess the level of progress against each audit report recommendation. Key evaluation steps included:
 - detailed examination of relevant documentation and evidence supporting activities to address the recommendations.
 - walkthroughs of any key systems or processes supporting activities to address the recommendations, where identified.
 - documenting the independent assessment for the identified activities to address the recommendations.
- assessing the effectiveness of systems, processes and controls for the management of perceived, potential or actual conflicts of interest. Key assessment steps included:
 - identifying and confirming relevant interests for key stakeholders within ALC and related parties.
 - assessing whether appropriate documentation had been maintained to support the declaration process and identified any perceived, potential or actual conflicts of interest.
 - assessing whether appropriate documentation had been maintained for management strategies identified for any perceived, potential or actual conflicts of interest that had been declared.
 - identifying, where possible, any potential risk areas related to perceived, potential or actual conflicts of interest for the ALC.

(iii) Reporting

Reporting for the review included the following tasks:

- identifying recommendation completion, progress, challenges, and additional governance areas for improvement
- developing a draft report to provide to key stakeholders. The draft report was submitted on 6 June 2024
- holding an exit interview to confirm the validity of the draft report and identifying remaining queries and additional information
- providing final queries and holding a discussion with the ALC Board Chair and key Management on 17 July 2024
- distributing the final draft report, including any required updates, to relevant stakeholders within ALC and NIAA for formal management comment. The final draft report was submitted on 9 August 2024, and
- releasing the final report to the Review Sponsors and other nominated key stakeholders, including the Board of ALC, the ALC CEO, the Group Manager Integrity, NIAA, and the Minister for Indigenous Australians.

Appendix B – Implementation Progress Assessment Criteria

The following assessment criteria has been used to assess progress by the ALC against the ANAO recommendations. The assessment criteria used is consistent with the criteria used by the ANAO in a series of performance audits that examined the effectiveness of Australian Government entities' implementation of agreed recommendations from Parliamentary Committee and Auditor-General reports.¹⁶

Category	Explanation
Not implemented	There is no supporting evidence that the agreed action has been undertaken, or the action taken does not address the intent of the recommendation as agreed.
Partly implemented	The action taken was less extensive than the recommendation agreed, as: <ul style="list-style-type: none"> • it fell well short of the intent of the recommendation as agreed; or • processes were initiated or implemented but outcomes were not achieved.
Largely implemented	The action taken was less extensive than the recommendation as agreed, as: <ul style="list-style-type: none"> • it fell short of the intent of the recommendation as agreed; or • processes were initiated or implemented and there is evidence there was also action taken to achieve the outcome.
Implemented	There is supporting evidence that the agreed action has been undertaken and the action met the intent of the recommendation as agreed.
Implementation ongoing	There is supporting evidence of ongoing action to implement the recommendation and the entity considers that implementation is in progress or ongoing.

¹⁶ <https://www.anao.gov.au/work/performance-audit/implementation-parliamentary-committee-and-auditor-general-recommendations-department-of-finance>

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