



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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23 November 2017

Ref: [REDACTED]

PGPA Act Review
Review Secretariat
Department of Finance
One Canberra Avenue
Forrest ACT 2609

By email: PGPAActReview@finance.gov.au

Dear Independent Reviewers

Please find attached a submission by the Northern Land Council (NLC) to the independent review of the Public Governance and Performance Accountability Act 2013 (PGPA Act).

The NLC apologises that the submission is provided after the due date of 10 November 2017 and trusts that the submission will still be considered. The NLC did seek a short extension from the Department of Finance for a short extension in an email on 3 November 2017.

The NLC welcomes this independent review of legislation that has had a significant impact on its governance and operations. The transition from the former Commonwealth Authorities and Companies Act 1997 (CAC Act) to the PGPA Act was not an easy one for the NLC, nonetheless we believe it has led to improved organisational governance and public accountability of the NLC's performance and will continue to do its best to comply with all of its obligations as they apply to Land Councils.

The NLC seeks consideration in the Review on how the PGPA Act could be tailor applied to Land Councils in the Northern Territory given their unique statutory position and additional compliance requirements. The NLC would also welcome in the longer-term consultation with Land Councils on how best to incorporate the framework for the PGPA Act as it applies to Land Councils into the Land Rights Act.

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Should you have any queries regarding our comments, please do not hesitate to contact:

[REDACTED]

[REDACTED]

Yours sincerely

[REDACTED]

Joe Morrison
CHIEF EXECUTIVE OFFICER

NORTHERN LAND COUNCIL

SUBMISSION TO THE PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY ACT 2013 AND RULE INDEPENDENT REVIEW

NOVEMBER 2017

ABOUT THE NORTHERN LAND COUNCIL

The Northern Land Council (NLC) was established by traditional owners in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act), it became an independent statutory authority responsible for assisting Aboriginal people in the Top End of the Northern Territory to acquire and manage their traditional lands and seas.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law. The Land Rights Act requires the Land Councils to consult with traditional Aboriginal owners (and other Aboriginal people affected by proposals) before giving a direction to an Aboriginal Land Trust to enter into any agreement or take any action concerning Aboriginal land. Under the Land Rights Act, traditional Aboriginal owners must give their informed consent, as a group, to each proposal. Some of the most important functions of Land Councils include:

- Determining and expressing the wishes of Aboriginal people about the management of, and legislation in relation to, their land;
- Negotiating on behalf of traditional owners with parties interested in using Aboriginal land or lands the subject of a land claim; and
- Facilitating economic activity that occurs on those lands subsequent to successful negotiations.

In 1994, the NLC became a Native Title Representative Body under the *Native Title Act 1993* (the Native Title Act). In this capacity, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt.

The NLC is committed to achieving enhanced social, political and economic participation and equality for Aboriginal people in its region through the promotion, protection and advancement of our land rights and other rights and interests. The NLC assists the Aboriginal people of its region by providing services in its key output areas of land management, land acquisition, mining, land trust administration, native title services and advocacy, information and policy advice. The vision of the NLC is a Territory in which the land rights of every traditional owner are legally recognised and in which Aboriginal people benefit economically and culturally from the secure possession of their lands and seas.

SUBMISSION

The NLC welcomes the Independent Review of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and Rule and is pleased to provide the following submission. Since its introduction, the PGPA Act has had a significant impact on the NLC's governance and operations. The NLC supports the objectives of the legislation in making improvements in governance and accountability of the organisation to its constituents and will continue to do its best to comply with obligations as they apply to Land Councils.

Acknowledging the unique purpose, governance and statutory functions of a Land Council as a Commonwealth entity, the NLC provides input to parts (1), (2), (4) and (6) of the review Terms of Reference as understood

below and provides comment and recommendations against the headings: Introduction of the PGPA Act; NLC changes made in response to the PGPA Act; and Land Councils as unique Government entities.

INQUIRY TERMS OF REFERENCE

The Review will consider the broad scope of operations and functions under the PGPA Act and Rule, including, for example: policy and strategic initiatives, and procedural requirements.

In addition to the general consideration of the implementation and operation to the PGPA Act and Rule the review will give consideration to issues such as:

- 1) The impact of the new legislative framework including:
 - a) Consideration of the impact on small entities and previous Commonwealth Authorities and Companies Act 1997 bodies, how these entities are managing under the new framework and whether adjustments should be made for smaller entities;
 - b) Examination of how Commonwealth entities work cooperatively with others (in 'joined up' government), as emphasised by the PGPA Act principles and objects;
- 2) Accountability and Governance, including examination of the:
 - a) Timely and transparent advice provided to Parliament:
 - i) reporting on contracts and consultancies in annual reports;
 - ii) the reporting of senior executive remuneration and changes to accounting standards while balancing parliamentary accountability;
 - iii) whether there would be benefit in bringing forward and potentially legislating an earlier annual report delivery and tabling date;
 - iv) Requirements for and the role played by entity audit committees;
- 3) The Commonwealth Risk Management Policy, including:
 - a) Risk maturity in entities, the Commonwealth, executive government and the Parliament;
- 4) The enhanced Commonwealth performance framework, including:
 - a) Ongoing monitoring and public reporting of whole-of-government results for the framework;
 - b) Timely and transparent, meaningful information to the Parliament and the public, including clear read across portfolio budget statements, corporate plan, annual performance statements and annual reports;
- 5) Support provided to Commonwealth entities including:
 - a) Review of the PGPA Act and Rule guidance issued by the Department of Finance and others, including the Attorney-General's Department;
 - b) Consideration of other communication strategies such as Communities of Practice, utilised to support entities.
- 6) The list above is intended to be illustrative and should not be considered exhaustive.

INTRODUCTION OF THE PGPA ACT

The transition from the former Commonwealth Authorities and Companies Act 1997 (CAC Act) to the PGPA Act was not easy for the NLC or for other land councils in the Northern Territory. The NLC was largely left to its own devices to interpret and understand what the PGPA Act and Rules meant and how they should be applied to the organisation. It is acknowledged that there are a number of resources on the website of the Department of Finance. However, the NLC would have appreciated some face to face education and training by the Department, including how the changes could be applied to the NLC with its unique statutory functions and purpose and Board membership and governance.

Meeting the PGPA Act requirements have become easier as time progresses and the intent of the changes are increasingly understood. However, ***to better deliver on the objectives of the PGPA Act and ensure its requirements can be met with ease, the NLC would welcome face to face tailored Northern Territory Land Council training by the Department of Finance. This training should include education and awareness for the staff and elected members in their role as 'officials' under the legislation.***

The NLC makes further comment at the end of the submission on why and what adjustments should be made to the application of the PGPA Act to the NLC as a unique entity.

NLC CHANGES MADE IN RESPONSE TO THE PGPA ACT

The PGPA requirements have led to strengthened risk management practices, promoted a fully functioning Audit Committee and generally improved good governance. The requirement for an independent Audit Committee and its role in providing a high level of assurance to the Accountable Authority has been particularly welcome and has led to changes in its membership and role, the bringing in of additional expertise and the development of more rigorous practices within the organisation to account for its performance and manage risk.

The NLC especially supports the role of the Audit Committee as providing independent oversight of the performance reporting of the organisation, as different and as an alternative from oversight from Government given the NLC's statutory independence and purpose.

The NLC acknowledges the requirements and role of an annual Corporate Plan, Performance Statement and Annual Report and, whilst onerous, sees them as minimum necessities to plan, monitor and report on performance. The intent to provide a clear read across all reports is supported and the NLC continues to improve the way it does this.

The NLC welcomes the Board Chairman and the Chief Executive Officer of the organisation as the Accountable Authority for the annual performance statement as it has increased accountability between the elected arm and administration and brought the two closer together. However, there is a large gap between the Chairman as the Accountable Authority and the rest of the elected arm whom are deemed officials, as are the staff of the NLC. The NLC welcomes consideration on how this gap can be bridged.

In light of the increased rigor now applied to the development of the annual report, and the annual performance statement, the timeframes set by the Department of Prime Minister and Cabinet (PMC) can be challenging to meet. ***The NLC does not support an earlier Annual Report delivery date. The NLC would welcome further assistance from PMC to meet the current timeframes for corporate and annual reporting. Consideration could also be given to publishing funding earlier in the calendar year.***

LAND COUNCILS AS UNIQUE GOVERNMENT ENTITIES

The NLC acknowledges that the PGPA Act is an attempt to shift Commonwealth entities to a single, principles-based accountability and performance framework where all Commonwealth entities would be treated as a coherent whole and have the flexibility to develop their own systems and processes to support their operations. The NLC however, considers that Land Councils in the Northern Territory should not be treated as if they were part of the Government in the same way as other Commonwealth entities.

While Land Councils are statutory bodies established under the Land Rights Act, it is clear they were meant to be independent of the Government in a unique way. Unlike other statutory bodies, Land Council members are

Aboriginal people living in their specific areas who are elected to their Councils and who also elect office holders including the Chair and Deputy Chair. For other statutory entities, including Indigenous statutory bodies such as the Indigenous Land Corporation or Indigenous Business Australia, Board members are appointed by the relevant Minister. Moreover, uniquely, Land Councils are not subject to general or specific direction from the Minister other than the Minister being able to make specific directions in relation to the finances of land councils under section 39 of the Land Rights Act.

The PGPA Act and its application does not reflect an understanding of Land Councils in the Northern Territory, roles of the elected arms and our enabling legislation as being different to many other entities under the PGPA Act. Combined with the NLC's functions of a Native Title Representative Body, there is a disconnect between the Land Rights Act, the Native Title Act and the PGPA Act where the NLC must comply with all three Commonwealth Acts which are not always consistent with one another. This disconnect and the separate reporting and accountability requirements of each legislation places an added burden on the administration of Land Councils in the Northern Territory. Further, with the majority of the NLC's funding coming through the Aboriginals Benefit Account (ABA), it is difficult to quantify the extent to which the added reporting and compliance function is subsidised by the ABA and not necessarily the Native Title Act. There has been no additional funds provided by the Department of Finance to implement the changes required by the PGPA Act and given the lack of guidelines for the Minister for Indigenous Affairs on funding Land Councils through ABA there is some risk inherent in the funding of the Land Councils for all its compliance functions to be met.

It is also of significant concern to the NLC that much of its governance, performance and accountability obligations are now in legislation outside the Land Rights Act, its enabling legislation. The NLC is of the view that its performance, governance and accountability requirements should be included within the Land Rights Act, ensuring their specific applicability to Land Councils and to reduce unnecessary and costly reporting.

The NLC firstly seeks consideration on how the PGPA Act could be tailor applied to Land Councils in the Northern Territory given their unique statutory position and additional compliance requirements.

The NLC would welcome in the longer term consultation with Land Councils on how best to incorporate the framework for the PGPA Act as it applies to Land Councils into the Land Rights Act.