

Additional Comments from the Australian Greens'

1.1 The Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018 establishes the Aboriginal and Torres Strait Islander Land and Sea Future Fund (ATSILSFF) to replace the Aboriginal and Torres Strait Islander Land Account (ATSILA). The ATSILFF will receive the money and financial assets of the ATSILA.

1.2 Due to the restrictions on the investment mandate of the ATSILA, it is not generating sufficient investment returns to ensure the financial sustainability of the Indigenous Land Corporation (ILC) into the future.

1.3 The investment function of the ATSILSFF will be overseen by the Future Fund Board of Guardians, rather than by the Department of the Prime Minister and Cabinet as is the case currently with the ATSILA. The ATSILSFF will also have a broader investment mandate, which should see more sustainable returns produced and allow annual payments to the ILC to continue, without the current concerns of slowly depleting the ATSILA.

1.4 The Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Bill 2018 amends the *Aboriginal and Torres Strait Islander Act 2005* to expand the responsibility of the Indigenous Land Corporation "to enable it to support Aboriginal and Torres Strait Islander peoples to care for, manage and benefit from freshwater and sea country."¹

1.5 The expansion of its remit beyond land-based activities is consistent with developments in native title case law.

1.6 The ILC held consultations in the second half of 2017 with Aboriginal and Torres Strait Islander organisations about the potential for expansion of its remit to include functions relating to water. A majority of those consulted supported this reform.

1.7 This Bill will also amend the name of the ILC to the Indigenous Land and Sea Corporation (ILSC).

1.8 The Aboriginal and Torres Strait Islander Land and Sea Future Fund (Consequential Amendments) Bill 2018 amends five additional acts to "enable the effective operation of the ATSILSFF at commencement."² It also includes minor technical amendments relating to the renaming of the ILC to the ILSC.

1.9 The Australian Greens support the intent of these three Bills.

1.10 The Australian Greens note that there were not a large number of submissions to the inquiry but some of the submissions that were received raised a number of concerns and/or proposed changes to these Bills. These concerns and proposed changes are outlined below.

1 Hon Ken Wyatt MP, Minister for Aged Care and Minister for Indigenous Health, Second Reading Speech, *House Hansard*, 28 March 2018, p. 3052.

2 Department of the Prime Minister and Cabinet, *Submission 3*, p. 5.

Additional payments to the ILC/ILSC

1.11 As outlined in the Majority Committee Report, currently an additional, automatic payment is made from the ATSILA to the ILC when the capital of the ATSILA exceeds a CPI-indexed target.

1.12 Under the Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018 this process will be amended; automatic, additional payments will cease. Instead, there is provision for one discretionary payment per year if determined by the Minister for Finance and the Minister for Indigenous Affairs.

1.13 The Department of the Prime Minister and Cabinet said in its submission:

Prior to making a determination, the Minister for Finance and the Minister for Indigenous Affairs are required to seek advice from the FFBG on the impacts of making the proposed payment on the sustainability of annual payments to the ILC.³

1.14 However, the Australian Greens are concerned that this does not go far enough.

1.15 The Goldfields Land and Sea Council expressed concern about the lack of limitation placed on the provision of additional payments to the ILC in the Bills.⁴

1.16 The ILC itself suggested that there were improvements that could be made with regards to the discretionary payments provisions. In its submission it said:

If the fund is to remain a true perpetual fund, it is proposed there should be no provision for discretionary Ministerial payments if they were to result in a diminution of its capital base. Alternatively, there could be some form of specialised limit (e.g. Minister not permitted to make such payments if in the opinion of the Future Fund Board it is likely to affect the ability to make payments under s 22.).⁵

1.17 It continued:

The ILC recommends that, in the unlikely event, that the Minister for Finance and the Minister for Indigenous Affairs makes payments to the ILC in contravention to the advice provided by the Future Fund Board (pursuant to Section 27), then the Ministers should provide joint advice documenting their rationale. This would be relevant for annual payments made over or under the Future Fund Board's recommendation.⁶

1.18 The Australian Greens want to see stronger controls and limits on potential future discretionary payments to the ILC/ILSC. We also want to see stronger requirements for community consultation if discretionary payments are to be made.

3 Department of the Prime Minister and Cabinet, *Submission 3*, p. 7.

4 Goldfields Land and Sea Council, *Submission 2*, pp. 1–2.

5 Indigenous Land Corporation, *Submission 6*, p. 2.

6 Indigenous Land Corporation, *Submission 6*, p. 2.

Reporting requirements

1.19 The Australian Greens note the section of the Majority Committee Report on reporting requirements⁷ and acknowledge the need for further reporting requirements, as suggested by the ILC in its submission,⁸ of the Future Fund Board of Guardians to meet the needs of the ILC Board and the Aboriginal and Torres Strait Islander community. There needs to be certainty that reports will be available at regular intervals that illustrate the performance of the ATSILSFF, rather than reliance placed on the Minister for Finance to request such reports.

Preamble

1.20 The Majority Committee Report at paragraph 2.15 outlines the ILC's proposal for a preamble to the Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018.⁹ The Majority Committee Report also states at paragraph 2.29, "It is the committee's view that the ATSILFF bill is of an administrative nature—that is, the transfer of the management of the Land Account to FFBG—and amends other acts including the ATSI Act for which a preamble already exists."¹⁰ The Australian Greens do not share this view. We want to see a preamble included in the Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018 that sets out "a context for its effect and interpretation"¹¹ and that clarifies any potential uncertainty relating to the addition of fresh-water country to the ILC's remit, given its new name is proposed to be the Indigenous Land and Sea Corporation.¹²

Omission

1.21 The Australian Greens support Recommendation 1 of the Majority Committee Report, which recommends "that the Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Bill 2018 be amended to ensure that the Aboriginal and Torres Strait Islander Act 2005 gives the Indigenous Land Corporation (ILC) management of water or waters for which the ILC has water-related rights."¹³

1.22 The Majority Committee Report makes this recommendation having regard to the ILC's submission to the inquiry,¹⁴ which draws attention to the above mentioned omission in the Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Bill 2018 and recommends an amendment to that Bill.¹⁵

7 *Majority Committee Report*, Ch. 2, pp. 6–7.

8 Indigenous Land Corporation, *Submission 6*, pp. 2–3.

9 See: *Majority Committee Report*, Ch. 2, p. 4.

10 See: *Majority Committee Report*, Ch. 2, p. 7.

11 Indigenous Land Corporation, *Submission 6*, p. 3.

12 Indigenous Land Corporation, *Submission 6*, p. 3.

13 See: *Majority Committee Report*, Ch. 2, p. 7.

14 See: *Majority Committee Report*, Ch. 2, pp. 4 & 7.

15 See: Indigenous Land Corporation, *Submission 6*, p. 4.

Recommendation 1

1.23 Subject to amendments being made to address the above matters, the Australian Greens recommend that the Bills be passed.

Divestment by ILC

1.24 In its submission to the inquiry, the National Congress of Australia's First Peoples (National Congress) stated:

National Congress is very concerned about the inadequate progress towards divestment of properties purchased by the ILC to First Peoples, as divestment is the ILC's mandate. It has been disappointing to see too many properties still rented to Aboriginal and Torres Strait Islander organisations rather than divested.¹⁶

1.25 The Australian Greens acknowledge the concerns of National Congress with regards to divestment but also note that at Additional Estimates in March of this year Mr John Maher, Chief Executive Officer, Indigenous Land Corporation, said:

We continue our commitment of divestment of properties, and I'm pleased to say that, since the last estimates hearing, the ILC have completed a divestment plan for every one of the 52 properties now held by the ILC.¹⁷

Senator Rachel Siewert
Senator for Western Australia

16 National Congress of Australia's First Peoples, *Submission 4*, p. 3.

17 Mr John Maher, CEO, Indigenous Land Corporation, *Estimates Committee Hansard*, 2 March 2018, p. 10.