



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

**Submission to the Senate Standing Committee on Finance and Public
Administration on three bills about the Indigenous Land Incorporation**

April 2018

About the National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples ("Congress") is the peak representative body for Aboriginal and Torres Strait Islander Peoples. Established in 2010, Congress has grown steadily and now comprises over 180 organisations and almost 9,000 individual members, who elect a board of directors.

Congress advocates self-determination and the implementation of the United Nations Declaration on the Rights of Indigenous peoples. Congress believes that Aboriginal and Torres Strait Islander people should be central in decisions about our lives and communities, and in all areas including our lands, health, education, law, governance, and economic empowerment. It promotes respect for our cultures and recognition as the core of the national heritage.

To date, Congress's main foci have been Aboriginal and Torres Strait Islander issues in the areas of health, education, land and sea rights, justice, Constitutional recognition, and sovereignty. In addition, Congress has been involved in a wide range of other issues, including cultural maintenance and development, including languages; government relations, including treaty discussions; employment and economic empowerment; housing; family violence; children and youth; disabilities; and governance and leadership.

Expansion of the ILC's functions to water

National Congress's view on amending the *Aboriginal and Torres Strait Islander Act 2005* to extend the ILC's functions to water-related activity, and to allow the ILC to assist Aboriginal and Torres Strait Islander peoples in the management, use and care for waters remains unchanged from our earlier submission to the ILC in September 2017. The Submission is attached.

While in principle we support this amendment given the traditional importance of water for our peoples, National Congress has grave concerns about the ILC's extremely poor management of its resources and thus seriously doubts its ability to manage sea acquisitions in addition. The purchase of the Ayers Rock Resort in 2010 at the inflated cost of \$300 million, which led to the loss of approximately \$100 million, serves as an illustrative example of the inadequate implementation of accountability, auditing and risk assessment measures by the ILC.¹ This was preceded by a number of exceptionally poor failures in process, which are detailed in the attached submission. In summary, of the \$6 million spent on due diligence consultants, none appear to have actually been engaged during the process of purchasing the resort.² Secondly, minutes taken at relevant ILC Board Meetings were incomplete; further, we are troubled by the fact that the decision to spend \$300 million on a property could have been approved by a mere simple majority of the Board. Thirdly, the ILC appeared to have ignored the risks identified prior to the purchase of the Ayers Rock Resort.

There are many other examples of the ILC's incompetent or negligent management of assets. This includes the fact that the ground floor of 27 Cope St, a major asset of the ILC's in Redfern, lay vacant for almost seven years, providing no return on investment whatsoever other than capital gain. Another example is the former multi-storey ATSIC building in Belconnen, ACT which appears to have been abandoned and has now been vandalised.

Highly concerning, the ILC has historically had a tendency to operate against the wishes of the Aboriginal and Torres Strait Islander communities. Many Aboriginal and Torres Strait Islander peoples and groups have criticised the ILC for failing to communicate and consult with us. Although the ILC has committed to regional consultations as one of its key principles, many people are not adequately informed of when meetings occur, or do not receive the support they require to attend.³ Indeed, Congress notes that it has been forced to relocate from its previous premises by the ILC, despite its significant position as the peak representative body for Aboriginal and Torres Strait Islander peoples.

Finally, Congress further notes that many communities affected by the ILC's purchasing decisions have felt that inadequate progress has been made towards divestment, and that they have not received any benefits from the acquisition of land.⁴ Money earned from

¹ "Ayers Rock Resort: GFC blamed as Indigenous Land Corporation secures \$65ml bailout," *ABC News Online* (8 May 2016), <http://www.abc.net.au/news/2016-05-08/ayers-rock-resort-65m-bailout-nigel-scullion/7393378>.

² McGrathNicol, *Ayers Rock Resort Review – Final Report* (2013), 56.

³ Patrick Sullivan, *Policy Change and the Indigenous Land Corporation*, AIATSIS (2009), 12-13.

⁴ *Ibid*, 13.

properties purchased by the ILC, for instance, is often reinvested by the ILC for its own purposes, instead of being placed in a trust for traditional owners or the original native title applicants.⁵ Furthermore, the offer of employment is not always particularly helpful: many people employed on the ILC's properties are either not Aboriginal or not from the area, and many are also employed on only a casual basis.⁶ Where employment and training is available to First Peoples from the ILC, communities largely do not have a say and training is frequently of a practical rather than commercial nature, which does not provide our people with the necessary skills for financial independence.⁷

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.

Further, while the ILC provides native title applicants with some funds and the use of qualified consultants in order to develop business plans, mere funding is inadequate; First Peoples need ongoing support and communication to undertake the ILC's application process due to a lack of resources and necessary skills.⁸ Such difficulties are compounded by the complexity of the ILC's divestment requirements and inadequate clarification of how communities may meet them.⁹ Furthermore, as in Congress' case, the ILC can dismiss consideration of applications for the flimsiest reasons and is unwilling to enter into any discussions about its processes or justify its decisions.

Congress recommends that while Aboriginal and Torres Strait Islander water rights should be represented by a specialist body, we are not convinced that the ILC is the appropriate body. Instead of seeking to expand its mandate to include water management, the ILC should engage in a thorough, external review of its own procedures in which the views of the intended beneficiaries of its services are primary. There is little use in allowing the ILC to manage waters (or indeed, land) if such management does not fulfil the purpose of providing our peoples with assistance in the acquisition and management of our own land.

Failure to send to Human Rights Committee

While the bills address human rights issues, National Congress is concerned on procedural grounds that the bills do not appear to have been sent to the Human Rights Committee for vetting as required according to standard operating procedure for the passage of legislation. This is an important safeguard for Australian legislation and one which we believe is very important to uphold on principle. This is particularly salient given Australia's recent taking up of a position on the UN Human Rights Council and the poor human rights record of our nation in relation to Aboriginal and Torres Strait Islander peoples.

⁵ Ibid.

⁶ Ibid.

⁷ Sullivan, 13.

⁸ Ibid.

⁹⁹ Ibid, 13-14.

Establishment of The Aboriginal and Torres Strait Islander Land and Sea Future Fund

National Congress supports the Government's decision to establish the ATSILSFF to support the making of annual and discretionary additional payments to the ILC. However, we are concerned that before providing additional payments to the ILC, there should be a thorough, external review of its current processes and largescale organisational change in order to ensure that payments are handled properly and its purposes are fulfilled.