

Parliament of the Commonwealth of Australia

**FIFTH REPORT OF THE
PARLIAMENTARY JOINT COMMITTEE
ON NATIVE TITLE AND THE
ABORIGINAL AND TORRES STRAIT
ISLANDER LAND FUND**

**Annual Reports for 1994-1995
Prepared Pursuant to Part 4A of the
Aboriginal and Torres Strait
Islander Commission Act 1989**

July 1996

© Commonwealth of Australia 1996

ISBN 0 642 24856 7

This document was produced from camera-ready copy prepared by the Secretariat of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, and printed by the Senate Printing Unit, Parliament House, Canberra.

THE COMMITTEE

Members

Senator E Abetz (**Chair**)
Senator C Chamarette
Senator C Ellison
Senator C Evans
Senator the Hon M Reynolds (**Deputy Chair**)
Hon I Causley MP
Hon N Dondas AM MP
Mr W Entsch MP
Mr D Melham MP
Mr H Quick MP

Secretary

Peter C. Grundy
S1.61
Parliament House
CANBERRA

Telephone: (06) 277 3598

CONTENTS

	Page
Chapter 1	Introduction 1
Chapter 2	Operation of the Land Fund 7
Chapter 3	Compliance with the Legislation 11
	• Specific Legislative Requirements 12
	• Summary 17
	• Recommendation 4 17
	• Recommendation 5 17
Chapter 4	Compliance with the Guidelines 19
Appendix 1	<i>ATSIC Annual Report 1994-95</i> Appendix 14 25
Appendix 2	Correspondence from Department of Finance dated 17 April 1996 37
Appendix 3	Correspondence from ATSIC dated 6 May and 14 May 1996 45
Appendix 4	Guidelines for Statutory Authorities 61

CHAPTER 1

Introduction

1.1 This is the first report on annual reports prepared pursuant to the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*. That Act, like the Native Title Act, was passed following a protracted consideration in the Parliament. Given its significance, the history and objectives of the legislation should be summarised.

1.2 The *Native Title Act 1993*, which received Assent on 24 December 1993, provided in Part 10 for the establishment of a National Aboriginal and Torres Strait Islander Land Fund. The purpose of the Land Fund (s.201) was to assist Aboriginal peoples and Torres Strait Islanders:

- (a) to acquire land; and
- (b) to manage the acquired land in a way that provides economic, environmental, social or cultural benefits to the Aboriginal peoples and Torres Strait Islanders.

1.3 The Keating Government formed the view that this provision of the Native Title Act did not allow enough scope for the establishment and operations of an Indigenous Land Corporation. Accordingly, on 30 June 1994 Mr Keating presented the *ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994*. As was explained in the Second Reading Speech on 30 August 1994, it was envisaged that the Land Fund would be set up by regulations under the Native Title Act and that the Indigenous Land Corporation would begin operations on 1 January 1995; s.201 of the *Native Title Act 1993* then would be repealed.

1.4 The Senate on 1 September 1994 referred the bill to the Standing Committee on Finance and Public Administration for consideration and report. That report was tabled on 10 October 1994 recommending that the bill be agreed to.

1.5 Nevertheless, subsequent debate in the Senate culminated on 16 November 1994 when the bill was passed with sixty-seven amendments and one request for an amendment (which related to an annual increase of \$3 million in the amount of money to be appropriated to the Land Fund). The request needed to be dealt with by the government in the House of Representatives before the bill could be passed with the amendments. The government declined, the bill was returned to the Senate and on 28 November the Senate's amendments were referred to a select committee for (another) report. This action resulted in a declaration from the government that it would treat the deferment of the bill as a failure to pass pursuant to section 57 of the Constitution.

1.6 Although the select committee reported on 9 February 1995, the bill did not come on for further consideration. Rather, a new bill was introduced into the House of Representatives on 28 February 1995. The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill 1995* reflected a number of the Senate amendments to the original bill.

1.7 Against the wishes of the government, the majority in the Senate brought on the original bill for further consideration on 28 February. The bill was further amended to substitute amendments for the request rejected by the government in the House of Representatives and to make new amendments reflecting the deliberations of the select committee; the bill was then passed by the Senate. The amendments of the bill were rejected by the government in the House of Representatives, at which point the Opposition announced that it would support the new bill containing some of the amendments made by the Senate. The new bill was passed by the Senate on 21 March and received Assent on 29 March 1995.

1.8 The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*¹ repealed Part 10 of the *Native Title Act 1993* and amended the *Aboriginal and Torres Strait Islander Commission Act 1989*.² Under Part 4A the amended ATSIC Act established (s.191B) the Indigenous Land Corporation (ILC) with land acquisition and land management functions; it also established (s.192W) the Aboriginal and Torres Strait Islander Land Fund. The purpose of the ATSIC Amendment Act was described by Mr Keating in his Second Reading Speech:

It is to enable indigenous people to acquire land and to manage and maintain it in a sustainable way to provide economic, social and cultural benefits for themselves and for future generations of their peoples.³

\$200 million was committed to the Fund in the 1994-95 budget, and the ATSIC Act commits (s.193) a further \$121 million per year for nine years under an indexation formula.

1.9 The *Indigenous Land Corporation Annual Report 1994-95* advised (p.3) that 'the Land Fund is administered by ATSIC at the discretion of the Minister for Finance'. Section 193F(2) of the ATSIC Act provides that the Minister for Finance may delegate Land Fund investment powers to an ATSIC staff member; and s.193H provides that, in respect of the Land Fund, ATSIC must keep accounts and prepare financial statements in a form determined by the Minister for Finance. The Department of Finance has confirmed that the Minister for Finance has delegated

1 Hereafter the 'ATSIC Amendment Act'

2 Hereafter the 'ATSIC Act'

3 House of Representatives Hansard, 28 February 1995, p.1108

Land Fund investment powers to the following ATSIC officers: the Deputy Chief Executive Officer and the General Manager, Economic Division.⁴

1.10 At s.193I the ATSIC Act requires the Minister to cause to be prepared a report about the administration of the Land Fund for each financial year ended 30 June. Copies of the report are to be laid before each House of the Parliament within fifteen sitting days after the completion of the report. The following specific matters are required by the Act to be included in each annual report:

- (a) particulars of amounts credited to the Land Fund during the financial year;
- (b) particulars of amounts paid out of the Land Fund during the financial year;
- (c) particulars of investments of the Land Fund;
- (d) the realised real return on investments of the Land Fund in respect of the financial year;
- (e) such other information (if any) as is specified in the regulations.

Importantly the ATSIC Act also provides at s.193I (4) that

The obligations imposed by this section are in addition to, and not instead of, obligations imposed by any other law of the Commonwealth.

⁴ Letter to Committee Secretary, dated 17 April 1996; this correspondence is reproduced at Appendix 2 of this report.

1.11 Further, the Amendment Act made significant changes to the Parliamentary Joint Committee on Native Title. Under the Schedule it altered the Committee's name by adding 'and the Aboriginal and Torres Strait Islander Land Fund'; the Schedule also extended the Committee's duties by requiring it to consult extensively about the implementation and operation not only of the Native Title Act but also of Part 4A of the ATSIC Act. And it requires the Committee to examine each annual report prepared under Part 4A of the ATSIC Act as well as all annual reports of the National Native Title Tribunal (*Native Title Act 1993* s.206).

1.12 This Committee report has been prepared pursuant to those amendments to the Native Title Act. It examines Appendix 14 of the *ATSIC Annual Report 1994-95* and the *Indigenous Land Corporation 1994-95 Annual Report*, both of which were prepared pursuant to Part 4A of the ATSIC Act (ss.193I and 193K respectively).

1.13 The *ATSIC Annual Report 1994-95* was transmitted to the Minister on 20 October 1995 and tabled in the Senate on 13 November 1995 and in the House of Representatives on 21 November. The first annual report of the Indigenous Land Corporation, that for 1994-95, was presented to the Minister on 27 November 1995 and tabled in both Houses on 29 November. Each report, then, satisfied the tabling requirements.

1.14 While the ATSIC and ILC annual reports for 1994-95 were tabled during October and November 1995, the dissolution of the House of Representatives in January 1996 delayed the Committee in reviewing those reports. Pursuant to s.204 of the *Native Title Act 1993* members of the Committee cease to hold office upon the dissolution of that House. The Committee met for the first time in the 38th Parliament on 19 June 1996. And the Committee held a public hearing on Monday 24 June 1996 to hear evidence about the report from the ILC General Manager (Mr John Wilson) and Deputy General Manager (Mr Murray Chapman). The Committee's report was adopted on 26 June 1996.

CHAPTER 2

Operation of the Land Fund

2.1 As a consequence of the legislative amendments affecting the Land Fund and the time taken to effect them, the Fund has undergone various administrative changes. It will assist this review and provide a basis for future Committee reports if those changes are recorded.

2.2 Part 10 of the *Native Title Act 1993* (s.201 - now repealed) established a National Aboriginal and Torres Strait Islander Land Fund. The purpose of the Fund was to assist Aboriginal peoples and Torres Strait Islanders to acquire land and to manage it beneficially. The operation of the Fund was to be governed by regulations under the Native Title Act.

2.3 The 1994-95 Budget allocated \$200 million to the Land Fund which the Department of Prime Minister and Cabinet administered from 1 July 1994. Under the ATSiC Act, this appropriation (plus appreciation) was transferred on 1 June 1995 to the Aboriginal and Torres Strait Islander Land Fund established pursuant to s.192W(1).

2.4 Allocations to the Land Fund are to occur for ten 'category A' years under an indexation formula (ss.192Z to 193AA). In the 1994-95 Budget the Keating Government announced that a total of \$1.46 billion would be allocated to the Land Fund. The Land Fund is a fund in the public account and is the property of the Commonwealth (s.192W(2)). Assets of the Land Fund are to be invested in accordance with s.62B of the *Audit Act 1901* (ATSiC Act s.192W(3)).

2.5 The purpose of the Land Fund is to make designated payments to the Indigenous Land Corporation and ATSiC (s.192X). And the ILC's purposes are:

- (a) to assist Aboriginal persons and Torres Strait Islanders to acquire land; and
 - (b) to assist Aboriginal persons and Torres Strait Islanders to manage indigenous-held land;
- so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders. (s.191B)

The ILC's functions are set out at ss.191C, 191D and 191E of the ATSIC Act. They have been summarised in the ILC annual report at page 4.

2.6 Pursuant to s.193A(1), an amount of \$25 million was paid out of the Land Fund to the Indigenous Land Corporation in 1994-95. No payment was made to ATSIC; payments under an indexation formula are to be made to ATSIC in 1995-96 and 1996-97. Under the ATSIC Act (s.191H) the ILC has the power:

- (a) to enter into contracts and agreements;
- (b) to invest money of the Indigenous Land Corporation;
- (c) to appoint agents and attorneys and act as an agent for other persons;
- (d) to form, and participate in the formation of, companies;
- (e) to subscribe for and purchase shares in, and debentures and securities of, companies;
- (f) to enter into partnerships;
- (g) to participate in joint ventures and arrangements for the sharing of profits;
- (h) to accept gifts, grants, bequests and devises made to it;

- (i) to act as trustee of money and other property vested in it on trust;
and
- (j) to charge for the provision of services by it.

2.7 In summary:

- The *Native Title Act 1993* (s.201) established the National Aboriginal and Torres Strait Islander Land Fund.
- \$200 million was paid into the Land Fund under the 1994-95 Budget; the funds were administered by the Department of Prime Minister and Cabinet.
- Section 201 of the *Native Title Act 1993* was repealed pursuant to the ATSIIC Amendment Act which established the Aboriginal and Torres Strait Islander Land Fund.
- On 1 June 1995 the Aboriginal and Torres Strait Islander Land Fund, administered by ATSIIC, received the appropriation of \$200 million (plus interest) previously administered by the Department of Prime Minister and Cabinet.
- Payments to the Land Fund will continue for a total of ten years under an indexation formula.
- An amount of \$25 million was drawn down from the Land Fund in June 1995 to the Indigenous Land Corporation.
- Amounts will be drawn down to ATSIIC in 1995-96 and 1996-97 and to the ILC indefinitely.

CHAPTER 3

Compliance with the Legislation

3.1 The *Native Title Act 1993* (s.133) requires the Tribunal President to provide the Commonwealth Minister with an annual report each year which the Minister is required to table within fifteen sitting days in each House. By contrast, pursuant to the *Aboriginal and Torres Strait Islander Commission Act 1989* (s.193I) it is the Minister's responsibility to cause annual reports to be prepared about the administration of the Land Fund. And Division 2 of Part XI of the *Audit Act 1901* applies to the Indigenous Land Corporation by virtue of s.193K of the ATSI Act. At s.63H(1) the Audit Act provides that:

The authority shall, as soon as practicable after 30 June in each year, prepare and submit to the appropriate Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister administering this Act approves.

Under the legislation, then, the Minister is able to report fully to the Parliament on both the Land Fund and the ILC.

3.2 It should be recorded that the *Indigenous Land Corporation 1994-95 Annual Report* has made no reference to the reporting requirements under the ATSI Act at s.193I. Rather, the Chairperson's letter of transmittal to the Minister advised that the report was presented 'in accordance with section 63H of the *Audit Act 1901* (as applied by section 193K of the Indigenous Land Corporation Act)'. It is a notable feature of the ATSI Act that it obliges the Minister to have annual reports prepared (s.193I) and requires the ILC to report to the Minister pursuant to the Audit Act (s.193K). Given the links between the Land Fund and the ILC (s.192X) it is desirable for the ILC to acknowledge not only its own reporting obligations but also

those of the Minister. While the application of the Audit Act to the operations of the ILC includes a report from the Auditor-General to the Minister:

whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the authority during the year have been in accordance with the enactment establishing the authority ...(s63H(2)(c))

unless the statutory requirements are articulated in the report, it is difficult for the reporting authority to ensure that its reporting is comprehensive. In its next report, that for 1995-96, the ILC should ensure that it articulates fully the limitations of its reporting pursuant to Part 4A of the ATSIC Act and notes the legislative reporting requirements that should be covered by ATSIC's reporting at the Minister's direction; indeed, a single coordinated report could be produced in future. Notably, at page 359 (Appendix 14) of its annual report ATSIC has recorded the ILC's role in relation to the Land Fund.

Specific Legislative Requirements

Section 193H

3.3 The ATSIC Act (s.193H) requires that, in respect of the Land Fund, ATSIC must keep accounts and prepare financial statements in such form as the Minister for Finance determines. This is acknowledged in the ILC annual report at page 3. The Department of Finance has advised that the Minister's Delegate approved the form of the Financial Statements pursuant to s.193H of the ATSIC Act (see Appendix 2 of this report). The ATSIC report does not refer to this section of the Act.

Section 193I

3.4 The legislative requirements under s.193I of the ATSI Act have been responded to in the *ATSI Annual Report 1994-95* at its Appendix 14. (For convenience that Appendix is reproduced in this Committee report at Appendix 1.) Reporting by ATSI in response to those requirements is noted below and relevant reporting by the ILC is also recorded.

(a) *Particulars of amounts credited to the Land Fund during the financial year*

ILC report:

The Statement of Cash Flows (p.14) for the period does not record the actual amount credited to the Land Fund. Rather, on page 3 it provides a table of proposed 'Funding Allocations to and from the Land Fund' from 1994-95 to 2003-2004 and specifies that in the first year it was intended to allocate \$200 million to the Land Fund. No advice is given about the date on which the allocation was credited to the Land Fund.

Importantly, this table is incorrect in the column headed 'Transferred to the ILC'. From 1997-98 onwards the amount is to be \$45 million, not \$24 million as the table records. Similarly, the 'ATSI Program' column should record \$21 million for 1996-97. The ILC confirmed on 24 June 1996 that, on this point, an *erratum* to the annual report had been sent to the Minister for tabling in the Parliament.

ATSI report:

At p.359 (Appendix 14) it is recorded that on 1 July 1994 an appropriation of \$200 million was made to the interim fund under the administration of the Department of Prime Minister and Cabinet. On 1 June 1995 investments to the value of \$211,795,322 were transferred to the new Land Fund. It is notable that this

information represents the situation accurately and that the ILC's coverage was not precise; this indicates the need for coordination between the ILC and ATSIC in reporting on Land Fund matters.

(b) *Particulars of amounts paid out of the Land Fund during the financial year*

ILC report:

The table on page 3 and the Statement of Cash Flows on page 14 advise that \$25 million was transferred to the ILC. No date is given for the actual transfer. Note 9 on page 16 confirms that an amount of \$25,000,000 was paid in accordance with Section 193A (1) of the 'Indigenous Land Corporation Act' (sic) in respect of the year ended 30 June 1995. This section of the (amended) *Aboriginal and Torres Strait Islander Commission Act 1989* provides that the payment is to be made on a business day nominated by the Minister.

ATSIC report:

Page 359 reports that the first draw down from the Land Fund 'took place on 29 June 1995 with \$25 million being provided to the ILC'. No appropriation was made from the Land Fund to ATSIC in 1994-95.

Although s.193A(1) of the Act requires the Minister to nominate a business day for the payment, the Department of Finance has advised that:

The Minister did not nominate a day in the first category A year for payment to be made to the Indigenous Land Corporation. Due to the desirability of avoiding interest penalties there were in fact two payments in the period 1/6/95 to 30/6/95. These payments coincided with the maturing of particular short term

investments and occurred within the 30 day period required by s.193A.⁵

ATSIC has commented on the advice of the Department of Finance.⁶ ATSIC has notified the Committee that:

- an advance of \$15,518,623.18 from the Land Fund to the ILC was made on 2 June pursuant to s.193E(1) of the ATSIC Act; and
- an amount of \$9,481,376.82, the balance due to the ILC for 1994-95, was made on 29 June 1995.

These details were not provided in ATSIC's annual report where it was erroneously reported that:

- the first draw down took place on 29 June; and
- \$25 million was provided to the ILC on that day.

Further, with respect to the advice from the Department of Finance that a business day was not nominated for the first draw down, ATSIC has provided a copy of a Ministerial Submission (No. 5317) where it was recommended that the Minister for Aboriginal and Torres Strait Islander Affairs approve Friday 30 June 1995 as the business day pursuant to s.193A(1) of the Act and approve Friday 2 June as the date for the advance. Two comments are relevant:

5 Letter to Committee Secretary, dated 17 April 1996; this correspondence is reproduced at Appendix 2 of this report.

6 Letters to Committee Secretary dated 6 May and 14 May 1996; this correspondence is reproduced at Appendix 3 of this report.

- the Minister did not sign his approval on the submission although he did annotate a memorandum on the matter dated 31 May 1995; and
- the draw down was not made on 30 June as proposed.

(c) *Particulars of investments of the Land Fund and*

(d) *The realised return on investments of the Land Fund in respect of the Financial Year*

ATSIC report:

At p.359 the ATSIC annual report records that:

During June, the 1994-95 draw down of \$25 million was paid from the Land Fund to ILC.

The realised real return on the \$175 million of appropriation towards the growth of the capital fund was 6.47 percent. This is based on an indexation factor as determined under the Act of 1.018, making the inflation adjusted base investment \$17,815,000.

The high real return on investments is attributed to a large extent to the fact that the draw down of \$25 million to the ILC was not paid until June 1995, allowing the full amount of \$200 million to be invested for most of the year.

In addition, relatively high real interest rates are currently available due significantly to the low inflation rate.

Investments during the year were made in securities which are prescribed by the Audit Act. These included promissory notes, commercial bills and negotiable certificates of deposit. The value of these investments at 30 June 1995 was \$189,670,629.

Section 193K

3.5 The legislative requirements under s.193K of the ATSIC Act have been responded to in the *Indigenous Land Corporation 1994-95 Annual Report*. And the Auditor-General has confirmed at page 19 of that report that the legislative requirements have been met.

Summary

3.6 The annual reporting requirements pursuant to ss.193I and 193K of the *Aboriginal and Torres Strait Islander Commission Act 1989* have been satisfied by the 1994-95 annual reports of both ATSIC and the Indigenous Land Corporation in that the matters required to be covered were discussed. Nevertheless, the Committee's inquiries have revealed shortcomings in ATSIC's administration of the Land Fund in that the draw down date (30 June) proposed to the Minister was not observed. Further, ATSIC's annual report did not report accurately that the payment on 29 June was for less than \$9.5m and not \$25m as stated.

Recommendation 4⁷

- That the ILC and ATSIC coordinate their annual reporting on Land Fund matters to ensure consistency, completeness and accuracy.

Recommendation 5

- That, pursuant to s.193I(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, the Minister request a single coordinated annual report for 1995/96 about the administration of the Land Fund.

7 Please note that Recommendations 1, 2 and 3 are contained in the Committee's fourth report.

CHAPTER 4

Compliance with the Guidelines

4.1 As a statutory authority the Indigenous Land Corporation is required to comply with the *Guidelines for the Content, Preparation and Presentation of Annual Reports by Statutory Authorities* tabled in the Senate on 11 November 1982. In summary, the Guidelines require the following information:

- (i) Enabling legislation
- (ii) Responsible Minister
- (iii) Powers, Functions and Objects
- (iv) Membership and Staff
- (v) Financial Statements
- (vi) Activities and Reports
- (vii) Operational Problems
- (viii) Subsidiaries

The Guidelines are reproduced in full at Appendix 4 of this report.

4.2 The *Indigenous Land Corporation 1994-95 Annual Report* covers the period from 1 June 1995 (when the ILC commenced) to the end of that financial year, 30 June 1995. Accordingly, it would not be reasonable to expect the Corporation's first annual report (covering a period of only one month) to be as comprehensive as those for a full year of activity.

4.3 It is important to record, however, that the Committee expects the Corporation's next annual report, that for 1995-96, to comply fully with the Guidelines. At this stage the Committee will confine its comments on the Corporation's first report to those matters that should have been included despite the fact that the report covers only the initial month of the ILC's operations.

. Enabling Legislation

4.4 On page 2 the ILC report notes in general terms its enabling legislation. Being its first annual report, however, the ILC could have been more precise in referring to the legislation both in the section headed 'Enabling Legislation' and the subsequent 'Rationale for the Establishment of the ILC'. Importantly, the enabling legislation is not referred to by its correct title in the letter of transmittal.

. Responsible Minister

4.5 The identity of the responsible Minister is indicated in the letter of transmittal. The Minister's functions in regard to the ILC and its Board of Directors are referred to in 'Enabling Legislation' (p.2) and 'Land Fund' (p.3) where the responsibilities of the Minister for Finance are also noted. Nevertheless the report does not acknowledge that the Minister was to nominate the business day in the first 'category A' year when payment was to be made to the Indigenous Land Corporation out of the Land Fund pursuant to s.193A(1) of the ATSIC Act.

. Powers, Functions and Objects

4.6 The Indigenous Land Corporation's powers and functions are set out on pages 2 and 3 of its report. This section, however, would have benefited from precise references to the legislation.

Membership and Staff

4.7 ILC Directors are set out on pages 6 and 7 of the report; brief biographies (including terms of appointment) are provided together with photographs. Given that the Chairperson's photograph appears in this section, it was unnecessary to repeat it on page 1. Further, the ATSI Act (s.191V(2)) provides for the title 'Chairperson'; Mr Ross signed the report's letter of transmission as 'Chairman'.

4.8 The only reference to staff in the report is on page 8. The Guidelines require a list of senior executive staff, a statement of the total number of staff, the basis of staffing and the address and telephone number of the information officer. While it is recorded in the report that the ILC had nine officers, it is not clear how many were appointed as senior executive staff. The information officer's address is provided on page 5 although a name is not given.

Financial Statements

4.9 The ATSI Act (s.193H) requires that, in respect of the Land Fund, ATSI must keep accounts and prepare financial statements in such form as the Minister for Finance determines. This is acknowledged in the ILC annual report at page 3.

4.10 Section 193K of the ATSI Act applied s.63H of the *Audit Act 1901* to the ILC. The Audit Act (s.63H(1)) provides that the financial statements are to be in the form approved by the Minister. On 8 June 1995 the Minister's delegate approved the forms of the financial statements for the ILC.

Activities and Reports

4.11 The Committee expects the ILC to be in a much better position to comply with this Guideline in its next annual report. The Guideline requires:

A description of the principal programs and activities of the body noting objectives and reviewing achievements. Information on interaction with other authorities, departments and State and international bodies should be provided as should a list of publications during the reporting period.

In particular, for 1995-96 the Committee expects a full account of the ILC's achievements over its first full year of operation.

4.12 Importantly, in complying with this Guideline for 1994-95 the ILC should have described its most significant interactions with ATSIC during June 1995. They would have included the letter dated 5 June 1995 from the ATSIC Chairperson concerning the decision of the ATSIC Board to set aside \$10 million in each of the following two years for land acquisitions in the Northern Territory; by Decision No. 1467 the ATSIC Board recommended to the ILC Board that the ILC not approve any land purchases for the Northern Territory over the two year period:

... the Commission believes it is in the best interests of Aboriginal people that it apply ATSIC funds to the Northern Territory while encouraging the ILC to purchase land elsewhere in Australia, where conversion to inalienable freehold title is not available.⁸

The ILC considered this request at its Board meeting on 6 June 1995 and resolved:

... that having regard to the ATSIC Chairperson's letter of 5 June 1995 concerning the decision of the ATSIC Board to set aside \$10 million in each of the next two years for land acquisitions in the Northern Territory, the Indigenous Land Corporation Board made a complementary decision that all ILC funds available in the first three Category A years for land

⁸ *New South Wales Aboriginal Land Council v ATSIC* 131 ALR 559 at 565

acquisition be confined to locations other than the Northern Territory.⁹

4.13 Significantly, s.191U(2) of the ATSIC Act provides that land granted by the ILC must not be claimed under the *Aboriginal Land Rights (Northern Territory) Act 1976* precluding any such land from enjoying the status of 'aboriginal freehold'; land purchased by ATSIC funding has no such limitations.

4.14 The NSW Aboriginal Land Council and the Tasmanian Aboriginal Centre Inc. commenced proceedings in the Federal Court to overturn ATSIC's decision to allocate most of the funds it was managing to the Northern Territory. Justice Hill decided, in part, that although the June 1997 sunset clause in the Land Rights Act and the advantages of land held under that Act were not irrelevant considerations, it did not follow that ATSIC could commit virtually all of the funds available to the Northern Territory for land acquisition. Justice Hill found that the ATSIC decision should be set aside.¹⁰

4.15 This matter was the subject of review by the Senate Select Committee on Certain Land Fund Matters. The ILC's response to the Committee's report, *Certain Land Fund Matters*, should be recorded in the ILC's next annual report. The Select Committee report was tabled on 30 November 1995 following the tabling of the ILC's first annual report on 29 November 1995.

Operational Problems

4.16 The ILC's first annual report makes no mention of initial operating problems. The Chairperson's Introduction (p.1), however, noted that there were 'difficult and complex challenges' before the Corporation including 'a complex range

9 ILC Board Decision No. 13, Meeting No. 1

10 *New South Wales Aboriginal Land Council v ATSIC* 131 ALR 559.

of problems facing indigenous peoples as a consequence of dispossession'. The second annual report should articulate more clearly the nature of these challenges and problems and the approach taken to address them.

Subsidiaries

4.17 Details of subsidiary companies formed, or interests acquired, are required by the Guidelines. Section 191H(2)(d) of the ATSI Act empowers the ILC to form companies. Presumably no such activity was undertaken in the reporting period although no statement appears to that effect. Notably, s.193Q(1) of the ATSI Act provides that:

The Indigenous Land Corporation must take all reasonable steps to ensure that a company incorporated in a foreign country does not become a subsidiary of the Indigenous Land Corporation.

Senator Eric Abetz

Committee Chair

APPENDIX 1

ATSIC Annual Report 1994-95
Appendix 14

Appendix 14

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* provides for the establishment of the Aboriginal and Torres Strait Islander Land Fund and the Indigenous Land Corporation under part 4A of the *Aboriginal and Torres Strait Islander Commission (ATSIC) Act 1989*.

Purpose of the Land Fund

The Land Fund is to be built up to become a self-sustaining capital fund by 30 June 2004. It provides a secure and ongoing source of funds to the Indigenous Land Corporation (ILC) to assist indigenous peoples to buy and manage land in a sustainable way to provide economic, environmental, social and cultural benefits.

Background

The intention to establish the Land Fund was first announced as part of the Government's response to the High Court's Mabo decision. The response consisted of three components:

- the Native Title Act 1993;
- the Land Fund; and
- the Social Justice package (due to be released in 1995-96).

The *Native Title Act 1993* was recognised to be limited in application – it gave protection to those indigenous peoples whose rights to land have not been extinguished. The Land Fund and Social Justice package seek to address the needs of the balance of indigenous peoples.

The concept of the Land Fund was enshrined in the *Native Title Act 1993*. The preamble to the legislation states: "it is important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established to assist them to acquire land." Part 10, Clause 201 of that Act created an interim fund.

In the 1994-95 Budget the Government announced that \$1.46 would be allocated to the

Land Fund over the next ten years. In that year \$200 million was allocated to the Land Fund. As the specific legislative arrangements of the Land Fund had not been established the Department of Prime Minister and Cabinet was given responsibility for investing this allocation under the interim arrangements of the *Native Title Act 1993*.

During 1994 the Department of Prime Minister and Cabinet drafted the legislation to establish the Land Fund. ATSIC, along with other indigenous organisations, was involved in negotiations regarding the shape of the Bill.

The *ATSIC Amendment (Land Fund and Indigenous Land Corporation) Bill 1994* was presented to Parliament in June 1994. The Senate supported the amended Bill - now called the *Land Fund and the Indigenous Land Corporation (ATSIC Amendment) Bill* on 21 March 1995. The Act came into effect on 1 June 1995.

With the commencement of the Act Part 10, Clause 201 of the *Native Title Act 1993* was repealed and balances held under the interim arrangements were transferred to the new Land Fund. Responsibility for managing Land Fund investments was transferred to ATSIC.

Land Fund Appropriations

Over the next nine years \$121 million (indexed) will be appropriated into the Land Fund by the Commonwealth Government each year. About 66 per cent will be invested to build the capital base of the fund. The remaining 34 per cent will be administered by the ILC for land purchases and land management. The allocations will be indexed so as to maintain their value in real terms.

After ten years Government allocations to the Land Fund will cease and the ILC will receive the realised real return on investments of the fund in the previous year. By this time the capital base will be sufficiently large for the annual earnings to replace the Government appropriation making it a perpetual fund.

The Land Fund itself, however, will remain the property of the Commonwealth.

The first draw down took place on 29 June 1995, with \$25 million being provided to the ILC. No appropriation was made from the Land Fund to ATSIC in 1994-95.

In the next two years, \$45 million (indexed) will be drawn down of which \$24 million will go to the ILC and \$21 million to ATSIC for its Land Acquisition and Maintenance program. After July 1997 \$45 million (indexed) will drawn down for the ILC.

Structure of the Land Fund

The Aboriginal and Torres Strait Islander Land Fund is a trust account within the Commonwealth Public Account. Monies placed in the Land Fund must be invested in accordance with section 62B of the *Audit Act 1901*.

The Land Fund and its investments are administered by the Aboriginal and Torres Strait Islander Commission under delegation from the Minister for Finance. The Deputy Chief Executive Officer has been appointed as that Delegate.

ATSIC is required to keep accounts, prepare financial statements and produce an annual report regarding the Land Fund.

Consultative Forum

A Consultative Forum on the Investment Policy of the Land Fund was appointed by the Minister for Aboriginal and Torres Strait Islander Affairs. It is a committee through which the nominated ILC Directors and other appointees of the Minister can express views about the investment policy of the Land Fund to the ATSIC Delegate of the Minister for Finance.

It consists of the Delegate, at least two nominated ILC Directors; and such other persons the Minister considers appropriate.

The Consultative Forum met twice in 1994-95, (8 June 1995 and 21 June 1995) and consists of:

Glenn Rees — ATSIC
Lawrie Willet — ILC
Penny Morris — ILC
David Ross — ILC

The Consultative Forum approved the conservative investment options detailed in section 62B of the *Audit Act* pending development a comprehensive investment strategy to maximise Land Fund income.

Performance Indicators

On 1 July 1994, an appropriation of \$200 million was made to the interim fund under the administration of the Department of Prime Minister and Cabinet. On 1 June 1995, investments to the value of \$211,795,322 were transferred to the new Land Fund.

During June, the 1994-95 draw down of \$25 million was paid from the Land Fund to ILC.

The realised real return on the \$175 million of appropriation towards the growth of the capital fund was 6.47 percent. This is based on an indexation factor as determined under the Act of 1.018, making the inflation adjusted base investment \$17,815,000.

The high real return on investments is attributed to a large extent to the fact that the draw down of \$25 million to the ILC was not paid until June 1995, allowing the full amount of \$200 million to be invested for most of the year.

In addition, relatively high real interest rates are currently available due significantly to the low inflation rate.

Investments during the year were made in securities which are prescribed by the Audit Act. These included promissory notes, commercial bills and negotiable certificates of deposit. The value of these investments at 30 June 1995 was \$189,670,629.

Indigenous Land Corporation

The Indigenous Land Corporation (ILC), an independent statutory authority, separate from ATSIC, will use the funds made available each year to it from the Land Fund. The ILC has responsibility for the acquisition and management of new lands and also land-holdings already owned by indigenous interests in all states and territories. Further details about the operations of the ILC are available in the ILC's Annual Report.

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND
FINANCIAL STATEMENTS
FOR PERIOD ENDED 1 JUNE 1995 TO 30 JUNE 1995

CONTENTS

- Commissioners' Statement
- Operating Statement
- Statement of Financial Position
- Statement of Cash Flow
- Notes to and Forming Part of the Accounts

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

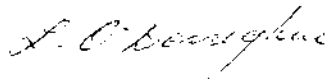
STATEMENT BY COMMISSIONERS

FOR THE PERIOD 1 JUNE 1995 TO 30 JUNE 1995

In our opinion the attached financial statements have been made out in accordance with the Guidelines for Financial Statements of Commonwealth Authorities issued by the Minister for Finance which require compliance with Statements of Accounting Concepts and applicable Accounting Standards, and so as to present fairly:

- (i) the Operating Result for the period ended 30 June 1995;
- (ii) the Financial Position as at 30 June 1995;
- (iii) the Cash Flows for the period ended 30 June 1995; and
- (iv) other matters required to be disclosed by the Guidelines.

Signed in accordance with a resolution of Commissioners.



Lois O'Donoghue CBE AM
Chairperson

6 October 1995



Charles Perkins AO
Deputy Chairperson

6 October 1995

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

OPERATING STATEMENT

FOR THE PERIOD 1 JUNE 1995 TO 30 JUNE 1995

	NOTE	1995 \$
COST OF SERVICES		
Operating Expenses		
Payments made to Indigenous Land Corporation		<u>25,000,000</u>
Total Operating Expenses		<u>25,000,000</u>
OPERATING REVENUE FROM INDEPENDENT SOURCES		
Interest	3	<u>2,875,307</u>
Total Revenue from Independent Sources		<u>2,875,307</u>
NET COST OF SERVICES		22,124,693
REVENUE FROM GOVERNMENT		
Funds transferred from National Aboriginal and Torres Strait Islander Land Fund	4	<u>211,795,322</u>
OPERATING RESULT		189,670,629
Accumulated Operating Results at Beginning of Financial Year		<u> 0</u>
ACCUMULATED OPERATING RESULTS AT END OF FINANCIAL YEAR		<u>189,670,629</u>

STATEMENT OF FINANCIAL POSITION

AS AT 30 JUNE 1995

	NOTE	1995 \$
CURRENT ASSETS		
Receivables	5	6,501,884
Investments	6	<u>183,168,746</u>
TOTAL CURRENT ASSETS		<u>189,670,629</u>
NET ASSETS		<u>189,670,629</u>
EQUITY		
Accumulated Operating Results		<u>189,670,629</u>

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

STATEMENT OF CASH FLOWS

FOR THE PERIOD 1 JUNE 1995 TO 30 JUNE 1995

	NOTE	1995 \$
CASH FLOWS FROM OPERATING ACTIVITIES		
Inflows:		
Interest received		1,709,388
Receipt from the National Aboriginal and Torres Strait Islander Land Fund		<u>206,459,357</u>
		<u>208,168,745</u>
Outflows:		
Payments made to Indigenous Land Corporation		<u>25,000,000</u>
Net cash from operating activities	7	<u>183,168,745</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Outflows:		
Payments for investments		<u>(183,168,745)</u>
Net cash provided by/(used in) investing activities		<u>(183,168,745)</u>
Net Increase/(Decrease) In Cash Held		0
Cash at beginning of reporting period		<u>0</u>
Cash at End of Reporting Period		<u>0</u>

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

NOTES TO AND FORMING PART OF THE ACCOUNTS

FOR THE PERIOD ENDED 30 JUNE 1995

1 ESTABLISHMENT OF THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND.

The Aboriginal and Torres Strait Islander Land Fund was established by the Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995, inserted into the ATSIC Act 1989 to recognise the fact that most indigenous people will not benefit from the High Court's Mabo (No. 2) decision and the Native Title Act 1993 because they were dispossessed of their land and cannot therefore demonstrate the continuous association necessary to prove native title.

The Aboriginal and Torres Strait Islander Land Fund is a Trust Account within the Public Account. For the first ten years the Fund will be credited specified amounts drawn from the Consolidated Revenue, and the Indigenous Land Fund (ILC) will be paid specified amounts drawn from the Fund to perform its functions. During a transitional period, ATSIC will also be paid amounts drawn from the Fund to continue land acquisition and land management functions. At the end of the ten years, the ILC will receive from the Fund each year the realised real returns on investments made by the Fund.

2 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies adopted in preparing the financial statements of the Aboriginal and Torres Strait Islander Land Fund are stated to assist in a general understanding of these accounts. These policies have been consistently applied by the reporting entity except as otherwise indicated.

The financial statements have been drawn up in accordance with the guidelines for Financial Statements of Commonwealth Authorities as issued by the Department of Finance in March 1995 and the applicable Accounting Standards.

(a) Basis of Accounting

The accounts have been prepared on the basis of historical costs and except where stated do not take into account current valuations of non-current assets.

(b) Income Tax

The reporting entity is not subject to taxation imposed by a law of the Commonwealth, a State or a Territory

(c) Cash

For the purpose of the Statement of Cash Flows, cash includes cash on hand, deposits held at call with banks and investments in bank bills (Negotiable certificates of deposit, Promissory notes and Commercial bills), net of bank overdrafts.

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

NOTES TO AND FORMING PART OF THE ACCOUNTS

FOR THE PERIOD ENDED 30 JUNE 1995

3 INTEREST

Interest income is credited back against the Consolidated Revenue Fund and is then appropriated back to the Aboriginal and Torres Strait Islander Land Fund under Section 192W(4) of the Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995.

4 TRANSFER OF FUNDS

From 1 July 1994 to 31 May 1995, the National Aboriginal and Torres Strait Islander Land Fund was managed by the Department of Prime Minister and Cabinet. The funds of \$211,795,322 as at 31 May 1995, including accrued interest earned to that date, were transferred to the renamed Aboriginal and Torres Strait Islander Land Fund, which came under ATSIC's administration and investment policy as at 1 June 1995.

5 RECEIVABLES

Other Debtors	6,501,884
Less Provision for Doubtful Debts	<u>0</u>
	<u>6,501,884</u>

6 INVESTMENTS

Negotiable Certificates of Deposit with with ANZ Bank - maturing 17 July 1995	154,580,959
Promissory Notes - ANZ Bank Maturing 22 Dec. 1995	22,961,849
Promissory Notes - ANZ Bank Maturing 20 Dec. 1995	4,826,293
Commercial Bill - ANZ Bank Maturing 20 Dec. 1995	<u>799,644</u>
	<u>183,168,745</u>

**7 Reconciliation of Net Cash by Operating Activities
to Operating Result After Income Tax**

Operating result after income tax	189,670,629
Change in operating assets and liabilities	
(Increase)/Decrease in debtors	<u>(6,501,884)</u>
Net cash provided by operating activities	<u>183,168,745</u>

INDEPENDENT AUDIT REPORT

To the Minister for Aboriginal and Torres Strait Islander Affairs

Scope

I have audited the financial statements of the Aboriginal and Torres Strait Islander Land Fund for the year ended 30 June 1995. The statements comprise:

- Statement by Commissioners
- Operating Statement
- Statement of Financial Position
- Statement of Cash Flows, and
- Notes to and forming part of the Financial Statements

The Commissioners of the Aboriginal and Torres Strait Islander Commission are responsible for the preparation and presentation of the financial statements and the information contained therein. I have conducted an independent audit of the financial statements in order to express an opinion on them to the Minister for Aboriginal and Torres Strait Islander Affairs.

The audit has been conducted in accordance with Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Concepts and Standards, other mandatory professional reporting requirements and statutory requirements so as to present a view which is consistent with my understanding of the Trust's financial position, the results of its operations and its cash flows.

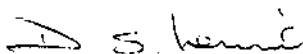
The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In accordance with section 63P(2A) of the *Audit Act 1901*, I now report that the statements are in agreement with the accounts and records of the Trust, and in my opinion:

- (i) the statements are based on proper accounts and records
- (ii) the statements show fairly in accordance with Statements of Accounting Concepts, applicable Accounting Standards, and other mandatory professional reporting requirements the financial transactions for the year ended 30 June 1995 and the state of affairs of the Trust as at that date
- (iii) the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets by the Trust during the year have been in accordance with the *Aboriginal and Torres Strait Islander Commission Act 1989*, and
- (iv) the statements are in accordance with the *Guidelines for Financial Statements of Commonwealth Authorities*.

Australian National Audit Office



D.S. Lennie
Executive Director

For the Auditor-General

Canberra

20 October 1995

APPENDIX 2

**Correspondence from Department of
Finance dated 17 April 1996**



Reference: 94/3941
Contact Officer: Roger Hollis
Telephone: 263 2032

Newlands Street
PARKES ACT 2600
Telephone: (06) 2632222
Fax: (06) 2733021

Mr Peter C Grundy
Committee Secretary
Parliamentary Joint Committee on Native Title
Parliament House
CANBERRA ACT 2600



Dear Mr Grundy

Land Fund

I refer to your letter of 12 April 1996. Our responses to your queries are as follows:

1. s.193A(1)

The Minister did not nominate a day in the first category A year for payment to be made to the Indigenous Land Corporation. Due to the desirability of avoiding interest penalties there were in fact two payments in the period 1/6/95 to 30/6/95. These payments coincided with the maturing of particular short term investments and occurred within the 30 day period required by s193A.

2. s.193F

The Minister delegated his Land Fund investment powers to the ATSIC Deputy Chief Executive Officer and, in his absence, the General Manager, Economic Division. Details of the delegation are attached for your information.

3. s.193H

The Minister's delegate has made a determination in relation to the keeping of accounts and preparation of financial statements for the Land Fund. Details are attached for your information.

Yours sincerely

Roger Hollis
Senior Finance Officer
Retirement Benefits, Aboriginals and Central Agencies Branch
17 April 1996

**MINISTER FOR FINANCE DELEGATIONS
SCHEDULE 1
AUDIT ACT 1901**

I, Kim C. Beazley, Minister for Finance, pursuant to section 70A of the Audit Act 1901 (the Act), delegate such of my powers under the Act as are specified in the first column of Attachment A to this instrument to perform the functions specified in the second column of that Attachment against those powers, severally to the persons for the time being occupying the positions specified in the third column of that Attachment against those powers and functions. When exercising delegations, delegates should have regard to the directions, issued pursuant to subsection 70A(2A) of the Act, which are shown in Attachment B to this instrument.



KIM C. BEAZLEY
Minister for Finance
30 May 1995

SECTION OF ACT (1)	FUNCTION (2)	POSITION (3)
62B(1)	To invest moneys standing to the credit of the Trust Fund in the name of 'The Minister for Finance of the Commonwealth'.	<p>ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION</p> <p>Deputy Chief Executive Officer ♦</p> <p>General Manager, Economic Division ♦ ♦♦</p>

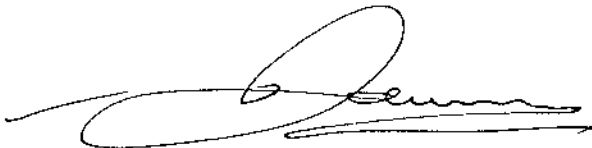
- ♦ In respect of moneys standing to the credit of the Aboriginal and Torres Strait Islander Land Fund.
- ♦♦ In the absence of the Deputy Chief Executive Officer.

**DIRECTIONS TO BE OBSERVED BY DELEGATES OF THE MINISTER FOR FINANCE
WHEN INVESTING TRUST FUND MONEYS UNDER SUBSECTION 62B(1) OF THE
AUDIT ACT 1901**

- (i) In investing Trust Fund moneys under this delegation, the Delegate shall pursue an objective of obtaining the maximum return available on eligible investments consistent with the requirements, including in particular cash flow requirements, of sound financial management of the Trust Account or head of the Trust Fund concerned;
- (ii) Any proposed investment - irrespective of its value - of a kind not specified in subsection 62B(1) and any other proposal concerning which the Delegate has doubt as to its eligibility under this delegation shall be referred to the Minister's Delegate in the Department of Finance for decision;
- (iii) An investment of Trust Fund moneys under this delegation shall, pursuant to subsection 62B(2), be made in the name of 'The Minister for Finance of the Commonwealth' (include name of Trust Account);
- (iv) Before approving any new investment of \$15 million or over, the details of the proposed investment are to be advised to the Financial Markets Section, Monetary and Public Debt Branch, Department of the Treasury.

**APPROVAL OF THE FORM OF FINANCIAL STATEMENTS FOR
THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND
FUND**

I, Michael Edward Darcy, Director, Accounting Development Section, Department of Finance, pursuant to the powers under section 193H of the *Aboriginal and Torres Strait Islander Commission Act 1989* delegated to me by the Minister for Finance **HEREBY APPROVE** that the form of financial statements for the Aboriginal and Torres Strait Islander Land Fund for the financial year ended 30 June 1995 shall be in the form set out in the Guidelines entitled *Financial Statements of Commonwealth Authorities* issued by the Minister for Finance for application to reporting entities for financial years ended on and after 30 June 1995.



M. E. Darcy
Delegate of the
Minister for Finance
18 October 1995

Appendix 3

**Correspondence from ATSIC
dated 6 May and 14 May 1996**



File No: 95/4504

Mr Peter Grundy
Committee Secretary
Parliamentary Joint Committee on
Native Title and the Aboriginal and
Torres Strait Islander Land Fund
Parliament House
CANBERRA ACT 2600



Dear Mr Grundy

**PAYMENTS TO THE INDIGENOUS LAND CORPORATION
(ILC) IN FIRST CATEGORY 'A' YEAR**

I refer to your letter dated 3 May 1996 addressed to Mr Peter Hamburger of Department of Finance. This has been forwarded to this Commission for response to your query on the payments made to the ILC during June 1995.

The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* ('the Act') commenced on 1 June 1995, and the date nominated for the 94/95 draw down was 30 June 1995.

An advance of funds totalling \$15,518,623.18 from the Land Fund to the ILC was approved by the Minister under Section 193E(1) of the Act and made on 2 June 1995 following maturity of an investment with the ANZ Banking Group Ltd. This advance was made to allow the ILC to meet its operating and set-up expenses pending the first Category 'A' year payment due on the nominated date.

The balance of the payment due to the ILC (\$9,481,376.82) for the 94/95 year was made on 29 June 1995 following maturity of an investment with Westpac Banking Corporation.

The payment of \$25,000,000.00 was made on the two dates in June 1995 to allow the current investments to reach maturity and therefore avoid incurring interest penalties.

I have attached a copy of the Ministerial Submission dated 24 May 1995 and copies of requests from ATSIC to PM&C for the two payments.

If you need any further information please contact me on (06) 2898891 or Mr Stephen Vince on (06) 2898947.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Binstead', with a long horizontal flourish extending to the right.

David Binstead
Manager
Financial Administration

6 May 1996

15545

Aboriginal and Torres Strait Islander Commission



to : Mr Alan Pigott
organisation : Dept of the Prime Minister & Cabinet
fax : 271 5938

from : Bryan Thurling
area : Accounts
phone : 289 3427
fax : 281 2651
address :

date : 28 June, 1995
pages : three

message:

As discussed attached is a copy of the paper work I have sent to you today, 28/06/95, via
ATSIC's courier.

Regards
Bryan Thurling



Mr Gerry Linehan
Director
Financial Management Section
Department of the Prime Minister & Cabinet
3-5 National Circuit,
Barton ACT 2600.

RE: DRAW DOWN OF FUNDS FOR THE INDIGENOUS LAND CORPORATION

The purpose of this correspondence is to seek your assistance with the processing of the second draw down of funds for the Indigenous Land Corporation, (ILC). The investment of Trust Fund monies that are due to mature on 29 June 1995 allows for an amount of \$9,481,376.82 to be paid to the ILC.

The ILC has requested that a collect cheque for the above amount be drawn and made payable to the Indigenous Land Corporation on 29 June 1995. Additional advice will be forwarded regarding the reinvestment of the balance of funds.

Thank you for your assistance with this process, the contact person for this matter is Bryan Thurling on 289 3427.

David Binstead
Manager,
Financial Administration Section

26 June 1995

Aboriginal and Torres Strait
Islander Commission



to : Alan Pigott
organisation : PM&C
fax : 271 5938

from : Bryan Thurling
area : Accounts
phone : 2893427
fax : 281 2651
address :

date : 2 June, 1995
pages : six

message:

As Discussed attached is a revised request for ILC funds release.
Also, Paul Brennen of the ILC confirmed to me this morning that he had had discussions
with you Mr Gerry Linehan that the cheque be drawn in favour of the ILC.



Mr Gerry Linehan
Director
Financial Management Section
Department of the Prime Minister & Cabinet
3-5 National Circuit,
Barton ACT 2600

**RE: DRAW DOWN OF FUND FOR THE INDIGENOUS LAND
CORPORATION**

The purpose of this correspondence is to seek your assistance with the issuing of the advance of the draw down of funds for the Indigenous Land Corporation. In our previous correspondence we had quoted the amount required as \$15,473,813, however, this amount had not taken into account the payment of final interest. Could you therefore make a cheque payable to the ILC for \$15,518,623.18 being the full value of the Negotiable Certificate of deposit at the date of maturity (2 June 1995).

Could you please contact Mr Bryan Thurling on 289 3427 when the Cheque is available for collection.

A handwritten signature in black ink, appearing to read "Rod Alfredson", is written over a horizontal line.

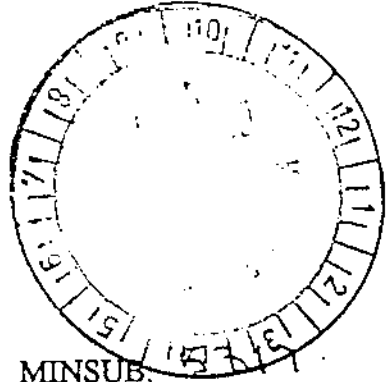
Rod Alfredson
Assistant General Manager
Finance Branch

02 June 1995

Ms Rumpson



RECEIVED
30 MAY 1995
SECRETARIAT BRANCH ATSIC
PHONE - 9 - 10 - 11 - 2 - 3 / 4



MINSUB.
File Ref: 95/01

MINISTER

**LAND FUND AND INDIGENOUS LAND CORPORATION
(ATSIC AMENDMENT) ACT 1995**

PAYMENT OF MONIES TO THE INDIGENOUS LAND CORPORATION

PURPOSE

1. To confirm a nominated date for the payment of the s193A(1) drawdown for 1994-95 from the Land Fund to the Indigenous Land Corporation;
2. To seek your approval for an advance of funds from the Land Fund to the Indigenous Land Corporation on 2 June 1995.

BACKGROUND

First s193A(1) drawdown to the Indigenous Land Corporation

Section 193A(1) of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* ("the Act") provides that in the first Category A year (1994-95) there is to be one drawdown to the Indigenous Land Corporation to the value of \$25m. The payment must also be made to the Corporation within 30 days of the commencement of the first Category A year.

The Act will commence on 1 June 1995, and the recommended nominated date for the payment is 30 June 1995. The recommended date is delayed until 30 June in order to avoid penalties and loss of interest that would result from redeeming a term investment prior to maturity date. The details of current investment of the Land Fund \$200m are provided in *Table 1*.

No	BANK	VALUE (28 APRIL)	MATURITY DATES
1	ANZ	\$15,473,813	19 May (2 June) 1995
2	Westpac	\$38,069,163	29 June 1995
3	ANZ	\$161,734,246	17 July 1995
TOTAL		\$215,277,222	

Table 1.

The table shows that Investment (1) matured on 19 May 1995, and arrangements have been made to re-invest the funds in short-term deposits, maturing on Friday 2 June 1995. Investment (1) is not sufficient to meet the requirements of a single payment, therefore the recommended drawdown date is Friday 30 June 1995, so that Investment (2) can reach maturity, and sufficient funds will be available (without any interest penalties) to make the required \$25m payment to the Corporation on that date.

These matters result from investment decisions made by the Department of the Prime Minister and Cabinet, which invested the 1994-95 Land Fund appropriation on behalf of the Commission, pending passage of the Bill.

The recommendation to make the s193A(1) drawdown from Investment (2) of the Land Fund to the Corporation on 30 June 1995 complies with the procedural requirements of the Act, and avoids any penalties or interest losses.

Advance of Funds to the Indigenous Land Corporation

The drawdown arrangements above will result in the Corporation having no funding for four weeks. However, the Corporation will operate independently of the Commission from the date of commencement, and therefore will need to incur set-up and operating expenses. The Commission has undertaken to provide accommodation and resources at no cost up until 1 June 1995.

In Ministerial Submission 5254 (2 May 1995 Attachment A) it was foreshadowed that the Corporation would request an advance of funds from the Land Fund on commencement, to meet the operating and set-up expenses. An advance can be sourced from Investment (1), which is available from 2 June 1995 and will not incur penalties or loss of interest.

Section 193E(1) of the Act provides that, in special circumstances, you are able to advance funds to the Corporation on account of payments that become payable to the Corporation in any given financial year, including a Category A year.

It is therefore recommended that, if you approve an advance under the circumstances outlined, that the full value of Investment (1) on maturity (approximately \$15.5m) be advanced to the Corporation on 2 June 1995.

The advance to the Corporation of the full value of Investment (1) is recommended on the grounds that had Land Fund investments been so structured as to provide access to Corporation funds without financial cost, the full drawdown would have been available for payment on or near the date of commencement of the Act.

C. CENTRAL ISSUES

The provision of an advance on 2 June 1995 (prior to the later drawdown on 30 June) is consistent with the need for the Corporation to have the capacity to determine its own operations from commencement (including the capacity to invest its own funds under paragraph 191H(2)(b)). The advance of funds is also required so the Corporation can provide for the following activities from 1 June:

1. the payment of all office holders and staff salaries and costs
2. the costs of setting up preliminary infrastructure (including IT capacity)
3. the costs of meetings and travel
4. office expenses (including accommodation)
5. possible consultancy, legal and financial services.

The funds advanced would be invested by the Corporation, apart from those funds retained to meet anticipated set-up and running costs for a period of up to three months.

The net result of the Corporation investing funds advanced would at least equal the return anticipated if Investment (1) were re-invested in current Land Fund deposits.

The recommendation that the maximum amount be advanced from the Land Fund at commencement of the Act is a result of investment strategies which were not determined by the Commission, and includes maturity dates which were not sufficiently flexible for the Corporation to plan its set-up program and funding needs, once the commencement date was proclaimed.

The provisions under section 193E to allow advances of funds is consistent with the commercial focus of the Act, and reflects the intent of the legislation to allow the Corporation to operate effectively within financial year limitations, in special circumstances and with adequate flexibility.

RECOMMENDATIONS

1. It is recommended that, pursuant to section 193A(1) of the Act, you APPROVE Friday 30 June 1995 as the nominated date for the first Category A payment from the Land Fund to the Indigenous Land Corporation; and
2. In view of the special circumstances, it is recommended that, pursuant to section 193E(1) of the Act, you APPROVE an advance to be effected on Friday 2 June 1995, from the Land Fund to the Indigenous Land Corporation on account of payments that are payable to the Corporation under s193A or s193C; and
3. That you APPROVE the amount of the advance to be equal to the full value at the date of maturity (2 June 1995) of a Negotiable Certificate of Deposit held with the ANZ Bank and identified as Investment (1) above; and

That you NOTE that, as a result of s193E(1) advance to the Corporation in the first Category A year, the amount payable as the first drawdown under s193A(1) will be an amount equal to the balance of \$25 Million less the amount paid on 2 June 1995 under s193E(1)

AJ Hanrahan
Manager
ILC Implementation Team
24 May 1995

APPROVED / NOT APPROVED

Cleared:
Assistant General Manager
Legal Branch
24 May 1995

ROBERT TICKNER
/ /1995

Authorised:
General Manager
Economic Division
24 May 1995

Contact Officer: Tony Hanrahan
289 3277 (tel) 282 4109 (fax)

26/5

83
30/5

in. please close with
A 6 ' 5
Dep't. of Finance
P M and MR Dillon
Discuss with changes
ILC
40/5
30/5



CHAIRPERSON



Mr Peter Grundy
Committee Secretary
Parliamentary Joint Committee on Native Title
Parliament House
CANBERRA ACT 2600

Dear Mr Grundy,

DRAW DOWN FROM THE LAND FUND

I have received your request of 6 May for advice on some matters relating to the initial draw down from the Aboriginal and Torres Strait Islander Land Fund to the Indigenous Land Corporation.

On the matter of the nomination by the Minister of the draw down date, I understand you have already been informed by the Department of Finance that they made a mistake. Minister Tickner did in fact nominate 30 June as the date of the initial draw down on 31 May. A copy of the document is attached. The original submission referred to has already been provided to you.

In relation to the payments, there is some confusion in terminology. Section 193A(1) of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* provides for only one draw down in the first year. However, it also allows at Section 193E(1) for an advance to be made with Ministerial approval, with recovery from the next draw down. Such an advance was approved and paid on 2 June, and adjusted against the draw down, which was actually paid on 29 June. The reference in the ATSIC Annual Report did not record the fact of the advance. This was not considered a significant issue in the context of the Annual Report.

I understand that the detail of the two payments has already been provided, together with supporting documentation, by our Finance area.

I trust that this clarification answers the Committee's concerns.

Yours sincerely,

LOIS O'DONOGHUE CBE AM



APPENDIX B

MINISTER

ADVANCE AND DRAWDOWN OF FUNDS TO THE ILC

You requested further advice in relation to paragraph 4 of the submission sent to you regarding an advance to the Indigenous Land Corporation (ILC) and the first payment from the Land Fund in accordance with the Division 10, Part 4A of the ATSIC Act.

The ILC Implementation Team has received legal advice from the Office of General Counsel, Attorney-General Department. That advice confirms the view that the recommendation in the submission is consistent with the provisions of Division 10 and is legally defensible. Written advice in regard to the above has been requested.

The proposed course of action has also been discussed with the proposed Chairperson of the ILC who agrees that the advance and payment outlined in the submission is appropriate.

The issue of the drawdown has been the subject of a number of meetings with officers of both Dept of Finance and of PM&C and their replies are attached.

For your information.

Tony Hamrahan
Manager
ILC Implementation Team

31 May 1995

RT
Approvals received
from DoF, PM&C
+ AGs. Can you
now approve
brief please.

83
31/5.

OK

[Handwritten signature]
follow up
confirm terms
and now

revert
this I
I hope you
understand my
determination to go
along with it
myself

APPENDIX 4

Guidelines for Statutory Authorities

GUIDELINES FOR STATUTORY AUTHORITIES

(See Senate, Hansard, 11 November 1982, pp 2261-2)

Introduction

These guidelines are intended to cover generally the annual reporting requirements for statutory authorities (incorporated or unincorporated authorities established by or pursuant to a law of the Commonwealth or of the ACT) and are subject to refinement in the light of experience.

Reports of small unincorporated authorities and office holders within the public account may continue to be included in the related departmental reports where it is practical to do so.

The guidelines do not, of course, override statutory requirements imposed by the legislation on individual authorities, but to the extent that they require a higher standard than does the legislation, they should be followed by all such authorities.

All authorities are to provide annual reports as soon as possible after the end of their financial year, if possible for the estimates debate in the Budget Sittings. At the very latest, reports should be submitted within six months (unless a shorter period is provided in the legislation of an individual authority). An explanation will be submitted to Parliament if the deadline has to be extended in exceptional cases (the new deadline is to be mentioned in the explanation). Ministers will ensure that reports are tabled within fifteen sitting days of receipt.

Where there is a requirement for a form of financial statements to be approved by the Minister for Finance, authorities should commence negotiations with the Department of Finance early enough to allow issues to be resolved without delaying the annual report. Authorities also need to bear in mind the need for reasonable time to be allowed for completion of auditing of the financial statement within the six month deadline.

Report contents

Reports should be the means of providing a wide dissemination of information on authorities, with special attention being given to making available material that might not otherwise be made public as a matter of course.

Application of these guidelines to those authorities engaged in commercial competition with the private sector is subject to the need to protect commercially sensitive material.

The following information is to be provided in future annual reports:

- (i) Enabling legislation: A clear statement of the legislation (if any) under which the organisation operates.
- (ii) Responsible minister: To be shown. A description of any statutory powers of direction which the minister has over the authority and any details of the exercise of any such powers, subject to the need to protect confidential information, to be included.
- (iii) Powers, functions and objects: To be detailed.
- (iv) Membership and staff: A list of the members of the body and their terms of appointment, together with listing of senior executive staff and

a statement of the total number of staff employed by the organisation. In addition, the basis for staffing of the organisations should be identified. The address and phone number of the information officer should also be included.

- (v) **Financial statements:** All government bodies should provide for Finance, the approved form must, of course, be followed; where an unincorporated body has no specific financial responsibilities and no financial reporting requirement exists, it might be appropriate to disclose departmental receipts and expenditures relevant to its operations, while avoiding unnecessary duplication of the information contained in the annual Financial Statements prepared by the Minister for Finance. The requirement for adequate disclosure will extend to bodies incorporated under companies legislation if the Commonwealth is sole owner or shareholder; this will not affect the need to satisfy the reporting requirements under company law. The Department of Finance and the Auditor-General's Office are preparing guidelines which will assist Commonwealth undertakings in preparing financial statements; an exposure draft entitled 'Proposed Guidelines for the Form and Standard of Financial Statements of Commonwealth Undertakings' was issued in August 1980. The exposure draft has been considered by the relevant parliamentary committees.

- (vi) **Activities and reports:** A description of the principal programs and activities of the body noting objectives and reviewing achievements. Information on interaction with other authorities, departments and state and international bodies should be provided as should a list of publications during the reporting period.

- (vii) Operational problems: A description of the major problems which have arisen in the body's activities, including details of requisite government action to overcome such problems eg the amendment of the enabling Act.

- (viii) Subsidiaries: Details of subsidiary companies formed, or interest acquired in existing companies, are to be provided. It is a desirable practice to include the annual report of such subsidiaries as are controlled by the parent authority with the report of that authority, where this is feasible.