

CHAPTER 4

Indigenous Land Corporation Annual Report 1999-2000

The Indigenous Land Corporation

4.1 The ILC is an independent statutory authority established pursuant to s.191A of the ATSIC Act. Its role is to assist indigenous Australians to acquire and manage land in a sustainable way to obtain economic, environmental, social or cultural benefits pursuant to s.191B.

4.2 Funding for the operations of the ILC is provided from the Aboriginal and Torres Strait Islander Land Fund Account (the Land Fund) under Division 10 of the ATSIC Act. Responsibility for reporting on the Land Fund resides with ATSIC. ATSIC's Land Fund report for 1999-2000 has already been considered in this Committee report.

Statutory Reporting Requirements

4.3 The statutory requirements in relation to the ILC's annual report are found in s.9 of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). Section 193K of the ATSIC Act modifies the application of some provisions of the CAC Act to the ILC.

4.4 Pursuant to s.9 of the CAC Act, the ILC must present a report to the Minister by 15 October each year and the Minister must table the report in both Houses of Parliament as soon as practicable.

4.5 Under s.9 and Schedule 1 of the CAC Act the ILC annual report must include a report of operations and financial statements prepared in accordance with the *Commonwealth Authorities and Companies Orders 1998* (the Finance Minister's Orders). In summary, the Finance Minister's Orders require that ILC annual reports include information regarding:

- a) enabling legislation;
- b) responsible Minister;
- c) statutory functions and objectives;
- d) directors;
- e) audit committee;
- f) organisational structure including subsidiaries;
- g) financial statements;
- h) review of operations and future prospects;
- i) judicial decisions and reviews by outside bodies; and
- j) indemnities and insurance premiums for officers.

Compliance

Tabling

4.6 The ILC annual report 1999-2000 was presented to the Minister (by the ILC Deputy Chairperson, Mr Clem Riley) on 4 September 2000. It was tabled in the Senate and the House of Representatives on 10 October 2000, satisfying the tabling requirements.

Enabling legislation

4.7 At page 10 of its (sixth) report, the ILC complied with the requirement to clearly state the legislation under which it operates. In its annual report for 1998-99, however, the ILC had stated this information under a separate heading.¹ The Committee considers that a separate heading is preferable and should be used in future reports.

¹ *Indigenous Land Corporation Annual Report 1998-99*, p.16.

Responsible Minister

4.8 The ILC complied with the guidelines in respect of this item at page 10 of its sixth report. As with the information concerning enabling legislation, clarity would be improved if this information were included under a separate heading.

Statutory functions and objectives

4.9 The ILC report (pp.11,12) details the core powers and functions of the ILC. Nevertheless, it does not list the factors to which the ILC is required to give priority (under the ATSIC Act) in relation to its land acquisition and land management functions. This information has been provided in previous reports.² The ILC should return to the previous format of reporting on its functions by including information about the factors to be accorded priority when the ILC exercises its land acquisition and management functions.

4.10 In its eighth report (p.9), the Committee recommended that a more complete treatment of the ILC's powers be outlined under the 'Powers, functions and objects' section of the ILC report. In particular the Committee noted the specific constraints on the ILC's borrowing of capital pursuant to Division 11 of Part 4A of the ATSIC Act. The previous three ILC annual reports provided this information but it has been omitted from the 1999-2000 report.³ The Committee reminds the ILC that this information should be included in future annual reports.

Directors

4.11 The ILC provides comprehensive information regarding its Directors at pages 5 to 8. The requirement to provide details of the number of Board meetings held during the financial year and the attendance of directors at those meetings is met at pages 120 and 121. Information regarding Board meetings of ILC subsidiaries is also provided (pp.122-126).

² *Indigenous Land Corporation Annual Report 1998-99*, pp.17,18; *Annual Report 1997-98*, pp.12,13; *Annual Report 1996-97*, pp.8,9.

³ *Indigenous Land Corporation Annual Report 1998-99*, p.18; *Annual Report 1997-98*, pp.13,14; *Annual Report 1996-97*, p.9.

4.12 The ILC Chairperson was quoted in *The Courier Mail* of 16 April 2001 as stating that she was 'stunned' that ILC Directors also received remuneration as Directors of Land Enterprise Australia (LEA), a wholly owned subsidiary of the ILC. Ms Firebrace claimed that there was a 'perceived lack of accountability' in relation to these payments.

4.13 The Committee considered it important to establish that these payments were proper, and in particular, whether they were in accordance with the provisions of the *Remuneration Tribunal Act 1973*. This matter was accordingly raised with the ILC.

4.14 At the public hearing held on 21 May 2001, the ILC Acting General Manager Mr Robert Haebich, gave evidence that four ILC Directors received payments of \$22 000 as Directors of LEA (p.NT88). Also, Mr Haebich stated at the hearing on 18 June 2001 that the Remuneration Tribunal had advised the ILC that it was not within the Tribunal's role to determine the remuneration of Directors of a subsidiary such as LEA. Further, on 5 February 1999 the Remuneration Tribunal had been advised in writing that the LEA Directors were also Directors of the ILC (p.NT121).

4.15 On another matter, the ILC is reminded of the Committee's observation in its fifth report (p.21) that the ATSIIC Act (s.191V(2)) provides for the title 'Chairperson'. During her term of office, Ms Sharon Firebrace has consistently used the title 'Chairman' contrary to the statute.

Audit committee

4.16 The ILC annual report provides information regarding membership of the audit committee (p.56). However, details regarding meetings of the audit committee and attendance at each meeting are not provided. Schedule 1 of the Finance Minister's Orders requires Commonwealth authorities to provide particulars of the number of meetings of the audit committee held during the financial year and the attendance of each member at those meetings. The Committee recommends that this information be provided in future ILC annual reports.

Organisational structure including subsidiaries

4.17 Information regarding ILC staffing is included at pages 59 to 63 of the annual report. The report includes tables on salary range and staffing in head office and divisional offices (pp.60-63). Information about the staffing structure of the ILC and LEA is also provided (pp.60-61). The attention of the ILC is drawn to s.192K(1) of the ATSI Act which provides for the title 'General Manager', *not* 'Chief Executive Officer' which is employed throughout the annual report. The ILC should follow the terminology provided by the statute.

4.18 Staff numbers have marginally increased since the previous reporting period from 52 to 58.⁴ The ILC reports that this was due to the increased need for ILC services (p.62).

4.19 The ILC is again commended for including a section on consultants. Appendix 4 of the ILC report (pp.127,129) individually itemises the amount spent on consultants.

4.20 Section 191G of the ATSI Act provides that the ILC may enter into an arrangement with a subsidiary regarding the performance of ILC functions by the subsidiary. The ILC report provides basic information regarding the relationship between the ILC and its subsidiaries at page 9. Detailed information regarding the operations of ILC subsidiaries is provided at pages 40 to 48. A list of the Directors and meeting dates of the ILC subsidiaries is contained at Appendix 3 of the ILC report.

4.21 All ILC subsidiaries are incorporated as proprietary limited companies with the ILC holding issued share capital (p.41). LEA was converted from a public to a proprietary company on 30 June 2000 (p.40).

4.22 LEA has responsibility for the management of the other ILC subsidiaries: Mogila Merino Stud Pty Ltd,⁵ Mt Clarence Pastoral Company Pty Ltd,⁶ and Cardabia

⁴ *Indigenous Land Corporation Annual Report 1998-99*, p.86; *Annual Report 1999-2000*, p.62.

⁵ ACN 078 466 761.

⁶ ACN 079 814 976.

Pastoral Company Pty Ltd.⁷ These subsidiaries were established to manage sheep properties in New South Wales, Western Australia and South Australia respectively (pp.41-43). LEA is also responsible for the management of Roebuck Plains Station and Myroodah/Luluigui Station in Western Australia (pp.43,44).

4.23 The 1999-2000 ILC report outlines the other functions and activities of LEA (pp.45-48). These include development and implementation of a national extension, education and training strategy, the Kimberley Aboriginal beef strategy and the Central Australian Aboriginal horticultural development strategy.

Financial statements

4.24 Under s.9 and Schedule 1 of the CAC Act the ILC is required to prepare financial statements in accordance with the Finance Minister's Orders. The financial statements must give a true and fair view of matters that those Orders require to be included in the statements.

4.25 The ILC's financial statements were audited by the Australian National Audit Office and an independent audit report was issued on 12 September 2000 (reproduced at pp.72,73 of the ILC report). The ILC received an unqualified audit opinion from the Australian National Audit Office. It confirmed that the financial statements give a true and fair view of the ILC and the economic entity comprising the ILC and entities it controls (p.73). The audit opinion also states that the financial statements are in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 2 of the Finance Minister's Orders (p.73).

Review of operations and future prospects

4.26 The primary functions of the ILC relate to land acquisition and land management pursuant to ss.191D and 191E respectively of the ATSIC Act (pp.11,12). When performing its land management and acquisition functions, the ATSIC Act requires the ILC to:

⁷ ACN 080 766 463.

- a) give priority to ensuring indigenous peoples derive social or cultural benefits (s.191F(2)(aa));
- b) apply sound business principles when performing its functions on a commercial basis (s.191F(1));
- c) maximise the employment of indigenous people and the use of goods and services provided by indigenous owned or controlled businesses (ss.191F(2)(b) and (c)); and
- d) give priority to pursuing sound land and environmental management practices when performing its land management functions (s.191E(3)(a)).

4.27 The ATSiC Act (ss.191N and 191P) also requires the ILC to develop a national indigenous land strategy (NILS) and regional indigenous land strategies (RILS). In performing its functions, the ILC must have regard to the NILS and the relevant RILS (s.191Q).

Land needs planning process

4.28 The ILC has been carrying out a national research and planning project (known as the land needs planning process) as a basis for revision of the ILC NILS and RILS (p.16).

4.29 The ILC reports that this planning process has to date indicated that indigenous groups have expressed a need to acquire land for a variety of reasons including housing, health, welfare, recreation and to provide income. In addition the need to acquire land of cultural significance continues to be expressed (p.50).

Land acquisition

4.30 In accordance with recommendations made by the Committee in its eighth report, the ILC has provided a detailed account of its land purchases and divestments for 1999-2000. A map (p.18) details ILC land purchases and divestments to 30 June 2000 and maps for each ILC divisional office indicate purchases and divestments during the reporting period (pp.23, 29 and 34).

4.31 The ILC annual report 1998-99 provided a table showing a state by state breakdown of properties approved for purchase, settled properties and divested properties. The table compared numbers of properties in each category at the

commencement and conclusion of the reporting period. In addition, a pie chart, included in the 1998-99 report, recorded the total cost of properties settled by ATSIC zone.⁸ The 1999-2000 annual report includes a table showing only the total numbers of properties approved, purchased and divested in each state as at 30 June 2000 (p.19). The Committee considers the information provided in the 1998-99 annual report to have been more informative; it should be included in future reports.

4.32 The ILC Board approved the purchase of 18 properties during the reporting period (p.17). This was a significant decline on the 69 proposals approved during the previous year (p.17).

4.33 During 1999-2000 the ILC acquired 30 properties (p.17). This also represents a significant decline from the 54 properties purchased in the previous financial year. The ILC spent \$25 million on direct land acquisition during the reporting period (p.59). The total number of properties acquired by the ILC at 30 June 2000 was 127 (p.19).

4.34 Also in this reporting period, the ILC divested 30 properties to incorporated bodies representing, where practicable, the traditional owners of the land. This was an increase on the 26 properties divested during 1998-99 (p.17). A total of 72 properties purchased by the ILC had been divested to indigenous corporations by 30 June 2000 (p.19).

4.35 The following table shows land acquisition and land management expenditure by the ILC during the past three financial years⁹:

Financial Year	1997-1998	1998-1999	1999-2000
Land Acquisition	\$26.4 million	\$51.6 million	\$25 million
Land Management	\$1.1 million	\$2.9 million	\$7.5 million

⁸ *Indigenous Land Corporation Annual Report 1998-99*, p.28.

⁹ *Indigenous Land Corporation Annual Report 1998-1999*, p.101, *Indigenous Land Corporation Annual Report 1999-2000*, p.78.

While there has been a progressive increase in land management expenditure over this three year period, expenditure on land acquisition declined significantly in 1999-2000.

4.36 The ILC reports that the decline in the number of land acquisition proposals approved for purchase and purchased is a result of the ILC's emphasis on the land needs planning process. In particular the annual report notes the ILC Board's decision of April 1999 that it would not consider land acquisition proposals, except in exceptional circumstances, unless they were part of a sub-regional overview of land needs or could be demonstrated to be a high priority for the region (p.17).

4.37 Nevertheless, the Committee is concerned about the consequences of the significant decline in properties approved and purchased by the ILC for indigenous peoples in the period 1999-2000. The Committee will continue to monitor this issue closely.¹⁰

Land management

4.38 In its 1999-2000 annual report the ILC advised that it spent \$7.47 million on land management activities during the reporting period (p.19). Details of this expenditure are provided in Appendix 7. The report also provides details of the 55 properties purchased by the ILC and yet to be divested and the land holding costs associated with those properties (pp.97,154).

4.39 The ILC completed a national indigenous land management research project during the reporting period (p.49). The ILC reports that the project highlighted a major policy issue: the need to coordinate with other service providers to ensure that indigenous land managers have equity of access to mainstream land management programs (p.51).

¹⁰ Evidence, pp.NT3-4.

Operational challenges

4.40 The ILC report identifies a number of operational challenges concerning title-holding bodies, land management and government/non-government agencies (pp.38-39).

4.41 It was again reported that difficulties arose in divesting acquired properties to appropriate Aboriginal corporations primarily due to disputes among individuals or groups about the membership structure of the title-holding body (p.38). The ILC has generally retained the ownership of properties until such disputes are resolved and in some cases has sought assistance from the National Native Title Tribunal or anthropologists to determine an appropriate title-holding organisation (p.38).

4.42 Bidjara Aboriginal Housing and Land Company Ltd (Bidjara Housing) commenced action in the Federal Court in August 1999 seeking a declaration that the ILC had failed to transfer a pastoral property near Mount Tabor in Queensland within a reasonable time as required by s.191D(3)(b) of the ATSIC Act. The ILC claimed in response that as a result of disagreements between Bidjara Housing and other groups asserting traditional ownership of the area it was reasonable to await the outcome of the native title process before making a decision to transfer the property (pp.65-66).

4.43 The Federal Court handed down its decision (after the reporting period) on 25 October 2000. The Court held that the ILC had not unreasonably delayed its decision by awaiting an outcome in the native title proceedings, by which the traditional owners, or the interests pertaining to the land, might be identified.¹¹ A subsequent appeal to the Full Federal Court by Bidjara Housing was dismissed.¹²

4.44 The ILC report notes continuing difficulties in relation to acceptance of its land management policy by some indigenous landowners who expect recurrent grant funding (pp.38-39). The ILC also notes an increased demand for land management assistance after the transfer of properties particularly in relation to the establishment of commercial ventures on indigenous held land (p.39).

¹¹ [2000] FCA 1501.

¹² [2000] FCA 138.

4.45 The report notes that the ILC's attempts to enter joint funding arrangements with other government agencies have been hindered by 'gaps, discrepancies or incompatibilities in funding criteria' (p.39). The ILC reports that it has nevertheless 'worked on several joint acquisition and land management proposals and will continue to pursue joint funding where possible' (p.39).

Consultation

4.46 A comprehensive list of community consultations is reported in Appendix 6 (pp.132-146).

Publications

4.47 A list of the ILC's publications for 1999-2000 is contained at Appendix 5 of the report (pp.130,131).

Judicial decisions and reviews by outside bodies

4.48 The ILC report provides details of litigation commenced against the ILC during the reporting period (pp.65-66). *Bidjara Aboriginal Housing and Land Company Ltd v Indigenous Land Corporation* has been discussed. Judgement in *Firebrace v Indigenous Land Corporation* was also given.¹³

4.49 Further, two inquiries were commissioned during the financial year (p.3). Senator the Hon John Herron, the then Minister for Aboriginal and Torres Strait Islander Affairs, commissioned Mr Stephen Skehill (former Secretary of the Attorney General's Department) to inquire into the behaviour of ILC Directors. And the ILC Board requested Sir Laurence Street to inquire into the purchase of Roebuck Plains Station in Western Australia. That inquiry was subsequently completed by Mr Andrew Rogers QC, and is known as the Rogers inquiry.

The Skehill Inquiry

4.50 The ILC Chairperson, Ms Sharon Firebrace, sought an interlocutory injunction from the Federal Court to restrain Mr Skehill from proceeding with his

¹³ [2000] FCA 1257.

inquiry into the behaviour of ILC Directors, alleging bias and breaches of the rules of natural justice. The Federal Court dismissed this application on 5 September 2000.¹⁴

4.51 The judgement of the Federal Court in *Firebrace v Indigenous Land Corporation* outlines some of the events leading up to the instigation of the Skehill inquiry by the then Minister. The judgement notes that:

On 19 April 2000, four directors of the ILC, namely Messrs David Baffsky, Clem Riley and Kevin Driscoll and Ms Lois Peller [sic], requested the Minister in writing in the terms set out below to terminate the appointment of Ms Firebrace on grounds of alleged misbehaviour in the following terms:

'As Directors of the ILC (and a majority of the Board), we request you to exercise your power under Section 192(h)(1) of the relevant Act to terminate the appointment of Sharon Firebrace on the grounds of her misbehaviour.

We make this request reluctantly but on, inter alia, the following:-

1. She has seriously misled the Board and members of the Board on more than one occasion.
2. She has purported to act on behalf of the ILC without authority.
3. She has, without authority, exposed the ILC to potentially serious legal and financial claims.
4. She has requested and/or authorised expenditure and appointments of staff without prior approval of the Board.
5. She has purported to make representations on behalf of the Board without prior authority.
6. She did not comply with your request for information and in a proper and timely manner.
7. She is not competent to be the Chairperson of the ILC.'

4.52 The judgement in *Firebrace v Indigenous Land Corporation* further records that the Minister wrote to the ILC Deputy Chairperson, Mr Clem Riley, on 30 May 2000 stating that he had decided to commission a formal inquiry as a result of his concerns 'about allegations made by you and your colleagues against the Chairperson and by the Chairperson about other Directors'.¹⁵

¹⁴ Ibid.

¹⁵ Ibid.

4.53 The judgement also sets out the terms of reference for the Skehill inquiry.

The issues to be examined under those terms of reference included:

- a) The appointment, proposed appointment, suspension, or purported suspension of any General Manager or acting General Manager of the ILC;
- b) The remuneration and other entitlements (including travel allowance) claimed, received or due to any Director (or acting Director) and any improper expenditure of ILC funds by any Director (or acting Director);
- c) The access to and use of information in relation to the affairs of the ILC by the Directors (or acting Directors) and whether there has been any improper disclosure or failure to make proper disclosure of such information by any Director (or acting Director);
- d) Whether any Director (or acting Director) has acted or purported to act on behalf of the ILC without due authority;
- e) Any conflict of interest that may exist on the part of any Director (or acting Director);
- f) Whether each Director (or acting Director) has acted properly with respect to other Directors (or acting Directors) including meetings and by keeping the Board fully and accurately informed of ILC business.¹⁶

4.54 Mr Skehill's report was delivered to the Minister on 1 December 2000. The Minister has not announced the report's findings or any decision based upon the findings. Notably, Ms Firebrace's term as ILC Chairperson expired in August 2001. Further, on 1 August the Minister announced the appointment of a new Chairperson, Ms Shirley McPherson.

4.55 Evidence heard by the Committee from various witnesses in relation to its examination of the ILC's annual report has highlighted a lack of consensus within the organisation regarding the activities of the Chairperson, Board and General

¹⁶

Ibid.

Manager. It is clear that the Skehill report deals with matters that are sensitive and complex, and that therefore a decision based upon those findings may take some time, especially in the interests of according procedural fairness to parties affected by the report.

4.56 However, at the date of finalising this report, more than 8 months have elapsed since the delivery of the Skehill report to the Minister. Given that the Skehill inquiry was undertaken to deal with the behaviour of the members of the ILC Board, resolution of matters arising from the report should be accorded a high priority.

4.57 Ms Firebrace, the ILC Chairperson, gave evidence at the public hearing on 27 March 2001 that the ILC had been requested to pay for the Skehill inquiry.¹⁷ The Acting General Manager of the ILC, Mr Robert Haebich, advised at the 21 May hearing that the ILC Board had declined to pay for the inquiry on the basis that the Board had not seen the Skehill report and had received no advantage from the report.¹⁸

The Rogers Inquiry

4.58 The second inquiry referred to in the ILC report was commissioned by the Board of the ILC into the purchase of Roebuck Plains and Cardabia Stations in Western Australia (p.3). The Rogers report was completed in June 2001, and the ILC has issued a media release in relation to its findings, although the report itself has not been released. The ILC Chairperson has also issued a media statement concerning the report's release.

4.59 The ILC annual report estimates the cost of the two inquiries and the defence of the Federal Court application initiated by the Chairperson at \$500,000 (p.81). The Committee draws attention to this considerable expenditure on matters which do not directly contribute to the fulfilment of the ILC's statutory responsibilities to assist indigenous people to acquire and manage land. Further, the Committee

¹⁷ Evidence, p.NT29.

¹⁸ Evidence, p.NT74.

agrees that it would be inappropriate for the ILC to meet the cost of the Skehill inquiry given that the inquiry was commissioned by the Minister.¹⁹

The Ward and Yorta Yorta cases

4.60 The ILC report notes two court cases with potential implications for the operations of the ILC: the Full Federal Court decision in *Ward v Western Australia* (the Miriuwung-Gajerrong case) and the Federal Court decision in *Members of the Yorta Yorta Aboriginal Community v Victoria* (the Yorta Yorta case) (pp.68-69). The ILC reported that it was awaiting the outcomes of appeals of both decisions before reviewing its land acquisition policies in light of the decisions (p.69). The High Court has heard an appeal from the Full Federal Court decision in *Ward v Western Australia* but not yet delivered its judgement. The Full Federal Court decision in *Yorta Yorta* was delivered on 8 February 2001 and an application for leave to appeal to the High Court was filed on 7 March 2001.

ANAO audit

4.61 As noted in the seventeenth report of this Committee, the Australian National Audit Office carried out a performance audit of the ILC during the reporting period.²⁰ The audit covered ILC operations from June 1995 to December 1999.²¹

4.62 The audit report, which was tabled in Federal Parliament on 29 June 2000, made nine recommendations which were accepted by the ILC. The ILC annual report notes that actions to address some recommendations, including the establishment of an evaluation section, were commenced during the reporting period (p.52).

Indemnities and insurance premiums for officers

4.63 Schedule 1 of the Finance Minister's Orders requires Commonwealth authorities to provide details of:

¹⁹ Evidence, pp.NT29-30.

²⁰ *Seventeenth Report of the Parliamentary Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund*, p.35.

²¹ 'Indigenous Land Corporation – operations and performance', *Auditor-General's Audit Report No.49*, 29 June 2000, p.15.

- a) any indemnity given to a current or former officer against a liability, or any relevant agreement under which an officer may be given an indemnity of that kind; and
- b) any premium paid, or agreed to be paid, for insurance against a current or former officer's liability for legal costs.

4.64 Details of insurance coverage the ILC took out during the financial year including the total cost for insurance premiums is provided at page 55 of the report. The report notes that ILC Directors contributed to the cost of premiums for their liabilities as Directors (p.55). The Committee suggests that future reports indicate the cost of liability insurance separately from other premiums as was done in the ILC annual report 1998-1999.²²

Style

4.65 The footnoting style of the ILC's 1999-2000 annual report is inconsistent. Footnotes generally recommence (with number 1) at the beginning of each section. On page 68 however the first two footnotes for the section are numbered 6 and 7.

4.66 The style and formatting of the 1999-2000 annual report is generally more accessible and easier to read than previous annual reports. Nevertheless, the location of page numbers (middle of outside margin) is both unusual and unnecessary.

Presentation Summary

4.67 The presentation of the 1999-2000 annual report of the Indigenous Land Corporation complies with the legislative and other formal requirements.

The 1999-2000 Report: Issues

Hearings

4.68 The Committee was not satisfied that it could properly complete its inquiry into the ILC annual report on the basis of the evidence given by the ILC at the first public hearing on 27 March 2001. A large proportion of the questions put by the

²² *Indigenous Land Corporation Annual Report 1998-99*, p.93.

Committee at that hearing were taken on notice by the ILC, including questions in relation to matters which had been raised in the Committee's previous reports. On 10 May the ILC General Manager provided written answers to those questions. The ILC Chairperson also provided further advice on 10 and 11 May.

4.69 A second public hearing was held on 21 May 2001 to allow the Committee to ask questions in relation to issues raised by the answers to questions taken on notice. And a third hearing was held on 18 June 2001 due to the number of questions again taken on notice during the second public hearing. The ILC had provided written answers to questions on 8 and 14 June.

4.70 The Committee has considered the circumstances in which three hearings were required to enable it to fulfil its statutory functions in regard to an annual report. The Committee believes that this indicates a significant level of disorganisation within the ILC. It provides support for the view that the ILC in this period was 'dysfunctional'.²³

Response to the Committee's Seventeenth Report

4.71 In its seventeenth report, the Committee drew attention to three specific matters about the ILC's 1998-99 annual report: finalisation of the land management policy, the leaking of an ANAO issues paper and land acquisition in urban areas.

Land Management

4.72 The first ILC land management policy was initially intended to expire in June 1999.²⁴ The policy was extended to allow a complete revision to be undertaken (p.20).

4.73 In its seventeenth report the Committee noted its interest in progress made by the ILC in developing its long-term land management policy (pp.26 and 32). The ILC report states that a new ILC land management policy was anticipated to be completed by September 2000 (p.20). However the ILC Chairperson gave evidence at a public hearing on 27 March 2001 that a new national indigenous land strategy

²³ Evidence, pp.NT62,100.

²⁴ Indigenous Land Corporation, *Guide to the First Land Management Policy 1997-1999*, June 1997, p.1.

would be finalised in early April 2001.²⁵ The ILC Board approved the strategy on 4 May 2001 and the Minister caused the strategy to be tabled in Parliament on 7 August 2001.²⁶

4.74 The Committee will continue to monitor the land management activities of the ILC and in particular the development of a long-term land management policy.

Australian National Audit Office (ANAO) issues paper

4.75 It has been noted above that an ANAO performance audit of the ILC was carried out during the reporting period. In its seventeenth report (p.36), the Committee expressed its dissatisfaction with the response of the ILC in relation to the leaking of an ANAO issues paper to the media.

4.76 Subsequently, the ILC Chairperson (Ms Firebrace) advised the Committee in a letter dated 2 August 2000 that, at the ILC Board meeting on 8 May 2000, the leaking of the ANAO issues paper was discussed and that:

... [t]he ILC Board did not resolve to refer any matter to the Federal Police.²⁷

4.77 The then ILC General Manager (Mr John Wilson) subsequently advised the Committee in a letter dated 12 September 2000 that:

The ILC Board wants you to be aware of its displeasure about this letter, which implies that the Board discussed the referral to the Australian Federal Police and dismissed it as an option. This is not true, as the matter of referral to any third party was never raised at the Board meeting of 8 May or any other Board meeting prior to yesterday's meeting.²⁸

Mr Wilson further stated that:

²⁵ Evidence, p.NT1.

²⁶ Subsection 191M(6) of the ATSI Act 1989 requires that the Board must give a copy of the NLS within 2 months of agreeing to the strategy. The Minister must cause a copy of the strategy to be tabled within 15 sitting days of receiving it (s.191M(7)). See also Evidence, p.NT120.

²⁷ This letter was attached to the Committee's seventeenth report as Appendix 3.

²⁸ Submission No 2.

I had originally intended to raise the matter with the Australian Federal Police and had made initial enquiries in February. I was directed by the Chairman not to pursue those enquiries.²⁹

4.78 The ILC Chairperson, responding to questions from this Committee, wrote (6 March 2001) advising:

That the ILC Board now maintains it did not discuss the question of referral of the leak to the AFP ignores the fact that Mr Bill Miller, Director Evaluation and Audit, ATSIAC, briefed the Board on 8 May 2000 on his view that the matter should not be referred to the AFP as it would be a futile exercise.³⁰

4.79 The ILC Chairperson and the former ILC General Manager gave similarly contradictory evidence regarding the referral of the leak to the Australian Federal Police at the public hearing on 27 March 2001. There Ms Firebrace gave evidence that she was not present at the 8 May 2000 meeting of the ILC Board during the discussion of the ANAO report. However, she understood from her discussions with Mr Bill Miller, Director of Evaluation and Audit ATSIAC, that he had advised the ILC Board at that meeting that referral of the leak to the AFP would be futile.³¹ For his part, Mr Wilson gave evidence at the same hearing in the same terms as his letter of 12 September 2000 to the Committee.³²

4.80 Mr Bill Miller's submission to the Committee³³ states that he does not ever recall saying to Ms Firebrace or anyone else that a referral by the ILC to the police would be 'futile'. Mr Miller's point is that he would not have made such a statement because:

At that stage I was aware that the Chairperson had signed and dispatched my recommended letter to the Auditor-General, as were Directors of the Board, and thus there was no reason for me to raise the issues of a possible police referral.

²⁹ Ibid.

³⁰ Submission No 1a.

³¹ Evidence, p.NT25.

³² Evidence, pp.NT46-47.

³³ Submission No 4.

Further, Mr Miller stated:

I would like to make it clear that I did not advise the ILC Board on 8 May 2000 to not refer the matter to the police nor did I say that referral would be futile.³⁴

4.81 At the second hearing of the Committee in relation to examination of the annual report, the ILC Chairperson gave evidence asserting that she was:

... the messenger ... I will stand by what was told me at the time – Bill Miller said to me that he had advised the board not to refer the matter to the AFP, the Federal Police, because he felt that it was futile ... I have a witness to the time that I had that conversation with Mr Miller. I have a note that I did take at the time.³⁵

4.82 According to a statutory declaration by Mr Sinnott,³⁶ the Chairperson's note was not made at the time of the 8 May 2000 Board meeting. Rather, it was made on or about 5 March 2001, some 10 months following the Board meeting and more than 6 months after the Chairperson's letter of 2 August 2000 regarding this issue. The Committee is doubtful whether a file note about a telephone conversation on 5 March 2001 is able to sufficiently substantiate a claim of 2 August 2000 about what had transpired at the 8 May 2000 Board meeting.

4.83 Further, it is noted that despite not being present at the time, the Chairperson did not accept the Board's account of the meeting as provided to the Committee by the ILC General Manager (Mr Wilson) on 12 September 2000.³⁷ Notably, the Board's account is consistent with Mr Miller's submission, as are the minutes of the 8 May 2000 Board meeting.

4.84 Mr Miller does not dispute that he advised Ms Firebrace whether or not there would be any use in referring the matter to the AFP. And he has given evidence to the Committee that it would be reasonable that Ms Firebrace would use the word

³⁴ Ibid.

³⁵ Evidence, p.NT52.

³⁶ Submission No 1e.

³⁷ Submission No 2.

'futile' in summing up his advice to her.³⁸ This, however, is to be distinguished from the account that Mr Miller claims to have given Ms Firebrace about his advice to the Board.

4.85 The leaking of the ANAO issues paper was ultimately referred to the Australian Federal Police by the ILC Board in September 2000.³⁹ While the AFP did not accept the matter for investigation, the Committee is concerned by the inconsistencies between evidence given by the Chairperson, on the one hand, and the former ILC General Manager (Mr Wilson) and the former ATSIIC Director of Evaluation and Audit (Mr Miller) on the other.⁴⁰ **The Committee is concerned that it may have been misled by Ms Firebrace.⁴¹ That is, she should have sought confirmation from the ILC Board and reported that to the Committee.**

4.86 Finally, the Committee notes that the Chairperson received a letter from the Auditor-General (dated 31 March 2000). Ms Firebrace, however, appears not to have provided it to the ILC Board or the General Manager prior to the 8 May 2000 Board meeting, during which discussion of the leak occurred. Given that Mr Miller appears also not to have known about the Auditor-General's letter, consideration of that letter at the Board meeting may have influenced the Board's consideration of the way in which to proceed about the leak issue. **On that occasion, Ms Firebrace may have failed in her duty to the ILC Board.**

Land acquisition in urban areas

4.87 The Committee noted in its seventeenth report that it would continue to monitor ILC activity in urban areas and in particular ILC policies designed to meet the land needs of urban indigenous people.⁴² The ILC has made a detailed submission to the inquiry into the needs of country and metropolitan urban dwelling

³⁸ Evidence, p.NT109.

³⁹ Ibid.

⁴⁰ Letter from Ms Andrea Quinn, Coordinator National Operations Monitoring Centre, AFP to Mr John Wilson, then General Manager of the ILC, 6 November 2000.

⁴¹ Evidence, pp.NT62,100.

⁴² Para 4.89, p.37.

Aboriginal and Torres Strait Islander peoples by the Standing Committee on Aboriginal and Torres Strait Islander Affairs.⁴³ The ILC submission notes that:

It appears indigenous people in urban areas are seeking and successfully acquiring land located in rural areas in close proximity to urban metropolitan and urban regional areas.⁴⁴

4.88 This is reassuring advice from the ILC.

Other Matters

Roebuck Plains

4.89 Roebuck Plains Station is a 290,000 hectare pastoral property located near Broome in Western Australia. It was purchased by the ILC on 18 May 1999 (pp.43,156); the purchase included stock valued at \$8.2 million.⁴⁵ The Committee visited Roebuck Plains on 2 July 2001 and had the opportunity to meet with the station manager and other employees operating the property. The ILC reports (p.43) that:

Reaching an agreement as to which of the Aboriginal families with traditional attachment to Roebuck Plains should comprise the title holding body has continued to prove difficult. Until this is satisfactorily resolved, the property will continue to be owned by the ILC.

4.90 The ILC Chairperson wrote to *The Australian* on 13 December 2000 referring to an article by Mr Mike Steketee. In that letter the Chairperson asked:

Why does Mr Steketee fail to mention that the Australian Federal Police are investigating the purchase and management of Roebuck Plains?⁴⁶

⁴³ Submission 39, 'Inquiry into the needs of country and metropolitan urban dwelling Aboriginal and Torres Strait Islander peoples', House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, October 2000.

⁴⁴ Ibid, p.11.

⁴⁵ Evidence, pp.NT8,42.

⁴⁶ 'Out of context leaked papers ignite brushfire', *The Australian*, 13 December 2000, p.14.

In response to an inquiry from the Committee about this matter, Mr John Wilson, the then ILC General Manager, advised on 22 December 2000 that:

This is not true. It has never been contemplated by the Board nor ever discussed.⁴⁷

Nevertheless, in a letter to the Committee dated 6 March 2001 the ILC Chairperson stated:

My comment in the press regarding an AFP investigation into Roebuck Plains acknowledges the fact that an AFP investigation was proceeding at that time, and as I understand, is still proceeding. That the ILC Board did not contemplate or discuss such an investigation is irrelevant to the AFP's commitment to an investigation following allegations it received privately.⁴⁸

4.91 The Committee wrote to the ILC Chairperson and the AFP requesting further information regarding this matter. The AFP responded to the Committee on 17 May 2001, advising that the AFP was still deciding whether to initiate an investigation. In particular, the AFP was seeking access to the Rogers and Skehill reports before determining whether to initiate an investigation. It is understood that neither report has yet been published.

4.92 The Committee wrote to the ILC Chairperson on 25 June 2001 to seek clarification. Ms Firebrace's response on 10 July was as follows:

I do not believe it is appropriate for me to comment on what are essentially confidential police matters, other than to state that on several occasions I have confirmed with AFP spokespersons that an investigation into the purchase of Roebuck Plains is proceeding.⁴⁹

4.93 The Committee is concerned about the ILC Chairperson's evidence and her statement to the media that an AFP investigation into Roebuck Plains was proceeding. Ms Firebrace's assertions are inconsistent with the AFP's advice that,

⁴⁷ Submission No 2a.

⁴⁸ Submission No 1a.

⁴⁹ Submission No 1d.

as at 17 May 2001, it was still deciding whether to initiate an investigation. **Again, the ILC Chairperson may have misled the Committee.**

Rogers Inquiry

4.94 Mr Andrew Rogers QC advised this Committee on 24 November 2000 that completion of his report into Roebuck Plains was being delayed by a number of factors, including that Ms Firebrace had declined to meet with him. Ms Firebrace wrote to Mr Rogers on 24 January 2001 advising:

I have been, and continue to remain, more than prepared to assist you in your inquiries.

4.95 Ms Firebrace stated that her reluctance to meet with Mr Rogers was based on the fact that his appointment had not been formally ratified by the ILC Board (as at 28 September 2000). But Mr Rogers' response to Ms Firebrace dated 29 January 2001 noted his 'considerable astonishment':

I would have thought myself, as a matter of ordinary english [sic], that once you reconsidered your position, you would notify me that you were prepared to participate in the Inquiry.

4.96 Further, Ms Firebrace gave evidence that she had been attending ILC Board meetings. If Mr Rogers' appointment was formally ratified by the Board, Ms Firebrace would have been in attendance at the meeting, or have read the relevant minutes.

4.97 In his letter dated 24 November 2000 (and somewhat contrary to Ms Firebrace's letter to *The Australian* of 25 June 2001) Mr Rogers noted that Ms Firebrace's charges were the impetus for the inquiry being launched. Crucially, Mr Rogers has stated publicly concerning his inquiry:

The first matter to note about the inquiry is that I did not find one skerrick of evidence to support the allegations of criminality and serious misconduct which the media had given such publicity to.⁵⁰

⁵⁰ Transcript, *Insight*, 'Boardroom Battles – 19 July 2001'. See also ILC media release 18 June 2001.

The Committee also notes the comment made by the Special Broadcasting Service (SBS) program *Insight* on 19 July 2001 that:

Ms Firebrace contacted *Insight* because she also wanted the media to conduct an investigation into Roebuck Plains. She relayed to us the same claims of secret commissions and international conspiracies. But Ms Firebrace could not provide any evidence to this program, nor apparently could she provide it to the official investigation.⁵¹

The Committee has been unable to accept as credible advice any of the evidence given to it by Ms Firebrace in relation to the Rogers inquiry. While the Rogers report is yet to be released, at this stage it is not possible to give any credence to Ms Firebrace's claims.

Offer of Acting General Manager position to Mr William Johnstone

4.98 The Committee received evidence from the ILC about the attempted removal of the General Manager of the ILC (Mr John Wilson) by Ms Firebrace without approval by the ILC Board, and the appointment of Mr William Johnstone to the position of Acting General Manager of the ILC without the Board's approval. The ILC has provided evidence to the Committee that the appointment of Mr Johnstone was not supported or approved by the Board.⁵²

4.99 Ms Firebrace gave evidence to the Committee at its public hearing on 21 May 2001 that the decision to appoint Mr Johnstone was:

... pretty much a decision of other members of the Board.

However, in correspondence to Ms Firebrace dated 20 March 2000,⁵³ Mr Johnstone indicated his understanding that Ms Firebrace was the sole person involved in the offer. There is no record of a (telephone-link) Board meeting to decide the matter; and Ms Firebrace has not presented any Board minutes to substantiate her claim. In addition, Ms Firebrace has not presented any evidence concerning the Board

⁵¹ Ibid.

⁵² Evidence, p.NT85.

⁵³ Submission No 3b.

members who may have approached Mr Johnstone prior to suggesting that Ms Firebrace do so.⁵⁴

4.100 Mr Johnstone is seeking 3 months salary commensurate with the terms and conditions of the position of ILC General Manager. Mr Johnstone has asserted that he took 3 months leave without pay (from his position with the Maari Ma Aboriginal Health Corporation) on the basis of the offer made to him by the Chairperson, and that he has suffered financial loss and personal embarrassment as a result.⁵⁵

4.101 The ILC has given evidence that it sought legal opinion (from the Australian Government Solicitor) on its liability to Mr Johnstone. The advice received was that while the ILC had no legal liability to Mr Johnstone, it should for the sake of its reputation 'make some payment in the nature of an act of grace'.⁵⁶ The ILC also received advice from the Australian Government Solicitor that it was not within the power of the Chairperson to suspend the General Manager.

4.102 In evidence before the Committee, the ILC stated that no money has been paid to Mr Johnstone. The ILC has informed the Committee that it is awaiting advice from the Department of Finance and Administration (DOFA) about whether it will release the relevant part of the Skehill report before it makes a decision.⁵⁷

Evidence of Chairperson

4.103 It will be clear from this report that, in the course of the Committee's inquiry into the 1999-2000 annual report of the Indigenous Land Corporation, a significant proportion of evidence that the ILC Chairperson presented was in conflict with other evidence the Committee received. The Committee wrote to Ms Firebrace on 25 June 2001 to draw her attention to the nature of the evidence that was before the Committee and to the fact that it contradicted many of her assertions. The Committee took this step so that Ms Firebrace would be fully aware of the balance of the evidence, and so that she would have a final opportunity to defend her claims.

⁵⁴ Evidence, pp.NT86,87.

⁵⁵ Submission No 3b.

⁵⁶ Submission No 3b.

⁵⁷ Evidence, p.NT120.

4.104 Ms Firebrace responded to the Committee on 11 July 2001 with a confidential submission. The Committee has carefully considered all of the material within that submission. While it has kept faith with Ms Firebrace by not publishing her final submission, the Committee notes that that material does not assist to clarify the discrepancies in the evidence before the Committee. Ms Firebrace's evidence at various points is in conflict with evidence from:

- the ILC Board;
- the former ILC General Manager (Mr John Wilson);
- Mr Andrew Rogers QC;
- the Australian Federal Police;
- the former ATSIIC Director of Evaluation and Audit (Mr Bill Miller); and
- Mr William Johnstone.

Further, Ms Firebrace has confirmed that the then Minister, Senator the Hon John Herron, suggested on three occasions during the reporting period that she should stand down as ILC Chairperson: 28 March, 24 May and 1 June 2000.⁵⁸

4.105 In these circumstances, the Committee is unable to support Ms Firebrace's claims about the causes of 'dysfunction' within the ILC during her two-year term of office which expired in August 2001.

Issues Summary

4.106 The Parliamentary Committee has a statutory duty to review the annual reports of the Indigenous Land Corporation. The Committee has welcomed this duty over the past six years because it has been a means of gaining information concerning a most significant matter: access to land ownership by Indigenous Australians who may not be able to achieve recognition of native title. The Committee would hope that its reports may even have contributed to the better management of the ILC.

⁵⁸ Submission No 1e, p.2.

4.107 However, the Committee has been very concerned about the performance of the ILC over the past two years. Many of the events that have affected the ILC and its programs have been public knowledge. Importantly, the examination of the annual report for 1999-2000 enabled the Committee to consider a wide range of matters that had been the subject of media articles, letters to newspapers and a television program.

4.108 Regrettably, there is reason to believe that the ILC's performance over the past two years has affected the delivery of benefits to Indigenous people by way of land ownership. The Committee has reviewed the ILC's activities in 1999-2000 in order to contribute to the resolution of its difficulties. The Committee is very hopeful that the newly appointed Chair and General Manager will direct the ILC into more competent performance with satisfactory outcomes pursuant to the relevant statutes.