

**Parliamentary Joint Committee on
Native Title and the Aboriginal and
Torres Strait Islander Land Fund**

**Indigenous Land Corporation
Annual Report 1999-2000**

Submission No: 3d

13 July 2001

Mr R G Haebich

A/g Chief Executive Officer

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INDIGENOUS LAND CORPORATION
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LAND ENTERPRISE AUSTRALIA
ABN 32 084 704 423

13 July 2001

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

Dear Mr Grundy

ANNUAL REPORT 1999/2000 - INDIGENOUS LAND CORPORATION

Please find below material prepared in answer to questions taken on notice at the recent hearings.

NT116

Mr SECKER - When did Dr Philpott become the manager?

Dr Phillipot was manager from June 2000 to November 2000.

NT117

Mr SECKER - was Dr Philpott or anyone asked why it took four months to get the bulls back into operation with the cows?

The explanation of the delay in putting bulls into operation is that GNP was late in joining the bulls with the cows partially associated with access problems due to cyclone Rosita and a heavy wet season.

NT 118

Mr HAASE Would you care to take on notice the question surrounding the shortfall (*in herd numbers*) and perhaps give us a blow by blow explanation as to what has occurred, what expectations were, the chronology that followed and what was not achieved? Would you do that for us so that we have a clear understanding of where the errors of judgement were made. Was it because the

bulls were not put across the herd earlier or for a longer period of time or falsely arriving at a projected figure of calving?

Dr Phillipot's chronology of events indicate that at 30 June 2000 LEA estimated calves on the ground to be 6,130 in the absence of a recent muster – the estimation process was recommended by the auditors and a natural increase estimate of 68% was applied to 9,015 breeders.

Both LEA/ILC and its auditors confirmed the natural increase estimate with GNP and industry sources. When adding this natural increase amount to the previous year's muster and settlement figures, and after allowing for a mortality rate, the total herd quantity for financial reporting purposes came to 20,998. At 30 June 2000 the herd was also valued at \$5,062,034 using Elders market information.

Mustering was completed in October with a count of 19,652 (valued by Elders at \$6,020,215). Therefore the 30 June 2000 estimate had overstated the numbers by 1,346, but understated their true market value by \$958,181. These differences were adjusted in the financial reports in November 2000. The difference in the numbers and values reflected picking up more adult cattle, and less calves than estimated.

There was no false projection of calving rates. The source of any differences arises with estimations of natural increases. The estimate of natural increases was only ever an estimate. As per Dr Phillipot's chronology and commentary all year calving creates problems in interpreting natural increase numbers. At Roebuck Plains calving had not yet been synchronised). GNP attempted to implement a synchronised calving system in December 1999. As a consequence of this a proportion of cattle that were expected to be picked up as calves were picked up as weaners or mickey bulls.

The late joining of bulls affected the second quarter of 2000 and will affect mustering in 2001. "A good wet season and plentiful feed following a series of average years or drought may cause a disproportionately large number of calves to be dropped later in the year, reflecting the synchronised increase in body condition and ovarian activity of the breeders." (Ag WA Pastoral Memo, July 2001).

The year 2000 was an exceptionally good wet season which had an impact on the following:

- **Removal of the bulls;**
- **Movement of breeders due to flooding;**
- **Nutritional.**

All of these factors have contributed to the apparent reduction in calving.

Mr CAUSLEY - Over the page is 'Muster and sale figures for 2001' and we have a stock muster of 17,828. I have never yet seen a station get all the stock together. There is always a discrepancy. If you look at these figures again you will see that you said the bulls were put back in April 2000 which means there should have been calves being dropped in January - February the following year. The sales figures for 2001 indicate a natural increase of 331. That seems to be very, very low.

The low natural increase reflect the fact that mustering only commenced in May. That is, until all paddocks are mustered the natural increase for 2001 will not be known. The natural increase of 331 indicates the increase as in the paddocks mustered in 2001; Frazer Lake and Yallaroo up 30 May 2001. The 1,297 mustered reflects approximately 7% of the total herd.

NT 120

Mr CAUSLEY - I think those figures need to be explained as well.

As above

NT 121

Mr SECKER - Do you know how many breeding cows they have? I know that there are 17,000 adult stock but how many of them are breeding cows and how many are steers, bulls or whatever?

	<i>June 2000</i>	<i>October 2000</i>
Cows	9,015	8,579
Heifer/weaners	3,757	5,922
Steers/weaners	1,245	3,348
Bulls	851	483
<i>Natural increases</i>	<u><i>6,130</i></u>	<u><i>1,320</i></u>
Total	20,998	19,652

NT 122

Mr SECKER - If, for example, there are 5,000 breeding cows which could be quite a reasonable amount with 17,000 breeding stock, 331 is actually a 6.6 per cent calving rate and not 66 per cent. I just wonder whether there has been some mistake in the shifting of the decimal point?

331 is the number of calves among the 1297 head mustered in two paddocks in late April/May.

NT 123

Mr SECKER - You may not be able to respond, Mr Haebich, and I will accept that, but I have a question concerning the remuneration of ILC director, especially as it relates to the establishment of LEA. Did the ILC receive advice regarding the power to appoint directors to LEA and, if so, what was that advice? I understand that separate advice says that neither the ILA nor even the minister could appoint someone as director to a board like LEA.

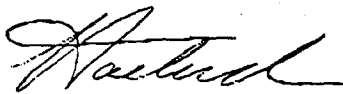
See attachment 1.

NT 124

Mr SECKER – Are you able to table that advice? (appointments to LEA Board).

See attachment 1

Yours sincerely

A handwritten signature in black ink, appearing to read 'R G Haebich', written in a cursive style.

R G HAEBICH
A/g Chief Executive Officer

ATTACHMENT 1



21 May 1998

Mr John Wilson
General Manager
Indigenous Land Corporation
GPO Box 652
ADELAIDE SA 5001

Dear Sir

LEGAL REQUIREMENTS AND OBLIGATIONS IN ESTABLISHING A COMMERCIAL SUBSIDIARY

I refer to our discussion on 19 May 1998 concerning a proposal by the ILC to establish a subsidiary which will undertake commercial activities in respect of indigenous-held land. You state the reason for establishing the subsidiary is that the ILC believes that its commercial activities would be better conducted by a subsidiary rather than by the ILC itself.

In this advice I set out for your information a number of issues relating to establishing the subsidiary and its mode of operation.

The Power of ILC to Establish a Subsidiary

The legislative ability of the ILC to establish a subsidiary is beyond doubt as by s.191H(2) the ILC has an express power to:

- (d) form and participate in the formation of companies; and
- (e) to subscribe for and purchase shares in, and debentures and securities of, companies

The *Policy Guidelines for Commonwealth Statutory Authorities (October 1987)* recognises the need of Statutory Authorities to establish subsidiaries. Those Guidelines do not set out in what circumstances a subsidiary should be established. It is left to the relevant authority to decide to set up a subsidiary on commercial or administrative grounds.

The power of the ILC to 'form and participate in the formation of' a company can only be exercised if it is intended that the company will perform a statutory function of the ILC. This is because the powers of the ILC are confined to those matters that are 'necessary or convenient' for the performance of its functions. The functions of the ILC are land acquisition (s.191D(1)), land management (s.191E) and 'other functions as are conferred on the ILC by the ATSIC Act' (s.191C(c)).

Adelaide Office
Business and Commercial

If the activities of the subsidiary relate to the ILC's functions then it follows that the establishment of a subsidiary to undertake those activities will be within the power of the ILC. By way of illustration I have previously said that the ILC could not start up a taxi company as such an activity would not constitute, or be incidental or conducive to, the performance of the ILC's land acquisition and land management functions.

My instructions are that it is proposed that the subsidiaries activities generally will relate to 'indigenous-held land' so in that sense it could be said it will be within the power of the ILC to establish the subsidiary. However upon the subsidiary being established it will be necessary to consider on a case by case basis the activities that it proposes to enter into to ascertain whether such an activity falls within the functions of the ILC. For example a proposal for the subsidiary to invest in an abattoir will require the ILC to examine whether such an investment falls within the ILC's function of carrying on land management activities in relation to indigenous held-land or is incidental or conducive to such a function. If the livestock being slaughtered by the abattoir are sourced solely or primarily from indigenous-held land that activity could possibly be said to relate to such land and therefore fall within the land management functions of the ILC. Such a proposal will require full and careful consideration if and whenever it arises.

The Subsidiary Agreement

Section 191(G)(1) provides that the ILC may make an arrangement with a subsidiary for the performance of functions corresponding to ILC functions. The arrangement between the ILC and the subsidiary should take the form of a written agreement. An early draft of the subsidiary agreement used in the Mogila acquisition is attached to this advice as a general guide to the form of a subsidiary agreement.

You will notice in the Mogila subsidiary agreement that the subsidiary is required to perform 'land management functions' corresponding to the ILC's function of carrying on land management activities in relation to ILC held land (s.191E(1)(b)). On the grant of the land to an ATSI corporation, the subsidiary will perform land management functions corresponding to the ILC's function of carrying on land management activities in relation to indigenous-held land (s.191E(1)(a) refers).

Section 191G(2) sets out matters that may be covered by a subsidiary arrangement, but an arrangement with a subsidiary is expressly not limited to those matters. An arrangement may provide -

- for the transfer of money from the ILC to the subsidiary in connection with the performance of corresponding functions;
- for the ILC to make loans to the subsidiary in connection with the performance of corresponding functions;
- for the ILC to guarantee loans to the subsidiary for the purpose of the performance of the corresponding functions;
- for the staff of the ILC to be made available to the subsidiary in connection with the performance of the corresponding functions.

Section 191G(4) provides that arrangements may relate to a particular function either generally or as provided by the arrangement. The arrangements may therefore cover any aspect of the performance by the subsidiary of functions corresponding to one or more of the functions of the ILC, including whether the subsidiary is to perform the corresponding

function generally (for example in respect of a State or a region) or in relation to a specific property. (See the Explanatory Memorandum for s.191G.)

In particular the s.191G arrangement should -

- identify the functions to be performed by the subsidiary; these would have to be expressed as functions corresponding to whichever of the functions of the ILC set out in s.191E of the Act were pertinent.
- any area in relation to which the subsidiary is to perform those functions;
- provide for the financial and performance accountability of the subsidiary to the ILC;
- set out financial arrangements between the ILC and the subsidiary.

However, the terms of the arrangement **must be consistent with s.191G(3)**, which imposes certain restrictions on the performance of corresponding functions by a subsidiary. Relevantly, a subsidiary must:

- give priority to pursuing sound land and environmental management practices (s.191E(3))
- carry on land management activities with the agreement of the holders of indigenous held land (s.191E(3))
- directly involve the holders of the land in those activities (s.191E(3))
- act in accordance with sound business principles (s.191F); and
- have regard to the national indigenous land strategy and any relevant regional indigenous land strategy (s.191Q).

In respect of the last dot point the issue arises whether the activities of the subsidiary will be consistent with what the NILS says in relation to land management ie 'land' must be central to a proposal. This is a matter of policy for the ILC to decide.

Section 191G(5) provides that the making of an arrangement about a function with a subsidiary does not prevent the ILC from performing that function itself.

You should consider whether it may be necessary for the subsidiary to be able to make grants or give loans or guarantees. The subsidiary may however not be given powers that exceed those of the ILC's.

A Separate Legal Identity of the Subsidiary

A subsidiary established by the ILC would have the powers and responsibilities of an ordinary company. It would be obliged to comply with the requirements of the Corporations Law. In that regard it would need to appoint at least one director and a secretary. Generally an odd number of directors are appointed (usually 3,5 or 7) so as to avoid a deadlock situation in voting. The financial statements of the subsidiary would need to be audited by the Auditor-General (s.12 CAC Act).

As well as having the staff of the ILC made available to it, it could employ its own staff. The employment of those staff would be subject to ordinary industrial law and those staff

would not be employed under the PS Act. Section 192T of the ATSI Act which relates to the employment regime of the ILC would not apply to staff of the subsidiary because they would not be 'staff of the ILC', since the subsidiary would be a separate legal person from the ILC.

The separate legal identity of a subsidiary would also have the result that the subsidiary would not share the ILC's exemption from taxation under s193P of the Act.

The present directors and officers insurance held by the ILC would cover directors or officers of the ILC serving as directors on the subsidiary but it would not extend to the subsidiaries own directors. The Subsidiary therefore would need to make its own insurance requirements.

The ILC is a 'Commonwealth authority' for the purposes of the CAC Act and any subsidiary established by it will therefore be subject to sections 29-31 of the CAC Act. Those provisions provide as follows:

- a Commonwealth Authority must ensure that none of its subsidiaries does anything that the authority does not have power to do (s.29).
- that the annual accounting period of the subsidiary is aligned with the accounting period of the Commonwealth Authority (s.30) although an exemption can be granted from this requirement by the Finance Minister (s.31).

The subsidiary will not, however, be a 'Commonwealth company' for the purposes of Part 4 of the CAC Bill (see the definition in section 34). The Department of Finance should be consulted as to the implications of the CAC Act and as to Government policy on the formation of subsidiaries by Commonwealth authorities.

The requirements of the CAC Act (particularly s.29,) will need to be borne in mind in drawing up the memorandum and articles of association of a subsidiary.

I also mention here that, despite the introduction of the CAC Act, which is intended to codify the reporting, accountability and other rules for Commonwealth authorities, the Department of Finance and the Treasury still need to be 'consulted' in relation to the establishment of the subsidiary.

Form of Control of Subsidiary

"Subsidiary" is defined by s.4(2) in the same terms as subsidiary is determined under the Companies Act 1981. The test of whether a body corporate is a subsidiary of another is generally said to reduce to the following:

1. does the principle body corporate ("P") control the composition of the board of directors of the subsidiary ("S"); or
2. is P in a position to cast or control the casting of more than half the maximum votes that might be cast at a general meeting of S; or
3. does P hold more than half the amount of issued share capital of S.

All three of the above requirements would be met if the ILC held all the issued shares in the subsidiary.

The simplest way for the ILC to control the composition of the board of the subsidiary is for it to be given the power to appoint or remove all or a majority of the directors of the Subsidiary. The power of appointment or removal by the ILC would need to be incorporated into the Subsidiaries memorandum and articles of association.

There is no requirement that the ILC and the subsidiary must have common directors. The ILC need only have "power" over the appointment of the directors of the subsidiary.

The concept of control by virtue of appointment to the Board needs to be kept in mind if it is proposed to provide other parties with representation on the Board. There appears to be no restrictions on the identity of the ILC's partners in a subsidiary but the ILC would have to maintain control over the appointment or removal of that person or body as a director of the subsidiary.

Holding Company

I do not believe it is necessary to interpose a holding company between the ILC and the subsidiary. In fact such an arrangement would only complicate matters.

Holding Companies are often used where a parent company sets up multiple levels of companies eg in property development. The principle advantage relates to accounting or banking as the holding company by entering into deeds of cross liability with the subsidiary companies is able to prepare consolidated books of account for the shelf companies. The holding company might also operate a bank account for the shelf companies.

Unless the ILC is intending to set up multiple subsidiaries I cannot see that such a company arrangement is necessary.

Yours faithfully



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for the Australian Government Solicitor

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ATTACHMENT 2

Chronology of Events

1999

January & February

Contract of sale between ILC and Birchwood Pastoral Company for ILC to purchase Roebuck Plains exchanged.

March & April

WA Pastoral Board approve lease transfer, from which the LEA commercial subsidiary and the ILC enter into a management agreement with the Great Northern Pastoral Company to manage Roebuck Plains Station.

May

Settlement of the land purchase occurs and the first management meeting between GNP and ILC/LEA occurs.

June & July

Late rains delay the commencement of mustering.

August

Mustering commences! Three new ILC/LEA Board members appointed including the appointment of a new Chair.

October

2nd Quarterly management meeting between ILC/LEA and GNP occurs. GNP request changes to the definition of profit and the investment of capital funds. ILC staff refer the matter to the Board. Board requests a report on the assessment of Roebuck Plains management. Mr Mick Sheehy conducts an assessment of the property and provides a report.

December

Muster completed with total adult cattle mustered of 17,828, and natural increase of 3,253. Herd bulls removed for culling replacement and synchronising calving.

2000

January & February

ILC settle with GNP on purchase of cattle numbers for \$4,991,870. Negotiations commence to terminate the GNP Management agreement, led by ILC representatives Director Baffsky and Director Driscoll CBE. GNP represented by Messrs Vereker, Illingworth and McCoy.

Capital purchases including bulls were put on hold while negotiations took place to terminate the GNP management agreement.

March & April

Interim assessment of GNP'S performance conducted. Project team led by Dr Stuart Phillipot and included Nathaniel Last and Rick Meredith. Initial review team submits report, pointing out a number of concerns including lack of development budgeting as required by management agreement, deteriorations of infrastructure and high cost of operation.

Negotiations to terminate management agreement between ILC and GNP aborted following suspension of Chief Executive Officer. GNP management agreement continues.

Heavy wet and cyclone Rosita force the mustering movement of breeders from the sheep camp, chain pump and ram paddocks to higher ground. Due to total reliance on helicopters heavy losses of calves and an increase in abortion rates due to stress expected. The extensive flooding of paddocks delays the rejoining of bulls by GNP.

20 April 2000, Bulls rejoined

May

Negotiations to terminate the GNP management agreement re-commenced. Director K. Driscoll represents the ILC and GNP is represented by Messrs McCoy, Vereker and Illingworth.

June

Negotiations to terminate management agreement completed 12th June 2000 by Director Driscoll CBE, with the management agreement to be terminated on 30 June 2000. Dr Phillipot as Manager of Roebuck Plains and Myroodah Station with Mr Last to act as overseer are transferred to Roebuck Plains to manage the implementation of the settlement agreement and the overall management of the property. Mr Illingworth stays on to supervise the muster by Mr Finger as part of the terms of the settlement agreement.

As recommended by the auditors a natural increase estimate of 6,130 is included in the 30 June 2000 financial reports. Apart from the natural increase and mortality rate, the herd of 20,998 was valued at \$5,062,034, and this reflected settlement and mustered numbers.

October

Mustering complete and Mr Illingworth and Mr Owen Finger depart the station. Mustering count was 19,652 (valued at \$6,020,215 by Elders). The difference between estimated and actual livestock numbers and values resulted from picking up more adult cattle and less natural increases than estimated. Financial reports and livestock registers were adjusted accordingly to reflect the muster figures in November.

November

Mr McCord, newly appointed manager assumes responsibility for management of Roebuck Plains Station. Dr Stuart Phillipot and Mr Last depart.

December

Mr McCord musters home paddocks and picks up additional cleanskins and 415 additional calves, bringing final muster figures for the year to 18,332 plus 1,735 calves.

Note that is 1518 calves less than the previous muster.

(Total 20067 head mustered at December)

2001

January – April

Standard wet season maintenance.

May

Mustering commences two paddocks mustered natural increase of 331

June

The herd of 18001 based on actual mustered results is valued at approximately \$6.8m.

Mustering continues with heavy culling of older cows and replacement with heifers.

Commentary

All figures presented to the PJC have been reconciled against tally sheets, waybills, invoices and purchase orders. There has never been either 2000 or 2500 head missing from Roebuck Plains Station.

There is a difference in natural increases to date, and thus a variation between the total number of natural increases mustered in 1999 and 2000. Due to some all year calving with part of the property being on flood plains, the calves mustered and recorded to date are unlikely to reflect the true extent of natural increases for two reasons:

1. Calving occurring after paddocks are mustered between July and October 2000 mustering period, and then growing and being identified as weaner cattle (adult cattle) in the following years muster. (this explains coming close to the 30 June 2000 projection due to picking up more adults but less calves);
2. Mustering starting in May and June 2001 will pick up additional calves/weaners as natural increases for this financial year.

The difference in natural increases has caused the herd estimate for financial reporting purposes to be over by approximately 7% of the mustered count. All things being considered, at 30 June 2000, the ILC and its Auditors made all reasonable efforts to confirm and test the natural increase estimate of 65% with GNP and industries sources.

In dollar terms however, the herd was significantly undervalued in the 30 June 2000 financial reports.

As for the late rejoining of the bulls by GNP last year, there would have been a reduction in calves in the second quarter of 2000. It is also expected this may have an impact on natural increases for the current 2001 muster.