

Parliament of the Commonwealth of Australia

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

Examination of Annual Reports for 2001-2002

June 2003

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TERMS OF REFERENCE

PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

206. Duties

The Parliamentary Joint Committee's duties are:

...

- (c) to examine each annual report that is prepared by the President of the NNTT or by any person under Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989* and of which a copy has been laid before a House, and to report to both Houses on matters:
 - (i) that appear in, or arise out of, that annual report; and
 - (ii) to which, in the Parliamentary Joint Committee's opinion, the Parliament's attention should be directed; and

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CHAPTER 1

Introduction

The Committee's Statutory Duty

1.1 The Parliamentary Joint Committee on the National Native Title Tribunal and the Aboriginal and Torres Strait Islander Land Fund has a statutory duty to examine the annual reports of the National Native Title Tribunal (NNTT) and the Indigenous Land Corporation (the ILC). Section 206 (c) of the *Native Title Act 1993* (referred to throughout this Report as “the Act”) requires the Committee to examine after tabling, each annual report that is prepared by the President of the NNTT or by any person under Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*. At its discretion the Committee then reports to Parliament on any matters to which Parliament's attention should be directed.

1.2 The annual report of a department or agency is a report to Parliament on that organisation's performance for the financial year. It is an important mechanism for public accountability. The Committee is of the view that the annual reporting process should provide a full analysis of the year's outcomes against benchmarks, together with some explanation of deviations from anticipated outcomes, and information regarding the agency's core business. The Committee's review and report on that annual report serves not only to draw to Parliament's attention matters of significance but also provides feedback to the agencies involved. It is the Committee's expectation that its comments will inform the agencies' next annual report, and thereby improve the level of accountability of the organisation.

Reports under consideration

1.3 Under paragraph 206 (c) of the Act, the Committee examines three reports in this report:

- The National Native Title Tribunal (NNTT) *Annual Report 2001-2002*;
- The Indigenous Land Corporation (ILC) *Annual Report 2001-2002*; and
- The Aboriginal and Torres Strait Island Land Fund (Land Fund) Report 2001-2002.

1.4 The Land Fund Report is included in ATSIC's *Annual Report 2001-2002*, and presented as Appendix 1 of the ILC's annual report.

National Native Title Tribunal

1.5 The NNTT is established under part 6 of the Act. The Tribunal consists of the President, Deputy President and full-time and part-time Members, all of whom are

appointed by the Governor-General (the Act, section 110). The President is assisted by the Registrar (who is also appointed by the Governor-General under section 95 of the Act), in the administration of the Tribunal. The Registrar also has powers in relation to applications to the Tribunal, and the keeping of registers.

1.6 The annual report of the NNTT was tabled in the Senate on 11 November 2002 and in the House of Representatives on 12 November 2002.

The Indigenous Land Corporation and the Land Fund

1.7 The ILC is a statutory authority established under section 191A of the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ATSIC Act). Its role is to assist Aboriginal and Torres Strait Islanders to acquire and manage land in a sustainable way to obtain economic, environmental, social and cultural benefits pursuant to section 191B of the ATSIC Act.

1.8 Funding for the operations of the ILC is provided from the Land Fund pursuant to Division 10 of Part 4A of the ATSIC Act. Responsibility for reporting on the Land Fund resides with ATSIC under section 193H of the ATSIC Act. ATSIC also has investment powers concerning the Land Fund, and reported on this in its annual report for 2001-2002, which was tabled in the Senate on 31 October 2002 and in the House of Representatives on 12 November 2002.

1.9 For the first three years of its existence, the ILC reported to Parliament under section 63H of the *Audit Act 1901*, which applied to the ILC through section 193K of the ATSIC Act.

1.10 The *Audit Act 1901* was replaced by the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) on 1 January 1998, and the ILC's annual reports have been prepared in accordance with section 9 of the CAC Act since then.

1.11 The Committee has expressed its concern in subsequent reports that it may not have a clear statutory responsibility to examine and report on the ILC annual reports from 1998-1999 to the present. The Committee's reservation lies in the Committee's duty under paragraph 206 (c) of the Native Title Act is to examine each annual report prepared by any person under Part 4A of the ATSIC Act. The Committee considered that paragraph 206 (c) of the Act should be amended to clarify its specific duty to examine the ILC's annual reports.

1.12 Amendments to the Native Title Act have been proposed for some time. The Committee was advised in 2001 that an amendment was proposed for inclusion in amendments to the ATSIC Act, originally expected in the spring sittings of that year.

1.13 The amendment has not yet been effected; however, the matter is now included in the draft Financial Framework Legislation Amendment proposals, which are currently the subject of an inquiry by the Joint Statutory Committee on Public Accounts and Audit.

1.14 Although there may be some doubt about the Committee's responsibilities under paragraph 206 (c) it can be argued that it should examine the ILC annual report for 2001-2002 under the duty it has to inquire into and report on the operation of the ILC in subparagraph 206 (d) (vii) of the Act.

Public Hearings

1.15 In preparing this Report, the Committee conducted two public hearings in Canberra:

- Tuesday 4 March 2003 (National Native Title Tribunal);
- Tuesday 18 March 2003 (the Indigenous Land Corporation).

The Committee acknowledges the time and evidence provided by the National Native Title Tribunal and the Indigenous Land Corporation which has assisted in the preparation of this Report.

Adoption of the Report

1.16 The Committee considered and adopted the report at a private meeting on 18 June 2003.

Chapter 2

National Native Title Tribunal

Annual Report 2001-2002

The National Native Title Tribunal

2.1 The NNTT has an integral role within the native title process. Its functions in relation to applications, inquiries, and determinations, mediation of Federal Court proceedings, providing assistance or mediation when requested and conducting research are set out in section 108 of the Act.

Formal Requirements and Compliance

Requirements

2.2 The President of the NNTT is required to prepare and give to the Commonwealth Minister “a report of the management of the administrative affairs of the Tribunal during the year” as soon as practicable after 30 June each year. The report must include financial statements required by section 49 of the *Financial Management and Accountability Act 1997* (the FMA Act), and an audit of those statements under section 57 of the FMA Act.¹

2.3 The NNTT, as a statutory authority, is not required to comply with the *Requirements for Annual Reports* (the Requirements) prepared by the Department of the Prime Minister and Cabinet². However, the Requirements apply, as a matter of policy, to prescribed agencies under section 5 of the FMA Act. The NNTT is a prescribed agency for the purposes of the FMA Act. In the NNTT’s annual report there is clear indication that it chooses to observe the Requirements³.

2.4 The Requirements recognise that annual reports are “the principal formal accountability mechanism ... from departments through (or on behalf of) government to the Parliament.”⁴ They acknowledge the nexus between the portfolio budget statements establishing the performance targets for departmental outputs (when funds are appropriated) and annual reports outlining the success or otherwise in meeting

1 *Native Title Act 1993*, section 133.

2 Requirements for Annual Reports, Approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*, Department of the Prime Minister and Cabinet, June 2001.

3 NNTT annual report 2001-2002, p ii.

4 Requirements for Annual Reports, p 2

these targets - “annual reports should provide sufficient information and analysis for the Parliament to make a fully formed judgment on departmental performance”.⁵

2.5 The Requirements set out five core items of information together with other mandatory information from specific statutory provisions; inclusion of this material ensures that an annual report provides “sufficient information”. In addition, a report must include a letter of transmittal and aids to access the document.

Compliance

2.6 The five core items of information required by the Requirements and the NNTT’s compliance with those requirements are listed below.

Review of President

2.7 The NNTT has met the first core item of information by including an extensive overview of the year under report (The President’s Overview, pages 2 to 22).

2.8 The section updates much of the information included in the review in the previous year’s annual report. The segments on the trends within the Tribunal’s workloads, the development of relationships with stakeholders, the external changes affecting the Tribunal and the role of representative bodies, for example, present a picture of the evolving work of the Tribunal, particularly when considered in the context of the comments made by the President in the previous annual report. It provides a useful base to the following sections of the report.

2.9 The review however, does not comment on the financial performance of the NNTT. The Committee notes that the Requirements only suggest information on financial performance be included in the overview. Given that this is the second financial year that the NNTT has had an operating surplus and that it has resulted from “lower than expected activity levels”⁶, the Committee is of the view that some comment on this matter could have been included in the overview.

2.10 The Committee also notes that the segment on “Future prospects” is largely a reiteration of the segment in the previous year’s annual report with the comment that the “Events in the reporting period have confirmed many of those trends”⁷. A more informative approach could have been taken by the President clearly indicating those trends that had been confirmed by events as well as events and trends that could be expected in the next 12 months.

5 Requirements for Annual Reports, p 3.

6 NNTT annual report, p 30.

7 NNTT annual report, p 22.

Departmental Overview

2.11 The NNTT have included a Tribunal Overview which sets out the role, functions and organisational structure of the NNTT. This meets the second core item (the departmental overview) of the Requirements.

2.12 The Committee notes the revised organisational structure resulting from the resignation of a senior officer in May 2002. The Committee appreciates that savings will be achieved in the loss of a senior officer and consequent reorganisation which has resulted in the loss of one section within the NNTT. The impact of such savings would not be discernable in the financial year under consideration as the event took place so late in the year. The Committee looks forward to some comment on how these savings have been expended in the next annual report for the NNTT.

2.13 The overview also sets out, in accordance with the Requirements, the NNTT's single outcome – the recognition and protection of native title - which has remained unchanged from the previous reporting period. The four output groups that the NNTT report on under the accrual budgeting framework have also remained unchanged⁸. The overview notes some descriptive changes have been made to some outputs to “clarify the particular nature of service being provided by the Tribunal”⁹.

Report on Performance

2.14 As stipulated in the Requirements, the report on performance included in the annual report provides an overview of the NNTT's financial performance, together with a detailed analysis of the NNTT's “performance against [its] outputs”¹⁰.

2.15 The section on the financial performance indicate that the “lower than expected activity levels” resulted in an under spend of \$405,000¹¹. In accounting terms it could be argued that this figure is not significant, except that it indicates that the NNTT has a small operating surplus. However, the Committee learnt during the public hearing that the annual report for the next reporting period will also record an operating surplus¹².

2.16 The section on outcome and output performance clearly indicates the resource usage for each output group. The significance of the small operating surplus becomes more profound in this context. For each of the outputs the NNTT has provided a very useful table - “performance at a glance”. As can be seen from the summary (see table 1) of two of the measures reported on in the tables, the majority of output groups record a significantly lower outcome and a disproportionately high increase in unit

8 The output groups are: registrations, agreement making, arbitration and assistance, notification and reporting. (NNTT annual report 2001-2002, p 28).

9 NNTT annual report 2001-2002 p 28.

10 NNTT annual report 2001- 2002, p 30.

11 NNTT annual report 2001-2002, p 30.

12 *Committee Hansard*, 4 March 2003, p 2.

cost. Given many of the results are significantly fewer than predicted, it would have been reasonable to expect that the operating surplus would have been substantially greater. However, the increase in unit cost of many of the output groups has absorbed much of that surplus.

2.17 The NNTT has been assiduous in explaining the variations and has also included a detailed discussion on “the estimation model”. It is clear from the discussion that the Tribunal’s work is frequently subjected to outside forces over which it has no control.

2.18 The Committee recognises that the NNTT has been only been working in this accrual accounting framework for a relatively short period as suggested in the comment that “prices from year to year will show less variation over time”¹³ The Committee also appreciates the detail in the transparency of the NNTT in reporting on its activities. However, it is concerned over the disparity between estimated per unit cost and the cost incurred per unit for a number of reasons. It provides a false expectation of the work that the Tribunal will achieve in a given financial year. The impression from budget statements is that for the money appropriated significantly more will be achieved. Further, in the future if the targeted outcomes are achieved, the result may be a substantial deficit. The Committee notes the progress made by the NNTT in developing the benchmarks but is of the view that further work is still required to reflect the actual situation.

Management and Accountability

2.19 The annual report provides the required information in relation to management and accountability.

2.20 It clearly outlines the corporate governance of the NNTT highlighting the work of policy development groups such as the ILUA strategy group, the Future act liaison group and the Agreement-making strategy group which was established in April 2002. The Committee notes that one of the roles of the new strategy group is to “develop a best practice agreement-making model to be used by the Tribunal in carrying out its agreement making functions”¹⁴. Given the trends outlined in the President’s review the Committee believes that such a model is necessary and expects that the progress of the work will be reported in the following annual report.

13 NNTT annual report 2001-2002, p 32.

14 NNTT annual report 2001-2002, p 86.

Table 1 - NNTT performance against output groups

Output group	Estimate	Revised estimate	Result
Registration of claimant applications	quantity	137	126
	Resource usage – unit cost per registration test	\$12,205	\$16,737
Native Title determinations	quantity	25	14
	Resource usage – unit cost per registration of a determination	\$10,727	\$14,207
Indigenous land use agreement applications	quantity	57	40
	Resource usage – unit cost per ILUA application processed for registration	\$7,866	\$24,388
Indigenous land use agreement- making	quantity	44	18
	Resource usage – unit cost of ILUA agreement - making	\$91,902	\$102,430
Claimant, non-claimant and compensation agreement-making	quantity	82	96
	Resource usage-unit cost per claimant, non-claimant and compensation agreement making	\$63,605	\$85,364
Future act agreement-making	quantity	84	85*
	Resource usage - unit cost for mediation and assistance for future Act agreements	\$12,122	\$39,396
Future act Arbitration	quantity	26	19
	Resource usage – unit cost of future act arbitration	\$92,239	\$64, 018
Objections to the expedited procedure	Quantity	850	909
	Resource usage – unit cost	\$1,591	\$3,962

* this figure represents the combine result of 25 mediations and 60 conferences

2.21 The Committee also notes the retention figures in the section on workforce planning. In the 2001-2002 financial year, 7.02 per cent of the workforce of the NNTT resigned while in the previous financial year the separation figure was 14.4 per cent. At the public hearing the Registrar did not seem to be concerned by the figures, indicating that “after six years or so you will have some turnover.”¹⁵ The Registrar continued by adding “Many of them have stayed within the broad sector”¹⁶. The Committee will continue to monitor the retention figures for the NNTT.

2.22 The NNTT employment practices in relation to indigenous staff were also explored at the public hearing. The annual report identifies 33 of the NNTT’s staff as “being either Aboriginal or Torres Strait Islander”¹⁷. At the hearing it was revealed that indigenous employment within the NNTT was increasing and that the NNTT had in place a number of strategies to encourage Indigenous employment within the organisation. In addition to the studies assistance generally available in the Australian Public Service, the NNTT has developed a cadetship scheme and offers “two full-time undergraduate scholarships solely for Indigenous staff”¹⁸.

2.23 The Committee also learnt that the NNTT was aware of a need to address the lack of balance in the representation of Indigenous employees through the hierarchy of the organisation. The NNTT put in place a protocol three years ago that altered their “advertising style, position documentation and also the structure of our selection processes”¹⁹ which has gradually increased the numbers of Indigenous employees in the executive and middle staffing levels²⁰.

2.24 Although not a requirement, the Committee suggests that, given the work the NNTT undertakes and as the NNTT is addressing the issue in a constructive and apparently productive way, that information on Indigenous employment and related practices within the NNTT be included in subsequent annual reports.

2.25 The Committee commends the finalisation of further accountability mechanisms for members of the Tribunal indicated in the annual report with the completion of the “procedures for dealing with alleged breaches of the members voluntary Code of Conduct and an extended conflict of interest policy”²¹. It expects that the NNTT will include any use of these procedures in subsequent annual reports and that they will be widely publicised so that those who may wish to use them will be in a position to do so.

15 *Committee Hansard*, 4 March 2003, p 25.

16 *Committee Hansard*, 4 March 2003, p 25.

17 NNTT annual report 2001-2002, p 91.

18 *Committee Hansard*, 4 March 2003, p 27.

19 *Committee Hansard*, 4 March 2003, p 28.

20 *Committee Hansard*, 4 March 2003, p 27.

21 NNTT annual report 2001-2002, p 97.

2.26 The NNTT also reported on the work they had undertaken on the evaluation of clients and stakeholders needs. A survey has been developed which will seek responses from clients to “specific attributes and their levels of satisfaction with Tribunal services in the areas of registration, notification, mediation, future act, indigenous land use agreements and assistance”²². The survey is regarded by the NNTT as being a benchmark study²³ and the outcomes will contribute “extensively to the development of improved performance standards outlined in the *Customer Service Charter* that will better effect the needs of the Tribunal’s clients.”²⁴. The Committee is of the view that the survey is overdue and will be carefully reviewing the results and any changes to the *Customer Service Charter*.

Financial Statements

2.27 Appendix VI sets out the financial statements of the NNTT and the independent audit report on those statements. The Audit Report states that the financial statements have been prepared in accordance with the Finance Minister’s Orders and “give a true and fair view” of the financial position of the NNTT as at 30 June 2002²⁵.

Other Mandatory Information

2.28 The NNTT annual report for 2001-2002 provides all the “Other Mandatory Information” stipulated in the Requirements. The details are outlined below.

Occupational Health and Safety

2.29 The NNTT’s occupational health and safety performance is provided on pages 91 and 92. The information provided meets the Requirements.

Freedom of Information

2.30 Appendix IV sets out the information required under the *Freedom of Information Act 1982* (the FOI Act). The Committee notes that the number of requests under the FOI Act have increased to four. In the Committee’s report on the annual report for the previous year it suggests that the NNTT provide additional information on each request. The Committee is aware that its report was not available to inform the annual report under consideration and therefore reiterates the request.

22 NNTT annual report 2001-2002, p 100.

23 *Committee Hansard*, 4 March 2003, p 21.

24 NNTT annual report 2001-2002, p 100.

25 NNTT annual report 2001-2002, p 131.

Advertising and Market Research

2.31 The NNTT reports in Appendix V expenditure of \$29,997 on market research which represents the first component of the client and stakeholder survey discussed in paragraph 2.26.

2.32 Expenditure on advertising did not markedly increase over the previous year and again the cost was primarily associated with the notification of native title applications.

Ecologically sustainable development environmental reporting

2.33 The NNTT's responsibilities do not require the implementation of the ecologically sustainable development principles of the *Environment Protection and Biodiversity Conservation Act 1999*. However, the annual report at page 106 details the NNTT's work in the area of environmental best practice. The highlight is the development of an Energy Management Plan.

Letter of transmission and aids to access

2.34 The President's letter to the Attorney-General was dated 9 October 2002. The requirement that the annual report be tabled within 15 sitting days of the Minister's receipt was met – the report was tabled in the Senate on 11 November 2002 and on 12 November 2002 in the House of Representatives.

2.35 In accordance with past practice the annual report provides the following aids to access:

- Table of contents (pages iv to vi);
- Glossary (Appendix VII, pages 162 to 166);
- Alphabetical index (pages 168 to 170);
- Contact officer (page ii); and
- NNTT internet home page (page ii).

Other Issues Arising***Workload of the NNTT***

2.36 The Committee and its predecessors have, in successive reports on the NNTT annual reports, examined the question of the NNTT's workload in any given financial year.

2.37 The President in his annual reviews has outlined the work trends within the Tribunal. The reports on performance included in the annual reports provide additional details on the NNTT's work. In the annual report for 2001-2002, the President has reiterated that "the volume of work in relation to each process indicates successive waves of work since the relevant amendments to the Act commenced to

operate on 30 September 1998.”²⁶. He also indicated that “As determinations of native title are made, and various forms of native title agreements are negotiated, we have moved onto ‘second generation’ issues that arise after determinations of native title are made and after ILUAs are registered ...”²⁷.

2.38 In examining the work trends, the Committee considered where the NNTT was directing its resources and whether the “second generation” issues had emerged as a significant component of the NNTT’s workload.

Registrations (Output Group 1.1)

2.39 Output Group 1.1 relates to Registrations and has the following three identified subgroups:

- Claimant applications (includes registration of native title claim applications);
- Native title determinations; and
- Indigenous Land Use Agreement applications.

2.40 The Committee notes that, as predicted in the previous year’s annual report, the number of registration test decisions (126) is 18 per cent fewer than that of the 2000-2001 financial year²⁸. However, the expectation that fewer of the NNTT’s resources would be dedicated to this function has not been borne out in the cost nor, in many cases, has the timeline been met²⁹. Further the notification of claimant applications continued to rise slightly (172 in 2001-2002 is 11 more than the previous year). The Committee notes the NNTT’s explanation that the “combined and further combined applications, and the remaining old Act applications, have proved to be more complex and hence their testing has required more resources.”³⁰.

2.41 The number of claimant applications at some stage of the process between filing and resolution as at 30 June 2002 was 601. During the reporting period 81 applications were discontinued or combined with other applications. These figures represent a slight increase on those of the previous year³¹.

2.42 Of the 14 native title determinations registered by the NNTT in the reporting period, there were 7 determinations that native title does exist, 1 (consent) determination that it did not and 6 non-claimant determinations that native title did not exist³². The 14 determinations is substantially below the estimated figure of 34³³ and a

26 NNTT annual report 2001-2002, p 3.

27 NNTT annual report 2000-2001, p 26.

28 NNTT annual report 2001-2002, p 3.

29 NNTT annual report 2001-2002, p 36 - cost increased from an estimated \$2 563 050 to \$3 399 480 and only 59 per cent of the decisions were made within the two month time frame.

30 NNTT annual report 2001-2002, p 39.

31 NNTT annual report 2000-2001, p 4.

32 NNTT annual report 2001-2002, p 40.

decrease (from 18)³⁴ in the previous reporting period. As would be expected the resource usage was below that estimated but not by a comparable amount³⁵. The timeframe was met in the majority of cases (64 percent of determinations registered within two days of receipt from the Federal Court)³⁶. The Committee welcomes the increased number of determinations that were made without recourse to trial³⁷.

2.43 The Committee notes that while the estimate (of 111) of Indigenous Land Use Agreements to be registered in the reporting period was not met³⁸ there was an increase in the number lodged with the Tribunal³⁹. Forty ILUAs only were registered in 2001-2002⁴⁰ in comparison to 42 in the previous year⁴¹.

Agreement-making (Output Group 1.2)

2.44 Output Group 1.2 relates to agreement making and includes work performed in relation to:

- Indigenous land use agreements;
- Claimant, non-claimant and compensation agreement-making; and
- Future act agreement-making.

This Output Group accounts for the greatest proportion (\$12.167m of the \$28.425m budget)⁴² of the NNTT's expenditure. This was also the case in the previous financial year.

2.45 The Committee notes that the number (18) of indigenous land use agreements (ILUAs) that were finalised with the NNTT's assistance was less than half the estimate of 48⁴³. The NNTT assisted ILUAs accounted for less than half the number (40) of ILUAs lodged for registration within the reporting period⁴⁴. Again the NNTT

33 NNTT annual report 2001-2002, p 40.

34 NNTT annual report 2000-2001, p 54.

35 NNTT annual report 2001-2002, p 40 – cost reduced from \$364 720 to \$289 828.

36 NNTT annual report 2001-2002, p 45.

37 NNTT annual report 2000-2001 p 5 indicates that 5 determinations resulted from trial and NNTT annual report 2001-2002 p 4 indicates that 2 determinations resulted from trial.

38 NNTT annual report 2001-2002, pp 47 and 48.

39 NNTT annual report 2001-2002, p 48.

40 NNTT annual Rreport 2001-2002, p 47.

41 NNTT annual report 2000-2001, p 59.

42 NNTT annual report 2001-2002, p 34.

43 NNTT annual report 2001-2002, p 51.

44 NNTT annual report 2001-2002, p 47.

has indicated that the efficiencies predicted in the 2000-2001 annual report have not eventuated.⁴⁵

2.46 The NNTT reports that 96 claimant, non-claimant and compensation making agreements have been finalised with their assistance. While this figure falls short of the initial estimate it exceeds the revised estimate and is slightly greater than the previous year (93)⁴⁶. The expenditure exceeds both the initial and revised estimates.

2.47 The future act agreement-making output includes future act mediations (section 31 of the Act) and conferences held pursuant to section 150 of the Act. In the reporting period 51 future act mediation requests were lodged with the Tribunal and 25 were resolved.⁴⁷ There were 60 conferences held with agreements being reached in 36 cases. These achievements have been at considerable expense to the NNTT with the estimated cost being exceeded by 57 percent⁴⁸.

Arbitration (Output Group 1.3)

2.48 The Tribunal's duties in relation to arbitration relate to:

- Future act determinations and
- Objections to the expedited procedure.

Such work requires a native title claim to have been registered (ie to have passed the registration test) before such procedures can be exercised. Expenditure on this Output Group is \$4.064m.⁴⁹

2.49 The Tribunal made future act determinations in relation to 19 applications. Only one was a matter continued from the previous financial year and one matter lodged in 2001-2002 was not finalised. This figure contrasts with the 43 determination made in 2000-2001⁵⁰. However, 31 of the 43 were applications filed in 1998.

2.50 The NNTT note that the total of 19 was fewer than the 26 of the (revised) estimate⁵¹ but the timelines were exceeded and the associated cost was significantly reduced. The explanation for the variation refers to the increase in the practice of requesting consent determinations.

2.51 The Tribunal only undertakes work on objections to the expedited procedure in Western Australia and the Northern Territory as other States have made other arrangements. To assist parties, the NNTT issued revised guidelines relating to

45 NNTT annual report 2001-2002, p 53.

46 NNTT annual report 2000-2001, p 66.

47 NNTT annual report 2001-2002, p 59.

48 NNTT annual report 2001-2002, p 58.

49 NNTT annual report 2001-2002, p 34.

50 NNTT annual report 2000-2001, p 74.

51 NNTT annual report 2001-2002, p 64.

objection acceptance in May 2001. The guidelines were revised following feedback from a number of native title representative bodies. Further comment resulted in another set of guidelines being issued in October 2001⁵². The Committee commends the NNTT for its willingness to accept client feedback and implement changes but expresses concern that the process required two sets of revised documents.

2.52 The number of expedited procedure objections processed was greater than 2000-2001 (901⁵³ compared with 517⁵⁴). The Committee notes that the estimates of this target group were not met, but that the cost again has increased substantially. Given that only two jurisdictions are utilising the Tribunal's expertise in this matter, the Committee is concerned that this subgroup accounts for well over half of the budget for arbitration.

Assistance, Notification and Reporting (Output Group 1.4)

2.53 The final of the NNTT's Output Groups relates to the following work:

- Assistance to applicants and other persons;
- Notification; and
- Reports to the Federal Court.

In budgetary terms it is the second largest item of expenditure accounting for \$7.509m of its budget.

2.54 The assistance the NNTT provides to applicants includes a number of different functions, such as assistance with the preparation of applications, providing maps and register information as well as a public education role. At the end of 2001 the NNTT extended its public education role to include the production of a quarterly newsletter – *Talking Native Title*.⁵⁵

2.55 The Committee notes that the performance targets for this subgroup have been exceeded and that the expenditure has come in under budget.

2.56 The Registrar has responsibilities to notify the general public and those interested in an area affected by native title claims of not only of those claims, but of compensation applications, applications to register an ILUA or amend a native title claim.

2.57 The NNTT's performance in relation to notification is slightly below the figure estimated for advertisements and more significantly below that estimated for letters. The cost for this output subgroup repeats the trend in the majority of other subgroups. Despite not meeting the estimate, the cost of advertising is almost double

52 NNTT annual report 2001-2002, p 66.

53 NNTT annual report 2001-2002, p 66.

54 NNTT annual report 2000-2001, p 77.

55 NNTT annual report 2001-2002, pp 70 and 71.

that estimated while that for letters comes in below budget but the unit cost is again exceeded.⁵⁶

2.58 Native title applications are made to the Federal Court which refers them to the NNTT for registration testing and mediation. The Tribunal is independent of the court but it “supervises the progress of mediation in each matter”⁵⁷.

2.59 The Federal Court did not request the number of reports anticipated, resulting in a shortfall in the number of reports provided. Although there was a reduction in the total cost it was not commensurate with the decrease in the level of output and again the unit cost increased.

Summary of trends

2.60 The Committee notes that the trends in the NNTT workload suggested in the President’s overview are present but are not so distinctive to recommend a shift in resources. There is still work to be undertaken in the area of claims. While the number of applications for registration tests decreases the number of claimant applications continues to rise. Further, the work that requires the majority of expenditure (Output Group 1.2) remains constant from the previous financial year to the one under consideration.

Consultants

2.61 The Committee has routinely commented on the NNTT’s use of consultants.

2.62 In the Committee’s report on the 2000-2001 annual report it commented that most of the NNTT’s expenditure on consultancies related to the outsourcing of the information technology services. The report recorded the NNTT’s comment that, despite the increase in expenditure for that financial year, the benefits of contracting out the IT were significant including an increase in the stability of the IT environment and the transference of the responsibility to hire and fire IT staff⁵⁸.

2.63 The Committee notes that in 2001-2002 there has been another increase (20 percent)⁵⁹ in the cost of IT. It queries whether the NNTT is keeping its initial policy decision under review and whether the transference to consultants of the responsibility to hire and fire IT staff has provided the benefits initially suggested by the strategy.

56 NNTT annual report 2001-2002, p 77.

57 NNTT annual report 2001-2002, p 79.

58 NNTT annual report 2000-2001, p 122.

59 NNTT annual report 2001-2002, p 105.

2.64 The Committee commented favorably in its report on the 2000-2001 annual report on the reduction in expenditure on the consultancies under section 131A of the Act. It notes that expenditure has increased from \$31,304⁶⁰ to \$65,900⁶¹.

2.65 The Committee also noted and sought explanation at the public hearing of the consultancy undertaken by the James Cook University for a cost of \$250,000⁶². The Committee was pleased to learn that the consultancy extended over 5 years to enable the NNTT

to go to the university on a sort of rolling basis to commission research and assistance on issues particularly arising in Far North Queensland in relation to native title and related matters.⁶³

Further:

One of the first projects we did was a survey of the legislative regimes at every level – treaty, Commonwealth, state, local government and licensing – that would impinge upon a wide range of parties in native title processes in the Cape York area.⁶⁴

2.66 The Committee commends the NNTT on this initiative and acknowledging that it is “a pilot”⁶⁵ will monitor the project. To this end it would appreciate comment on the project in the body of the annual report in future.

Impact of Judicial decisions upon the work of the Tribunal

2.67 Appendix II of the NNTT’s annual report outlines decisions of the High Court, the Federal Court and the Tribunal that have had a significant impact on the work of the NNTT.

2.68 As was the case in NNTT’s the previous annual report the decisions are summarized in the following categories:

- general developments in native title law;
- the registration test; and
- future acts.

60 NNTT annual report 2000-2001, p 122

61 NNTT annual report 2001-2002, p 105.

62 NNTT annual report 2001-2002, p 122.

63 *Committee Hansard*, 4 March 2003, p 22.

64 *Committee Hansard*, 4 March, p 22.

65 *Committee Hansard*, 4 March, p 22.

General Developments in Native Title law

2.69 The NNTT reported on the decision of the appeal to the High Court in relation to the *Commonwealth v Yammirr and Yammirr v Northern Territory*⁶⁶ (the Croker Island case)⁶⁷. The judgment was delivered on 11 October 2001 and the Committee in its last report on annual reports outlined the decision⁶⁸. The NNTT notes that the case “clarifies the interpretation and recognition of native title rights and interests offshore.”⁶⁹ and that it is relevant to the Tribunal’s work on registration tests and mediation.

2.70 Other judgments considered in the NNTT’s annual report also relate to its work on registration tests, mediation and the authorisation requirements of the Act.

Registration Test

2.71 There were no cases reported on in the annual report relating to the registration test that had an impact on the work of the Tribunal.

Future Acts

2.72 The one case reported on by the NNTT relating to future acts was *Little v State of Western Australia & Anor*⁷⁰. The appeal concerned the determination to dismiss expedited procedure objection applications which had been brought by the registered native title claimants for the Badimia claim. The basis of the appeal was the refusal of the Tribunal to change a listing date and to receive further evidence.⁷¹

2.73 The appeal was dismissed but the findings, particularly in relation to procedural fairness and the application of the *Aboriginal Heritage Act 1972* (WA), are relevant to the “interpretation of the law in right to negotiate proceedings.”⁷²

Conclusion

2.74 The NNTT in the annual report for 2001-2002 has not only met the Requirements but in doing so have provided a clear statement of its performance for that year. The Committee commends the NNTT on the transparent and accountable analysis of its performance and the explanation of the variations from the estimates

66 (2001) 184 ALR 113.

67 NNTT annual report 2001-2002, p 110.

68 Committee Report, December 2002, p 17.

69 NNTT annual report 2001-2002, p 111.

70 [2001] FCA 1706.

71 NNTT annual report 2001-2002, p 116.

72 NNTT annual report 2001-2002, p 117.

outcomes. The Committee has requested some additional information to be provided in subsequent reports to contribute to the reporting process.

2.75 While the Committee acknowledges the work of the NNTT it has raised some concerns over aspects of the NNTT's performance. The disparity between estimated targets and the outcome, together with the variation in the unit cost suggest that further work is required by the NNTT in this area.

CHAPTER 3

Indigenous Land Corporation

Annual Report 2001-2002

The Indigenous Land Corporation

3.1 The ILC is an independent statutory authority established under section 191 of the ATSIC Act. Under section 191B 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.

3.2 The funds for the ILC are derived from the Aboriginal and Torres Strait Islander Land Fund. Although responsibility for reporting on the Land Fund rests with ATSIC, the Report is included as Appendix 1 to the ILC annual report, and is considered in detail in Chapter 4 of this Committee's report.

Requirements for the ILC annual report

3.3 The Indigenous Land Corporation as a Commonwealth Authority (as defined in the *Commonwealth Authorities and Companies Act 1997*) is required to provide an annual report on the activities of the ILC under section 9 of that legislation. Section 1 of Schedule 1 provides that the report must include:

- (a) a report of operations, prepared by the directors in accordance with the Finance Minister's Orders; and
- (b) financial statements, prepared by the directors under clause 2 of this Schedule; and
- (c) the Auditor-General's report on those financial statements, prepared under Part 2 of this Schedule and addressed to the responsible Minister.

3.4 The annual report must be provided to the Minister by 15 October each year, and the Minister must table the Report in both Houses as soon as practicable.

3.5 The Finance Minister's Orders are those provided in the *Commonwealth Authorities and Companies Orders 1998* and require that the ILC's annual report include a range of information. The Committee examines the ILC's compliance below.

3.6 The ILC is also required to report on its performance under

- a) Occupational Health and Safety (section 74 *Commonwealth Employment Act 1991*);

- b) Freedom of Information (section 8 *Freedom of Information Act 1982*);
- c) Ecologically sustainable development and environmental performance (section 516A *Environment Protection and Biodiversity Conservation Act 1999*).

Compliance

Tabling

3.7 The ILC annual report was sent to the Minister by the Chairperson on 13 September 2002. It was tabled in the both the Senate and in the House of Representatives on 18 September 2002.

Enabling Legislation and Responsible Minister

3.8 The ILC has complied with the requirement to state the legislation which allows it to operate, as well as identifying the responsible Minister at page 10 of its 2001-2002 annual report.

Statutory Functions and Objectives

3.9 The ILC set out on pages 11 to 13 of annual report the powers and functions of the ILC.

3.10 In past reports the Committee has noted some typographical errors in this part. Although there are fewer, there are still some errors in statutory references¹ (for example “ATSIC Act” is “ASTIC”, and the Companies Act’s date is referred to as 1881; it should be 1981).

Directors and Meetings

3.11 The Committee notes that in its last report on the ILC’s annual report the Board was reminded of its obligation to attend Board meetings, in the light of poor attendance by the then chairperson and a committee member. The Committee notes that attendance has improved significantly over the previous year. This year reports all Directors as having participated in all Board meetings for the 2001-2002 year.

The Audit and Risk Management Committee

3.12 The Charter of the ILC’s Audit Committee was amended in 2000-2001 to include Corporate Governance and Risk Management responsibilities. The amendment also resulted in changes to the committee’s name. The Audit and Risk Management Committee has an over sighting, monitoring and advisory role in relation to the ILC and its subsidiaries to ensure compliance with its objectives and legislative requirements. The report includes information concerning the membership and role of

1 ILC annual report 2001-2002, p 13.

the committee (pages 16-17) as well as the attendance at and frequency of meetings (page 17). The report complies with the Finance Minister's orders under the CAC Act in this regard.

Organisational and Management Structure - including subsidiaries

3.13 The following information, meeting the Finance Minister's Orders, is provided in the ILC report:

- Staffing (pages 60-63).
- Staffing structure and salaries (pages 62-63).
- Consultants (Appendix 4, page 121).
- Details of the relationship between the ILC and its subsidiaries including an organisational chart (page 9), meetings (Appendix 3, page 117).

3.14 There has been an increase in staff from 73 last year to 85 in the 2001-2002 year. The ILC report notes that the ratio of Indigenous employees to non-indigenous remained static, and indicates that this was due in part to the high number of cessations of indigenous staff. In 2001-2002 there were 25 indigenous staff and 60 non-indigenous staff. The ratio the year before was 19 to 54.

Land Enterprise Australia

3.15 Land Enterprise Australia (LEA) was a wholly owned ILC subsidiary. It was formed to oversee commercial land management operations and the management of land-based enterprises purchased by the ILC. LEA operates within the framework of the National Indigenous Land Strategy 2001-2006.

3.16 During this reporting year, the Board decided to incorporate the activities of LEA into the structure of the ILC. In its place, the ILC established two directorates: the business planning directorate and the special projects directorate.²

3.17 The functions of the business planning directorate include the management of seven ILC enterprises (which are reported upon in detail), divisional support (including management advice), and development of a commercial acquisition and land management program.³

3.18 The functions of the special projects directorate include "Extension Operation and Training" for indigenous landowners, and assessment of ILC purchased land.

3.19 Also formed in 2001-2002 is the Land, Policy and Capacity Building Directorate. This is essentially a policy body, which also provides co-ordination of service delivery with other agencies and research.

2 ILC annual report, 2001-2002, p 44.

3 ILC annual report 2001-2002, p 44.

3.20 A comparison of the staffing structure for 2001-2002 with that of the previous year,⁴ reveals that the ILC has adopted a flatter management structure at the operational end of the ILC, and reintroduced the position of Deputy General Manager. That position was a part of the ILC's staffing (under the general staffing provisions of the ATSIC Act) until it was abolished in a general restructure in the 1998-99 reporting year. The position has been reintroduced – although the report does not explain why the position was again thought to be necessary. The Committee looks forward to comment in the next annual report as to the success or otherwise of this reintroduction.

Financial Statements

3.21 The ILC report reproduces the unqualified audit opinion from the Audit Office and the financial statements at pages 66 to 104.

Review of Operations and Future Prospectives

Land Needs Planning Process

3.22 In the previous reporting year, the ILC reported that the National Indigenous Land Strategy (required under sections 191N and 191P of the ATSIC Act) had been revised. Subsequently, this year's report indicates that the Board had also revised the Regional Indigenous Land Strategies. The ILC indicates these were the result of what was learned from their previous versions as well as incorporating the results of widespread consultations during the revision process.

Land Acquisition

3.23 A map on page 23 of the ILC report indicates the number and locations of acquisitions and divestments to June 2002. There are also maps providing the same information for each division.

3.24 In its report on the ILC annual report for 2000-2001, the Committee noted that the table included on page 28 of the 1998-1999 ILC annual report was an efficient way of providing state by state information regarding acquisitions, divestments and purchase approvals. This was also noted in its comments on the 1999-2000 annual report. Unfortunately, the table this year is the same as for the previous two reporting years. In the interests of accessibility, the table as it appears in the 1998-1999 annual report is preferable as it includes not only the total properties approved, settled and divested state by state, but it also includes the cumulative figures up to the reporting year, and most importantly the figures for the reporting year.

3.25 The tables (for example table 2 at page 24) do not make clear whether the figures are cumulative over a number of years, or concern only the year in review, and it is only by comparing the figures across several annual reports that it becomes clear

4 ILC annual report 2000-2001, p 62. and ILC annual report 2001-2002, p 62.

that the table represents cumulative figures. The Committee suggests this be made clear in future reports.

3.26 Also absent from this year's report is a clear statement of the number of approvals for purchase, settlements of purchases and divestments for the year. It appears by comparing table 2 on page 24 of the 2001-2002 annual report with table 2 on page 21 of the previous annual report, that 9 properties were settled in the 2001-2002 year, and 15 divested. However, the figure quoted for approvals – apparently a cumulative one - (247) in the 2001-2002 annual report is actually less than the same total for the previous year (262). The Committee suggests the ILC examine its presentation of information, and provide an explanation of any differences which appear inconsistent.

3.27 Compared to the previous year, the acquisitions were fewer, being half those in 2000-2001 and less than a third of those in 1999-2000. 15 properties were divested - one fewer than in 2000-2001 and 15 fewer than 1999-2000.

3.28 However, ILC expenditure on land acquisition increased from \$12.8 million in 2000-2001⁵ to \$15.4 million in the 2001-2002 reporting period.

3.29 The ILC report indicates that the past three years has seen a deliberate shift in emphasis from acquisition to that based on long term sustainable land use planning including an emphasis in economic planning.⁶ The Committee has previously commented on the decline in properties approved and settled and this remains of concern to the Committee. However, in its report on the 2001-2002 annual report⁷ the Committee noted the revised National Indigenous Land Strategy, and the Land Acquisition Strategy and Management Programs Guide were launched at the end of 2002. The Committee notes the shift in emphasis which the strategy represents and will monitor the situation closely.

Land Acquisition in urban areas

3.30 One of the issues which has arisen in past annual report inquiries, and in which the Committee maintains an abiding interest is the position of Indigenous people living in urban areas, and large country centres. The Committee notes that the ILC Board has recently formed a Committee on Social and Urban Issues which also has the responsibility of looking after educational issues which concern the ILC. The ILC is to be commended on this initiative, and the Committee looks forward to receiving a fuller report on its activities in the next reporting year.

5 ILC annual report 2000-2001, p 77.

6 ILC annual report 2001-2002, pp 21-22.

7 ILC annual report 2001-2002, p 30.

Land Management

3.31 The expenditure in land management has increased from \$6.8m million in the previous reporting year to \$10.9 million in the current year. This bears out the ILC's contention that it is endeavouring to provide the sustainable use planning discussed above as well as building capacity for the Indigenous landholders to continue and improve land use management.

Operational Challenges

3.32 The operational challenges are not as clearly identifiable as they have been in past reports,⁸ and this was noted in the Committee's last report on annual reports. However, those challenges are addressed in general terms in each region and demonstrate a commitment to implementing the ILC's revised program structure. The Committee reiterates its comments in the last report on annual reports regarding more comprehensive reporting.⁹

Consultations

3.33 The ILC report provides a list of community consultations which have taken place throughout the year at Appendix 5. Useful as this is, it would be valuable to know the purpose and outcome of these, and where they fit into the ILC's core activities.

Judicial decisions and review by outside bodies

3.34 The ILC report notes that there has been an agreement reached regarding the costs awarded to the ILC in the matter of *Firebrace v the ILC* [2000] FCA 1257. The Committee noted in its last report on annual reports that matter had been concluded.¹⁰

3.35 In the matter of *Bidjara Aboriginal Housing and Land Company Ltd v ILC* [2001] FCA 138 the ILC reports that the matter has been settled and the plaintiff will discontinue proceedings.

3.36 The Committee notes that the report of the Rogers review into the purchase of Roebuck Plains and Cardabia stations which had been received by the ILC Board in June 2001 was still under its consideration.¹¹ The Committee took evidence in private

8 ILC annual report 1999-2000, pp 38 & 39 and ILC annual report 2000-2001, pp. 41 & 42

9 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Report on the Examination of the Annual Reports for 2000-2001 in fulfilment of the Committee's duties pursuant to s.206(c) of the Native Title Act 1993, December 2002, p 31.

10 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund Report on the Examination of the Annual Reports for 2000-2001 in fulfilment of the the Committee's duties pursuant to s.206(c) of the Native Title Act 1993, December 2002, p 32.

11 ILC annual report 2001-2002, p 2.

session in relation to the Rodgers report. The Committee acknowledges that the ILC reports that Mr Rogers “found no evidence of illegality or criminal behaviour.”¹²

Indemnities and Insurance Programs for Officers

3.37 The report indicates that the ILC, its directors and officers as well as its subsidiaries are insured through Comcover. The insurance cost has increased from a total of \$153,171 in 2000-2001 to \$173,955 in 2001-2002.

Other legislative requirements

3.38 The ILC has reported on matters relevant to Freedom of Information (page 53). However, the ILC report does not contain any reference to information concerning Occupational Health and Safety. The Committee notes that the required OH and S information was included in the previous annual report.

3.39 In addition, the ILC is also required to provide a report under the *Environment Protection and Biodiversity Conservation Act 1999* in its annual report. Subsection 516A (6) paragraphs (a)-(e) set out the reporting requirements.

3.40 The Committee notes that matters relating to ecologically sustainable development were not addressed in the ILC report, and the ILC has acknowledged that this was due to an oversight.¹³ However, the absence of information on ecologically sustainable development and performance also arose in the Committee’s consideration of the 2000-2001 annual report.

3.41 The ILC’s failure to meet the reporting requirements in relation to Occupational Health and Safety and ecologically sustainable development requirements is of concern to the Committee. It requests that they are included in the 2002-2003 annual report, and subsequent reports for as long as they remain requirements applicable to the ILC.

Presentation and Style

3.42 The annual report is well-presented in a format which is generally easy to follow. However, as noted at the public hearing the colour scheme makes it difficult to read.¹⁴ The colour scheme referred to is the use of white printing on a mustard-yellow background; examples include figure 8 on page 62 of the Report (staffing structure) and Tables 3 and 4, page 63 (staff and salaries by EEO group). It detracts from an otherwise attractive report.

12 ILC annual report 2001-2002, p 2.

13 Answers to Question taken on Notice, dated 7 April 2003.

14 *Committee Hansard*, 18 March 2003, p 16.

Other Issues

Chairperson's Report

3.43 The Chairperson's report notes a number of Board and personnel changes, as well as highlighting an internal status audit of properties purchased by the ILC, and the resulting initiatives. The audit report examined:

- The physical status of the properties including improvements;
- The capacity of the title holders to manage the land effectively so as to meet their needs;
- The reasons for the ILC's initial purchase, and whether this still concurs with the aspirations of the title holders.

3.44 The outcome was mixed, and as a result the ILC has given in-principle approval to a new purchase strategy: properties will be purchased under one of four program streams, economic, environmental, social and cultural.

3.45 In evidence to the Committee the ILC's Acting General Manager, indicated that the four program streams reflected the language of the legislation which relates the ILC's activities to these four areas. Applicants for properties are required to identify their primary purpose in their application. He continued:

We require our clients or applicants to prepare business plans and to have a better understanding of some of the issues in running these types of properties. The reality is that the pastoral industry is marginal, but there is a belief that because we as Aboriginal people get land we are going to get in and make a lot of money from it. That does not always transpire.¹⁵

3.46 The Committee also notes the ILC's awareness of the need to develop and implement detailed strategies and objectives. In his evidence the Acting General Manager also told the Committee that the ILC is developing profiles of the 35 ATSIC regions in order to assist its assessment process of what is and is not viable in terms of the four program streams outlined above. The Committee welcomes these efforts to place the ILC's work in its statutory context and will monitor carefully further developments.

Performance

Outcomes

3.47 The ILC has as its outcome, the objective set out in section 191B of the Act (see above) and has one output: *Assistance in the acquisition and management of land*. This contrasts with previous years when three outputs were described individually:

15 *Committee Hansard*, 18 March 2002, p 3.

- land needs planning process;
- land acquisition;
- land management.

3.48 The Report explains (page 20) that the combining of the three outputs reflects the ILC's understanding and practice of its legislative functions and the fact that the "delivery of economic, environmental and cultural benefits to indigenous people cannot be successfully achieved while land acquisition, planning and management are considered as separate outputs".¹⁶ The main features of the new output are:

- A revision of the National Indigenous Land Strategy (NILS) for 2001 -2006, and the development of new regional strategies (RILS).
- The development of five strategic initiatives to implement the new land management policies. These include ILC involvement in group based planning and enterprise, regional development, coordination to assist Indigenous groups to access appropriate services, and research designed to benefit indigenous land holders and managers.¹⁷

3.49 In evidence to the Committee, the Acting General Manager also indicated that the organisation is focussing on capacity building both within and outside the organisation. The examples he gave include provision of support to back up the shortcomings in corporate governance skills.¹⁸

3.50 The Committee welcomes the ILC's change in business strategy, but considers that the combining of the three performance outputs and their associated objectives may not be in the interests of the ILC nor assist the reporting process.

3.51 Performance objectives and outputs must be clearly identifiable, achievable, and provide sufficient standards of accountability that they give a meaningful picture of the progress or otherwise of an organisation. The ILC view that combining its three outputs (land needs planning process, land acquisition and land management) into one output will assist in achieving its one outcome may be misplaced.¹⁹

3.52 The Committee is concerned that it will have the opposite effect, making it difficult for the ILC to particularise what is to be achieved, and thus what has been achieved, potentially making its accountability assessment less accurate. The Committee suggests that these measures be carefully developed to ensure that its achievements are properly reflected and possible failures can be clearly identified so that resources can be appropriately directed.

16 ILC annual report 2001-2002, p 20.

17 ILC annual report 2001-2002, p 22.

18 *Committee Hansard*, 18 March 2003, p 14.

19 ILC annual report 2001-2002, p 20.

Financial Management and Corporate Governance

Donation

3.53 The Chairperson of the ILC in her opening remarks drew the Committee's attention to a matter which was the subject of scrutiny at the supplementary estimates hearing on 20 November 2002.²⁰ The matter concerns a donation of \$50,000 to the Queensland Institute of Medical Research for research into the occurrence of rheumatic fever among indigenous populations. The donation was agreed to by the Board on August 2001.²¹ A press release from the ILC of 11 April 2002 indicates that Australia's indigenous population has the highest incidence of this illness (which can affect the heart) in the world.

3.54 The ILC was asked what constituted the basis for the donation and whether any legal advice was sought before making it. The question was taken on notice and the answer indicated that legal advice had been provided by the in-house ILC solicitor²².

3.55 In its response at the supplementary estimates hearing, the ILC indicated that the Board considered that the donation was authorised, under section 191H of the ATSI Act²³ and that it was on the basis that the research would:

enable research to be undertaken to address that disease, and therefore provide good health to people who could undertake land management.²⁴

3.56 In evidence to the Committee, the Chairperson of the ILC explained that:

The determination was made on the basis that a lot of our people who are in remote areas and yet are the only people to manage our properties have to be in good health. The decision was taken on the fact that this is an area that fits in with our land management side; we are just ensuring that some of our people will be in good health to manage those properties.²⁵

3.57 The Committee's research demonstrates that there is a disproportionate number of indigenous sufferers of rheumatic heart disease. The Australian Institute of Health and Welfare indicates that in 2002 the prevalence of rheumatic heart disease

20 *Committee Hansard*, 18 March 2002, p 2.

21 Background briefing, March 2003, p 2.

22 Answers to questions taken on notice, 7 April 2003.

23 Legal and Constitutional Legislation Committee Examination of Budget Estimates 2002-2003 Additional Information Volume 1, p 176.

24 *Legal and Constitutional Legislation Committee Hansard*, 20 November 2002, p 39.

25 *Committee Hansard*, 18 March 2003, p 5.

among indigenous Australians in the Top End was 1711 per 100,000, compared to 6 per 100,000 among other Australians in the same area.²⁶

3.58 The Committee noted the reasons advanced for the donation. However, the Committee considers that the connection between the work of the ILC and that of the recipient organisation could be perceived as questionable. Furthermore, although the Committee notes that the proposal came from a Board member it is not aware of the level of governance applied by the Board in its consideration of it.

3.59 While not imputing any impropriety to the process, the Committee considers that this constitutes a poor precedent, and suggests that in future, the ILC seeks and abides by advice from an independent legal adviser, before considering donating funds to other organisations. Without pre-empting such advice, the Committee considers that section 191H be rigorously applied in the consideration of any such donation.

Exposure to HIH and FAI

3.60 As noted in the previous report, the Chairperson confirmed that the ILC had lost \$5m as a result of the disintegration of HIH and FAI, and indicated that advice was being sought on the possibilities and options for recovery of those funds. The Committee asks that future annual reports include comment on the advice received by the ILC and implemented in relation to the recovery of the funds.

Consultancies

3.61 The Committee noted that \$2m had been spent on consultants in the 2001-2002 financial year.²⁷ The ILC indicated that some of the tasks done previously by consultants would now be undertaken by in-house staff, notably a property acquisitions officer to negotiate property dealings.

3.62 The ILC has also restructured its legal area which will result in more of that work being undertaken in-house.²⁸

3.63 However, the ILC indicated that the use of consultants is likely to remain at previous levels. In particular, they will be used in the ILC's remediation program in working with the personnel on the 108 properties owned by the ILC.

3.64 The consultants used by the ILC include the Cape York and Kimberley Land Councils. In evidence, the ILC indicated that the Land Councils have expertise available to them (for example, anthropologists) which is used by the ILC in area such as:

- undertaking consultations with traditional owners;

26 www.aihw.gov.au/cvd/majordiseases/rheumatic.html

27 *Committee Hansard*, 18 March 2003, p 3.

28 *Committee Hansard*, 18 March 2003, p 3.

- subregional overviews of land needs;
- working with proponent groups to determine aspects of land management proposals.

3.65 The fees (including GST of 10%), paid to the Kimberley Land Council were \$89,091.87 and \$26,050 to the Cape York Land Council.

3.66 The Committee also noted the cost of legal fees to the ILC²⁹ which was in excess of \$650,000 for the year 2001-2002. Almost \$466,000 of that was to the Australian Government Solicitor (the AGS). Further details of legal costs were taken on notice and provided to the Committee.

3.67 The Committee was advised that \$70,673 was paid to the AGS in a matter in the Federal Court: *Bidjara Aboriginal Housing and Land Company Ltd v ILC* [2001 FCA] 138. The balance of funds paid to the AGS were for 118 matters which included leasing and sub-leasing work, effecting grants of land, litigation, general advice and securities work.³⁰

3.68 In addition, the Committee was advised that the ILC is reviewing the possibility of employing in-house legal expertise.

3.69 The Committee acknowledges that the ILC's work is such that consultants are a necessary part of its operational repertoire. Similarly, as the acquisition, divestment and development of property is part of its core business, it is clear that legal costs will be substantial. However, the Committee encourages the ILC to continue to monitor these expenses and to explore and develop economies in its use of consultants.

Corporate Governance

3.70 As noted elsewhere in this report, the Land Fund will no longer receive government funding from 30 June 2004. In evidence to the Committee the issue of corporate governance arose both for the ILC and for the projects it establishes.

3.71 The Committee notes that the ILC has made advances over the last two years towards developing a cohesive approach to its activities. In evidence to the Committee, the Acting General Manager indicated that the ILC is endeavouring to build its internal capacity. Some examples he gave include client liaison, education and training.³¹

3.72 The Acting General Manager also outlined the ILC's strategies for capacity building for its clients. The ILC has developed processes for land tenure which are designed to ensure that organisations or groups applying for divested properties, have

29 *Committee Hansard*, 18 March 2003, pp 4 and 17.

30 Answers to Question on Notice, ILC 7 April 2003.

31 *Committee Hansard*, 18 March 2003, p 13.

a proven ability to manage the land effectively. This includes establishment of a leasehold arrangement for properties, as well as support for their operation.³²

Conclusion

3.73 Despite the ILC not providing all information required by the Finance Minister's Orders, it is clear from both the annual report and the evidence given to the Committee that the ILC has worked to re-establish its operational and corporate framework. To build on this, the Committee would like to see a more consistent focused approach to evaluation of past experiences and the way in which they inform the future operations of the ILC. This is so, particularly in view of the cessation of government contribution to the work of the ILC in 2004.

3.74 The Committee is aware that its last report on the ILC annual report for 2000-2001 was not available in time for its comments to be noted by the ILC for the 2001-2002 report. However, there are matters, which have been the subject of advice from the Committee in both its previous report, and those of its predecessors, and the Committee would like to see those suggestions implemented.

32 *Committee Hansard*, 18 March 2003, pp 14-15.

CHAPTER 4

The Aboriginal and Torres Strait Islander Land Fund Report 2001-2002

4.1 Section 193I of the ATSIC Act requires an annual report on the administration of the Land Fund, to be prepared as soon as practicable after the end of 30 June in each year. The Report must include:

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

4.2 These requirements have not altered since the last annual report, and the Committee notes that these requirements have been complied with.

Future Funding

4.3 In Appendix 1 to its annual report, the Indigenous Land Corporation set out the history of the Land Fund. When the Fund was established in 1995, \$200 million was allocated to the Land Fund. Thereafter until 2003-04, the Commonwealth Government each year was to appropriate \$121 million (indexed to 1994 values) to the Land Fund. Approximately 63 per cent was to be invested to build the capital base of the fund with the remaining 37 per cent to be administered by the ILC.

4.4 On 30 June 2004, this arrangement will cease and the annual earnings will replace the Government allocation to the Land Fund. The Land Fund itself will remain the property of the Commonwealth.

4.5 The Land Fund and its investments are administered by ATSIC under delegation from the Minister for Finance and Administration under section 193F (1) and (2) of the ATSIC Act. Two ILC directors are members of the Consultative Forum on the investment policy of the Land Fund.

4.6 In his evidence to the Committee the Acting General Manager of the ILC indicated that the Land Fund is estimated on maturity to be worth about \$1.3 billion¹.

1 *Committee Hansard*, 18 March 2003, p 12.

The Acting General Manager also indicated that the ILC is aware that it will have to rely solely on the earnings from the Land Fund, and this has led to a number of strategies - including a stock take of properties and assets - designed to assist with the ILC planning.

4.7 The Committee notes that this strategy has been operational for a short time, and acknowledges that it is possible more time is required to assess its effectiveness. However, the real return on the Land Fund Account is set out on page 110 of the ILC annual report, and shows that there has been a drop in its real return on assets. Table 2 below reflects the 2001-2002 position compared to the last financial year.

Table 2 – Land Fund Assets

ITEM	2000-2001	2001-2002
Assets as at 1 July	\$784,498,585	\$940,695,947
Add special appropriation 3 July	\$87,446,000	\$88,845,000
Assets as at 3 July	\$940,695,947	\$1,095,203,524
Nominal return on Assets	7.89%	6.38%
Inflation factor (set under s193D (1) of the ATSI Act)	1.60%	2.7%
Real return on assets	6.19%	3.58%
Required return to meet the target balance for June 2004	3.7%	2.50%

4.8 The required real return for the 2002-2003 year is 2 percent. The performance of the fund in the 2001-2002 year is clearly down on the previous year, however the Committee notes that this is in large part due to the higher inflation allowance – 1.1 percent more than the previous year. The Committee acknowledges that at the present rate the projected capital base will be sufficient to allow the annual earnings to replace the Government appropriation in 2004.

4.9 The Committee is of the view that the ILC are prepared for the transition and that, based on the financial year under review, the Land Fund will provide sufficient finances for the ILC at its current expenditure. However, the Committee would also like to see the ILC engage in an over-arching evaluation of the Fund, which would include an assessment of the objectives which underlie the establishment of the Fund, and an evaluation of the ILC's response to the matters which have confronted it. This,

the Committee considers, would provide a foundation for realistic assessment and management of the Fund's potential.

Legislation

4.10 The Committee notes that proposed amendments to the *Financial Management and Accountability Act 1997* (FMA Act) are part of the draft Financial Framework Legislation Amendment proposals which are being considered by the Joint Statutory Committee on Public Accounts and Audit. Included in the proposed legislation is the proposal to amend the title of the Land Fund so that it becomes known as the Land Account.

Summary

4.11 As the Land Fund approaches the date that Commonwealth funding will cease the Committee will closely monitor the Fund. The Committee notes that its Financial Statements for 2001-2002 received an unqualified audit. Further, the reporting about the Land Fund for 2001-2002 complies with legislative requirements.

CHAPTER 5

Conclusion

5.1 The Parliamentary Joint Committee on the National Native Title Tribunal and the Aboriginal and Torres Strait Islander Land Fund has in this report discharged its statutory duty to examine the annual reports of the NNTT and the ILC and has also considered the annual report on the Aboriginal and Torres Strait Islander Land Fund.

5.2 Chapter 2 considers the Committee's examination of the NNTT's annual report for 2001-2002. The Committee concluded that the NNTT had met all reporting requirements providing an accessible and informative report. On the basis of the Committee's examination some suggestions for future reports were made and some concerns over the NNTT's performance were raised.

5.3 In Chapter 3 the Committee details its examination of the ILC's annual report for 2001-2002. Although the ILC did not meet all reporting requirements sufficient information was included for the Committee to make the assessment that the ILC had worked to re-establish its operational and corporate framework. The Committee made suggestions for future annual reports and identified concerns that it has in relation to the ILC performance.

5.4 The Committee's examination of the Land Fund (Chapter 4) focussed on future funding for the ILC's operations given that the Government appropriation for the fund will cease in 2004.

Senator David Johnston
Chair

