

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 2002-2003

June 2004

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THE COMMITTEE

Members

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Senator J McLucas (**Deputy Chair**)

Senator P Crossin

Senator M Lees

Senator N Scullion

Mrs K Hull MP

Mr R McMullan MP

Mrs S Ley MP

Mr P Secker MP

Hon W Snowdon MP

Secretariat

Jonathan Curtis, Secretary

Anne O'Connell, Principal Research Officer

Barbara Rogers, Executive Assistant

The Senate
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3598

Facsimile: (02) 6277 5866

Email: nativetitle.joint@aph.gov.au

Internet: www.aph.gov.au/native_title

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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). Under Section 206(c) of the *Native Title Act 1993*, ('the NT Act') the Committee is required 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* ('the ATSIC Act'). The Committee, at its discretion, reports to Parliament on any matters to which Parliament's attention should be directed.

1.2 The Committee considers the analysis of the annual reports to be an important mechanism for giving agencies comment and constructive assistance to improve performance and accountability.

Reports under consideration

1.3 Pursuant to these requirements, the Committee examines three reports in this report:

- the National Native Title Tribunal (NNTT) Annual Report 2002-2003;
- the Indigenous Land Corporation (ILC) Annual Report 2002-2003; 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 2002-2003, and presented as Appendix 1 of the ILC's annual report. The Land Fund is the source of the ILC's funding.

National Native Title Tribunal

1.5 The NNTT is established under Part 6 of the NT Act. The annual report of the NNTT was tabled in the Senate and in the House of Representatives on 6 November 2003.

The Indigenous Land Corporation and the Land Fund

1.6 The ILC is a statutory authority established under section 191A of the ATSIC Act. Section 191B of this Act states that the purpose of the Corporation is to assist Indigenous people to acquire and manage land, and requires the Corporation to support sustainability, as well as the social, environmental and cultural benefits in the acquisition and use of the land.

1.7 Funding for the operations of the ILC is provided from the Land Fund pursuant to Division 10 of Part 4A of the ATSIC Act. ATSIC is responsible for reporting on the Land Fund 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 2002–2003, which was tabled in the Senate and in the House of Representatives on 14 October 2003.

1.8 The ILC's annual reports have been prepared in accordance with section 9 of the *Commonwealth Authorities and Companies Act 1997* since 1998.

Public Hearings

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

- Thursday 12 February 2004 (the National Native Title Tribunal); and
- Tuesday 2 March 2004 (the Indigenous Land Corporation).

1.10 The Committee acknowledges the time taken to provide evidence to the Committee by both the National Native Title Tribunal and the Indigenous Land Corporation.

Adoption of the Report

1.11 The Committee considered and adopted the report at a private meeting on 21 June 2004.

Chapter 2

National Native Title Tribunal Annual Report 2002-2003

The National Native Title Tribunal

2.1 The NNTT'S functions are set out in section 108 of the NT Act. These functions include: applications, inquiries, and determinations, mediation in Federal Court proceedings, providing assistance or mediation when requested and conducting research.

Formal reporting requirements

2.2 Under section 133 of the NT Act, 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' as soon as practicable after 30 June each year. The report must include:

- financial statements under 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.

2.3 The NNTT is a Statutory Authority which, as a matter of policy, complies with the Requirements for Annual Reports (the Requirements) prepared by the Department of the Prime Minister and Cabinet.¹

2.4 The Requirements note that their purpose is 'accountability, in particular to the Parliament'.² They set five core items of compulsory information together with other mandatory information from specific statutory provisions. Reports must also include a letter of transmittal.

2.5 The core items of information prescribed by the Requirements are:

- review by Departmental Secretary (or equivalent);
- departmental overview;
- report on performance;

1 *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 2003.

2 *Requirements for Annual Reports*, p. 3

- management and accountability;
- financial statements; and
- other mandatory information.

2.6 In addition the annual report must include a letter of transmittal and aids to access – such as a glossary, index, table of contents and contact details.³ The NNTT's compliance is set out below.

Compliance with formal requirements

President's overview

2.7 The President's report notes that the work of the tribunal was significantly affected by the High Court decisions in *Western Australia v Ward*,⁴ *Wilson v Anderson*⁵ and *Members of the Yorta Yorta Aboriginal Community v Victoria*.⁶ As a result of these judgements, the Tribunal and the parties which use it were compelled to reassess aspects of Native Title law and practice.⁷ In evidence to the Committee, the President of the Tribunal explained that:

... the cumulative effect of those judgements was to slow down a number of processes under the Act, including the resolution by agreement of claimant applications. Suddenly we had to find out which areas of land were still susceptible to claim.⁸

2.8 The Committee notes the impact of these decisions and in this report observes the effect they have had on the Tribunal's predicted workloads.

2.9 In its report on the NNTT Annual Report for the year 2001-2002,⁹ the Committee noted that more detailed information on the Tribunal's future prospects and trends would be more informative. The Committee is pleased that this detail has been provided this year. The President's report identifies eleven trends, including the

3 *Requirements for Annual Reports*, p. 5

4 (2002) 191 ALR 1

5 (2002) 191 ALR 191

6 (2002) 194 ALR 538

7 NNTT Annual Report 2002-2003, p. 1

8 *Committee Hansard* 12 February 2004, p. 23

9 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Report on the Annual Report of the National Native Title Tribunal and the Aboriginal and Torres Strait Islander Land Fund 2001-2002*, p. 6

increasing clarity of the law on native title; an increase in the volume of native title work; an emergence of agreement making as the usual method of resolving native title issues; reduction in timeframes, and the effect on the quality of agreement making of the available resources. This allows the Committee to better gauge the Tribunal's progress from year to year.

2.10 In the last Report on the Annual Report, the Committee also noted that there was no mention of the financial performance of the Tribunal in the President's review.¹⁰ This has occurred again in this year's Annual Report.

2.11 While this is clearly dealt with in depth elsewhere in the Report, the Committee believes that there should be a statement about the general financial trends of the Tribunal from the President. The Committee would like to see this in future Annual Reports.

Tribunal Overview

2.12 The Tribunal retains its single outcome: the recognition and protection of native title. The overview complies with the requirements in setting out the organisational structure, as well as the role and function of the Tribunal. The section of the report which deals with Tribunal members has been moved – appropriately in the Committee's view – to the 'Overview' section of the Annual Report rather than being reported under 'Corporate governance'.

2.13 The four output groups for the Tribunal are: registrations, agreement-making, arbitration and assistance, and notification and reporting. They remain unchanged from the previous annual report.

Performance

Financial performance

2.14 For the third year in succession, the Committee notes that there were 'lower than expected activity levels'¹¹ this year, which resulted in an underspend of the allocated \$29.632m by \$1.977m. There are underspent items which are common to this annual report and that for 2001-2002. They include:

- output 1.1.2, Native Title Determinations;
- output 1.2.1, Indigenous Land Use Agreements; and
- output 1.3.1, Future Act Determinations.

10 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, p. 6

11 NNTT Annual Report 2002-2003, p. 35; NNTT Annual Report 2001-2002, p. 30; NNTT Annual Report 2000-2001, p. 42

2.15 In evidence, the Tribunal confirmed that the surplus has been repaid to consolidated revenue. The Registrar told the Committee:

We are coming into the last year in 2004-05 of the current estimates cycle. There is a funding figure roughly equivalent to this year ... set down for the final year. We then come into a new estimates cycle, and there would have to be a rebasing of the tribunal's budget for the estimates cycle beginning from 2005-06.¹²

2.16 The Committee therefore expects that based on the current estimates cycle that there may also be a surplus next financial year, but that a more realistic set of estimates of expenditure and outputs will come into operation thereafter.

Outcome and output performance

2.17 As with the previous annual reports, the Tribunal provides 'performance at a glance' tables which show the unit cost as well as the total cost of each output, against the estimates for each output.

2.18 The Tribunal annual report indicates that its budget planning is consistent with the statutory requirements. The annual report also reproduces its comments from 2001-2002 regarding the difficulty of benchmarking, in the light of the nature of the Tribunal's work.

2.19 The Committee acknowledges that there may be some distinct variation in the work of the Tribunal from year to year, and also acknowledges the comments made by the President in evidence:

In the year covered by this report, the High Court and the Federal Court delivered landmark decisions that affected a range of activities, including the registration and testing of claimant applications, the mediation and settlement of claimant applications, the areas over which native title might or might not be found to exist and hence the areas where procedural rights under the Native Title Act may or may not be exercised. One consequence of those decisions was a slowing down of some activities and some lower than expected outputs.¹³

2.20 However the resource usage also indicates that although the allocated funds are underspent, the unit cost exceeds the estimated cost, frequently by a considerable amount. As with previous years, the Committee remains concerned at this trend.

2.21 The Tribunal has now been in existence for over ten years, and the Committee considers that some analysis of the directions the Tribunal has taken over that period should be undertaken in order to predict trends in the future, and provide a contextual

12 *Committee Hansard*, 12 February 2004, p. 7

13 *Committee Hansard*, 12 February 2004, p. 1

view of the Tribunal's performance in relation to other Tribunals and similar quasi-judicial bodies.

Management and accountability

2.22 The Annual Report complies with the requirements for this part. In its previous report, the Committee noted the importance of the policy development groups, in particular work of the agreement-making strategy group, which has developed an agreement-making model in accordance with best practice.¹⁴ The Committee notes that this work has progressed with the model being the subject of training and implementation by the agreement-making strategy group.¹⁵

Employment

2.23 The Committee noted that the Tribunal reported the resignation of 27 employees, representing 9.85 per cent of the workforce. In the previous reporting period this figure was 7.02 per cent. The Tribunal told the Committee that this was due to a combination of factors, including the length of time the Tribunal has been operational and the consequent moving of experienced and well-trained staff into related but non-Tribunal areas.

2.24 Indigenous employment increased over the period, and the Committee notes that its request for more information on indigenous employees has been provided this year. In particular, the Tribunal focused on training and career development, and over several days held a workshop for indigenous employees which covered such issues as:

- the role of the indigenous employee in an organisation such as the Tribunal;
- responding to family and community about the nature of their work, and what they can achieve as indigenous tribunal employees; and
- the ways in which the indigenous employees could contribute to the administration and policy setting for the Tribunal.¹⁶

2.25 A report and strategy paper were provided to the Tribunal at the end of the conference.

2.26 The Tribunal observed that some of the Indigenous employees who have left may have done so through disappointment with the work of the Tribunal, due to the limitations inherent in its statutory basis and the associated distance from advocacy or

14 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, p. 8

15 NNTT Annual Report 2002-2003, p. 104

16 *Committee Hansard*, 12 February 2004, p. 9

community work. In evidence, the Registrar noted that some indigenous employees have interests in these areas and have returned to assist their communities.¹⁷

2.27 However, the Committee also notes that former Indigenous staff often continue to contribute to the agreement making process in other capacities, and so the experience gained from the Tribunal is not lost to the overall native title system.

2.28 The Committee commends the Tribunal for taking providing this additional information, which was a positive inclusion in this year's Report. The Committee looks forward to an update on the implementation of conference initiatives in the 2003-2004 Annual Report.

Audit report and financial statements

2.29 These are set out at Appendix VII to the Report, and have been appropriately certified by the Auditor as giving a true and fair view of the financial position of the Tribunal as at 30 June 2003.

Other mandatory information

2.30 The Requirements stipulate that the report should include the following information:

- occupational health and safety performance;
- freedom of information;
- advertising and market research; and
- letter of transmission and aids to access.

2.31 The Committee notes that the Tribunal has complied with these requirements, and has also complied with the requirements for presentation to the Minister and for tabling.

The work of the NNTT

2.32 The Tribunal has one outcome: the recognition and protection of Native Title. There are four output groups which contribute to achieving this:

- registrations;
- agreement-making;
- arbitration; and

17 *Committee Hansard*, 12 February 2004, p. 11

- assistance, initiatives, notification and reporting.

2.33 The Tribunal notes that as was the case last year, there is considerable variation between estimates and the actual outcomes in any given output category.

2.34 The Tribunal attributes this to two main causes:¹⁸

- the number of significant court decisions affecting the claim mediations, and other processes in unpredictable ways; and
- delays occurring when parties and their representatives were either considering the consequences of a case or awaiting the outcome of one.

2.35 The Tribunal's report and evidence demonstrated this effect on the individual output categories within each group.

Output group 1.1 Registrations

2.36 In each output group there are subcategories. The Registrations group includes:

- claimant applications;
- Native Title determinations; and
- ILUAS.

2.37 As with previous Annual Reports the Committee finds the 'performance at a glance' tables, which are included in the output group reports, a concise and informative tool for interpreting the Annual Report.

2.38 In each category of Registration, the Committee notes the anticipated activity levels have not been realised, and the unit cost has been considerably more than anticipated. The following table illustrates this:

Output	Estimate number	Actual number	Estimate unit cost \$	Actual unit cost \$
Claimant applications	120	110	27,736	35,584
Native Title Determinations	20	3	21,283	32,666
ILUAS	55	36	25,589	31,046

2.39 The Committee notes in this output group that although the unit cost is more than anticipated, the overall cost is less, because of the reduced number of actual registrations received. The other output categories are in a similar position. This is comparable to the situation reported in the previous year.

Output group 1.2 Agreement making

2.40 The output group 'agreement making' includes:

- indigenous land use agreement making;
- claimant, non-claimant and compensation agreement making; and
- future act agreement making.

2.41 The effect of the slowing in activity attributed to the court decisions, referred to previously, is clearly seen in this output group. In Indigenous Land Use Agreement Making (output 1.2.1), the overall output cost was \$1.8m less than the estimate of \$3.77m. The Committee also notes the Tribunal's comment that in the case of ILUAS, it is not necessary for the Tribunal to be involved, and this makes predicting the cost and extent of that involvement difficult to estimate.

2.42 For claimant, non-claimant and compensation agreement-making (output 1.2.2), there were only claimant agreements made, (60 compared to an estimated 100) and the highest number was in Queensland. The Tribunal notes that the decisions in *Yorta Yorta*, *Ward*, *Wilson* and *De Rose* had the effect of delaying agreements while the parties assessed the consequences of the decision for them.¹⁹

2.43 Similarly, for output 1.2.3 – future act agreement-making – the Tribunal cannot influence the number of objection applications and future act determination applications lodged, although, once lodged, the process and therefore the number of conferences is to some extent within the Tribunal's control.²⁰ For this reporting year there were 55 agreements mediated by the Tribunal (compared to 60 last year).

Output Group 1.3 Arbitration

2.44 The two outputs are:

- future act determinations; and
- objections to expedited procedure.

2.45 The first output refers to the number of determinations made as to whether or not a future act may proceed. There were 56 determinations in the reporting year (90

19 NNTT Annual Report, p. 63

20 NNTT Annual Report, p. 71

were predicted) compared to 19 in the previous year. The Tribunal suggests this is partly a result of promoting future act consent determinations as a means of fast tracking agreements.

2.46 The unit cost (\$18,051) was a little less than that predicted (\$18,850), and much less than the cost last year (\$54,996).

2.47 For the second output, the actual number (917) was similar to last year (909), and the unit cost \$500 less than the estimate of \$3416.

Output group 1.4 Assistance, notification and reporting

2.48 There are three parts to this group:

- assistance to applicants and other persons;
- notification; and
- reports to the Federal Court.

2.49 The first output has been separated into contacts, events (including specific research projects, and educational programs and seminars) and initiatives, which includes capacity building projects for native title participants, and is a new category included in this report. The Tribunal includes a comprehensive account of the type of assistance (for example: information on preparation of applications, notifications, application/registration information) provided to applicants and other persons as well as the information about the states in which it is given. The state recording the most assistance was Queensland followed by NSW and Western Australia, and the area of greatest assistance was application/registration information, including searches.

2.50 The Tribunal explains that there was a greater need for assistance resulting from the Court decisions mentioned previously, as parties endeavoured to understand the implications of the decisions.²¹

2.51 In the area of notification, the Committee notes that the results were similar to last year in both overall cost and volume.

2.52 There were fewer than anticipated Federal Court notifications, and the Committee notes that the overall cost was less than estimated, but that the unit cost was more. The Tribunal notes the effect of the High Court cases on activity as the expected level of Federal Court reporting was not achieved because the court did not request the number of reports anticipated.

21 NNTT Annual Report 2002–2003, p. 101

Comment

2.53 The Committee again raised the issue of performance estimates and costings with the Tribunal at this year's hearing. The Committee heard that this is the third year that the Tribunal has had to report in this way: that is, through estimating performance against a set of indicators, and then responding to the results.²²

2.54 The comprehensive nature of the information provided by the Tribunal expands the Committee's understanding of the Tribunal's work. In evidence, the President said:

The documents start as documents which have to comply with various government requirements. We are more than happy to be transparent in that sense so long as the readers including this committee, appreciate that there is much more to it than that. Hence in my overview I try to give at least some allusion to the underlying human elements which really drive the process and, ... motivate us in our work.²³

2.55 The Committee notes that the performance of the work of the Tribunal as described within the parameters required of Commonwealth organisations may not necessarily be complete when viewed merely in terms of unit cost or the number of units achieved. The nature of the processes involved are inherently unpredictable, and one arbitration may be concluded in a short time, and others take much longer – yet each is a unit to which must be ascribed a cost.

2.56 The Committee believes that there is a need to bring the performance figures closer to the estimates, and was told in evidence that there will be a rebasing of the Tribunal's budget for the estimates cycle beginning 2005-06.

Consultants

2.57 There was an increase in the expenditure on consultants in 2002-2003. The amount increased from \$1,342,302 to \$1,808,355. Most of this is accounted for in the area of IT expenditure. The Tribunal indicated in the annual report, that as a result of the consultant's report some of its IT requirements will be undertaken in-house.²⁴

2.58 Included in the IT strategy is the Geospatial and Mapping unit. While acknowledging the important contribution of this unit, the Committee was concerned that the unit is not given discrete treatment in the report, and the associated cost is not clear.

22 *Committee Hansard*, 12 February 2004, p. 3

23 *Committee Hansard*, 12 February 2004, p. 3

24 NNTT Annual Report, 2002–2003, p. 123

2.59 The Registrar indicated that the geospatial work of the Tribunal will be reported upon more fully in the coming year.²⁵

Client Survey

2.60 During the year the Tribunal undertook a survey of client satisfaction, which demonstrated 65 per cent overall satisfaction with all output areas. The Tribunal reports that the results will be used to determine whether changes to practice, business processes or strategies are required.²⁶

2.61 The Committee looks forward to receiving information regarding these strategies in the next annual report.

Conclusion

2.62 As indicated, the Committee considers this report to be informative beyond the basic requirements for Commonwealth Departments and agencies.

2.63 The Committee's concern is the estimating process for both the volume of work and associated expenditure. The Committee appreciates the unpredictability of some of the factors which affect these outcomes and it may be the case, as has been suggested, that in its current form the Annual Report is not the most comprehensive way to reflect the work of the Tribunal. The rebasing budgetary process for 2005–2006 may assist the Tribunal in its reporting.

25 *Committee Hansard*, 12 Feb 2004, p. 19

26 NNTT Annual Report, 2002–2003

Chapter 3

Indigenous Land Corporation Annual Report 2002-2003

The Indigenous Land Corporation

3.1 The Indigenous Land Corporation (ILC) is a Commonwealth Authority established under section 191 B of the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ATSIC Act). As an independent statutory authority it is required to provide an annual report under section 9 of the *Commonwealth Authorities and Companies Act 1997*. 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.

Function of the ILC

3.2 The ILC was established in 1995 to assist Indigenous peoples in Australia to acquire land and to manage Indigenous-held land in a sustainable way to provide cultural, social, economic or environmental benefits for themselves and for future generations.

3.3 The Corporation is funded through the Aboriginal and Torres Strait Islander Land Fund, and the Land Fund Report is included as an annexure to the ILC Annual Report. The Land Fund report is addressed separately in chapter 4 of this report.

Compliance requirements

3.4 The ILC Annual Report was tabled on 14 September 2003, in both the Senate and the House of Representatives.

3.5 The ILC has reported in compliance with the following requirements:

- enabling legislation and responsible Minister;
- statutory functions and objectives;
- directors and meetings; and
- the Audit and Risk Management Committee.

3.6 The ILC is also required to report on:

- organisational and management structure;
- consultants;
- financial statements;
- occupational health and safety (section 74, *Commonwealth Employment Act 1991*);
- freedom of information (section 8, *Freedom of Information Act 1989*); and
- ecologically sustainable development and environmental performance (section 516A *Environment Protection and Biodiversity Conservation Act 1999*).

Reporting against requirements

Organisational and management structure – including subsidiaries

Staffing

3.7 The Committee notes that there have been some minor variations in staffing. The number of Indigenous staff has dropped from 25 to 23. Noting this, the ILC Annual Report sets out some strategies for addressing the change over the coming year,¹ and offered further confirmation in evidence.²

3.8 The Committee noted that the position of Deputy General Manager was re-established in the last financial year, however the staffing document on page 76 of the Report does not mention the position, nor its occupant. In evidence the Committee was advised that the position still exists, but that the incumbent is on leave for 12 months.³

Business Planning Directorate

3.9 The Report notes detailed information about six of the enterprises in which it is involved. Clearly the drought has affected some of the properties severely. However, the Committee considers a more detailed examination of the position of the properties managed would assist the Committee in assessing whether or not the management of the properties is successful.

1 ILC Annual Report 2002-2003, p. 74

2 *Committee Hansard*, 2 March 2004, p. 8

3 *Committee Hansard*, 2 March 2004, p. 23–24

3.10 Note 13A to the Financial Statements⁴ is a list of properties and includes the number of stock carried, the valuation of land and incidentals, as well as capital improvements. The Committee heard evidence regarding a number of these properties, and found that the way the accounts are presented does not give the information the Committee needs to perform its oversight role adequately. Clearer detail is required about:

- how much is paid for each property;
- who is currently operating the property;
- how is the success or otherwise of the enterprise being measured; and
- what is being done to help the non-performing properties.

3.11 From discussions at the hearing, the Committee notes it will be provided with more detailed material on the progress of ILC properties in the next Annual Report.⁵

Financial Statements

3.12 The Committee notes that the financial statements were prepared in accordance with the Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997*. They have been given an unqualified audit opinion.

Outcomes and outputs

3.13 The ILC has one outcome:

To provide economic, environmental, social and cultural benefits for Aboriginal persons and Torres Strait Islanders.⁶

3.14 Associated with this outcome is one output:

Assistance in the acquisition and management of land.⁷

3.15 The Committee notes that during the reporting year, the Corporation implemented its new land acquisition and land management programs. There are four new program streams for land acquisition and the ILC received 67 applications in the 2003 calendar year (compared to 59 applications in 2002).⁸ The Committee was

4 ILC Annual Report, 2002–2003, p. 106

5 *Committee Hansard*, 2 March 2004, p. 32

6 ILC Annual Report, 2002–2003, p. 32

7 ILC Annual Report, 2002–2003, p. 32

8 *Committee Hansard*, 2 March 2004, p. 1

pleased to see that of the seven properties purchased in 2003, six were in urban areas, as the Committee has previously encouraged the ILC to direct greater attention to urban Aboriginal communities.⁹

3.16 The Committee noted last year that the table detailing properties acquired, settled and divested required more information; the Committee is pleased to note that the table is more informative, and distinguishes between the cumulative figures and the figures for the reporting year.¹⁰

3.17 The Committee notes that the amount spent on direct land acquisition in 2002-2003 was \$12,258,824, which compares to \$15,365,592 the previous year. The Committee notes that the new land acquisition strategy was being phased in during the reporting period, which shifted the emphasis from land acquisition to long term sustainable planning. The Committee will continue to monitor this area closely.

Operational Challenges

3.18 The Committee notes that in the last report, it commented on the non-specific nature of this section. In this report, the general operational challenges are not specified: each region has noted its own challenges, and the only one which specifies them in any depth was the Eastern division. There is little information as to how these challenges are being met.

Consultations

3.19 The Report notes the purpose of each consultation. In its report last year, the Committee noted that it would like to receive information not only about the purpose of the consultations, but their outcome in the context of the ILC's core activities. While being mindful of creating too great a reporting burden on the ILC, the Committee considers that this information is important and should be made available to the Committee through the Annual Report.

Judicial decisions and review by outside bodies

3.20 There are no significant judicial decisions reported.

Indemnities and insurance programs for officers

3.21 The ILC report notes a significant (81%) increase this year in insurance premiums. The insurance is taken out through Comcover, the Commonwealth Government's insurable managed fund. The ILC does not have an exemption from insuring through Comcover.

9 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, p. 25

10 ILC Annual Report, 2002-2003, p. 36

Other legislative requirements

Freedom of Information

3.22 The Committee notes there were four requests received – compared to none the previous year – with one outstanding as at 30 June 2003.

Occupational Health and Safety

3.23 The Committee notes that the Annual Report contains no specific reporting of occupational health and safety issues, but initiatives in this area were noted in the section on Human Resources.¹¹ The Committee indicated in its last report that this information is required.

Ecologically sustainable development and environmental performance

3.24 The Committee observed the absence of this section in the previous ILC Annual Report, and notes it has been included in this year's report.¹²

Other Issues

The Chairperson's report

3.25 The Chairperson's report notes:

- the progress of the new NILS strategy and the development of a property remediation strategy, resulting from the internal audit undertaken in the 2001–2002 Annual Report;
- the release of the Land Acquisition Strategy, under which the ILC will only acquire land or provide support for land management where there is demonstrated commitment and capacity for the project, and which will fit into one of the ILC's four benefit categories; and
- the outcomes are focussed on the ILC's required outcomes.

Performance

3.26 Last year the Committee expressed concern that combining three outputs (land needs planning process, land acquisition and land management) into one (assistance in

11 ILC Annual Report 2002-2003, p. 75

12 ILC Annual Report 2002-2003, p. 17–23

the acquisition and management of land) may not give a meaningful picture of the progress or otherwise of the organisation.¹³

3.27 This issue remains of some concern. The 2002-2003 Annual Report includes more content on the strategies used in land management, but little or no information of the results obtained using these strategies. The Committee acknowledges that with some of the more recent initiatives, it may be a little early to report results. However, where this is the case, it should be stated.

Financial Management and Corporate Governance

Exposure to HIH and FAI

3.28 The Committee Report last year requested that the ILC Annual Report information on efforts to recover approximately \$5m owed to the ILC as a result of the demise of HIH and FAI.¹⁴

3.29 There was no report included in the Annual Report, however in evidence, the ILC informed the Committee that the matter is commercial-in-confidence, with ongoing discussions with the ILC's legal representatives.

Consultancies

3.30 The 2002-2003 Annual Report notes that:

Over the past two years the ILC has significantly reduced its use of consultants.¹⁵

3.31 The total amount spent on consultants in 01-02 was \$2,287,046; in 2002-2003 it was \$1,399,085. The Committee notes this considerable reduction.

3.32 At last year's hearing into the Annual Report, there was a point of contention around the amount spent on legal fees. The total amount on this item has been reduced from \$650,469 in 2001-2002 to \$448,777 in 2002-2003.

3.33 While the amount spent on legal fees with the Australian Government Solicitor was reduced from \$465,812 (2001-2002) to \$212,720 (2002-2003), the amount spent on other legal contracts rose from \$184,657 in 2001-02 to \$236,057 in 2002-03.

13 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, p. 29

14 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, p. 31

15 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Examination of ILC Annual Report for 2001-2002*, pp. 70-71

3.34 When the matter was raised at the hearing, the ILC explained that two major litigation matters in which the ILC was involved accounted for a proportion of this expenditure. The Committee's attention was drawn to page 66 of the Annual Report which set out the nature of these matters: one involving a caveatable interest in a property, and another in which the ILC was given legal standing in a dispute involving an ILC-granted property.

3.35 The Committee notes that the ILC is building up its internal expertise, and recognises that from time to time it will be necessary to use external expertise.

Presentation and style

3.36 The Annual Report is easy to follow and well presented. The Committee's reservations about the presentation of last year's report no longer apply, with improvements in the graphics and charts. There is also a marked reduction in typographical errors.

Conclusion

3.37 The Committee notes the ILC's general compliance with its statutory reporting requirements, and commends the ILC for improvements to the content of their Annual Report made over the last two years. However, the Committee would still encourage the Corporation to further broaden the information provided, particularly in relation to its business operations, to enable the Committee to meaningfully evaluate the performance of the properties managed by the Corporation, and thus the Corporation itself.

Chapter 4

The Aboriginal and Torres Strait Islander Land Fund Annual Report 2002-2003

4.1 The annual report on the administration of the Land Fund is prepared under section 193I of the ATSIC Act. Under the section, the report is required to include particulars of amounts credited to, and paid out of, the Land Fund during the financial year, together with:

- particulars of investments of the Land Fund;
- the realised real return on investments of the Land Fund for the financial year; and
- such other information (if any) as is specified in the regulations.

4.2 The Committee notes that these requirements have been complied with, and that the Financial Statements for 2002–2003 have received an unqualified audit report.

4.3 The history of the Land Fund is contained in Appendix 1 to the ILC Annual Report. The report notes that the fund is to become a self sustaining capital fund by 30 June 2004, and the fund will receive the realised return on investments from the year before.

4.4 The Land Fund received its last payment from Government last July. The General Manager of the ILC, Mr David Galvin explained to the Committee that the consultative committee to the land fund – which includes the chair, another member of the board, Mr David Baffsky, as well as a delegate of the Minister for Finance (the chief financial officer of ATSIIS) – has written to the Minister for Finance, outlining a strategy to support the land fund in its task of providing ongoing income for the ILC. This includes the possibility of relaxing some of the existing investment restrictions.¹

4.5 The Committee notes that for 2002–2003 the real return on investments exceeded the two per cent per annum previously identified as required (as at 30 June 2002) to reach the June 2004 target balance.

4.6 As the Report points out, this excess in the target for 2002–2003 does not necessarily mean that the same situation will prevail for the 2003–2004 financial year. The Report says:

1 *Committee Hansard*, 2 March 2004, p. 4

... there still remains the potential for an actual shortfall by 30 June 2004, given the possibility of unfavourable market conditions during the course of the 2003-2004 financial year.²

4.7 The table below sets out the comparative progress of the fund over the last three reporting periods.

Table 1 Land Fund Assets: Comparison 2000–2001 to 2002–2003

Item	2002-03	2001-2002	2000-2001
Assets as at 1 July	\$1,095,203,524	\$940,695,947	\$784,498,585
Add special appropriation	\$90,444	\$88,845	\$87,446
Assets as at 2 July	\$1,290,657,412	\$1,095,203,524	\$940,695,947
Nominal return on Assets	8.85%	6.38%	7.89%
Inflation factor (set under subsection 193D(1) of the ATSI Act)	1.7%	2.7%	1.6%
Real return on Assets	7.03%	3.58%	6.19%
Required return to meet the target balance for June 2004	2%	2.5%	3.7%

Issues arising from the Report

4.8 At the Committee hearing, the ILC was asked about Roebuck Plains Station. The Committee noted that at the inquiry into the last annual report of the fund, there was a stock strategy where by Roebuck Plains would feed prime breeding stock into other Indigenous owned pastoral leases in the Kimberley. This Annual Report did not appear to reflect any development in this area at all, and it appears that the strategy has been abandoned.

4.9 The ILC noted this was not entirely the case, but conceded that other initiatives had taken priority. The Committee considers that the strategy would assist in the improvement of Roebuck Plains and would also assist the other pastoral lease properties in the Kimberley which were to benefit from the scheme. In the next Annual Report, the Committee looks forward to an account of capability building at Roebuck Plains to enable the original plan to be implemented.

Legislation

4.10 The Committee noted last year that proposed amendments to the *Financial Management and Accountability Act 1997* were part of the draft financial framework

legislation being considered by the Joint Parliamentary Committee on Public Accounts and Audit. The relevant amendment would alter the title of the Land Fund to the Land Account.

4.11 The Joint Committee on Public Accounts and Audit reported in August 2003; to date there has been no government response.

Conclusion

4.12 The Committee notes the position of the fund at this important point in its development, and will continue to monitor its progress.

Chapter 5

Conclusion

5.1 In compiling this report, the Parliamentary Joint Committee on Native Title and the Torres Strait Islander Land Fund has discharged its statutory obligation to examine the Annual Reports of the NNTT and the ILC as well as the Annual Report on the Aboriginal and Torres Strait Islander Land Fund.

5.2 Chapter Two of the report includes the Committee's observations on the Annual Report of the NNTT. The Committee continues to be concerned at the estimates of expenditure and volume of work, but understands that the Tribunal is working towards more accurate assessments of these items. The Committee notes the unqualified audit result, and the detail given in both the report and in evidence to the Committee, which gives a fuller picture of the organisation than is possible from an adherence only to the minimum reporting requirements.

5.3 Chapter Three of the report examines the ILC's performance over the year. The ILC's report was a most professional document, which in most cases noted the reservations expressed in last year's report and acted upon them. Although the report complied with the requirements in most cases, the Committee took the view that more information on the properties, their capacity, the value of stock, machinery and other assets is necessary if the Committee is to evaluate the success or otherwise of the ILC's strategies.

5.4 Chapter Four looks at the performance of the Land Fund. The Committee considered that, on current indications, the Fund is well placed to become self sufficient as planned.

Senator David Johnston
Committee Chair

APPENDIX 1

Witnesses who appeared before the Committee at public hearings

Thursday, 12 February 2004

Parliament House, Canberra

National Native Tribunal

Mr Graeme Neate, President

Mr Hugh Chevis, Director, Service Delivery

Mr Christopher Doepel, Native Title Registrar

Tuesday, 2 March 2004

Parliament House, Canberra

Indigenous Land Corporation

Mr David Galvin, General Manager

Ms Shirley McPherson, Chairperson