

# Chapter 3

## The Indigenous Land Corporation Annual Report

### 2003-2004

#### **The Indigenous Land Corporation**

3.1 The Indigenous Land Corporation (ILC) is a Commonwealth Authority formerly established under section 191B of the *Aboriginal and Torres Strait Islander Commission Act 1989* and continuing under section 191B of the *Aboriginal and Torres Strait Islander Act 2005*.

3.2 The ILC is an independent statutory authority and provides an annual report under section 9 of the *Commonwealth Authorities and Companies Act 1997*. The report must include:

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

#### **Function of the ILC**

3.3 The ILC was established in 1995 by the *Land Fund And Indigenous Land Corporation (ATSIC Amendment) Act 1995*. The purpose of the ILC was:

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

3.4 This purpose will remain the same: The *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* included these provisions which have now become part of the *Aboriginal and Torres Strait Islander Act 2005*.

3.5 The Corporation is funded by the Aboriginal and Torres Strait Islander Land Account, formerly the Land Fund.<sup>1</sup> 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.

### **Tabling and Compliance requirements**

3.6 The ILC Annual Report was tabled on 16 November 2004 in the Senate and on 17 November 2004 in the House of Representatives.

3.7 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.

3.8 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*).

3.9 The Committee notes that each of these matters has been discussed in the Report.

## **The Report**

### ***Governance***

3.10 The ILC notes a change in its reporting on operations, and indicates that this comes from a recommendation by the ANAO and comments by this Committee.

---

1 The Land Fund was renamed the Land Account through the enactment of *the Financial Framework Legislation Amendment Act 2005* which amended Part 12, subsection 204(1) and subparagraph 206(d)(vii) of the *Native Title Act 1994*. In this committee report, the Account will continue to be referred to as the Land Fund as it was when the Annual Report under examination was compiled.

---

3.11 The ANAO undertook a follow-up audit (from 2002-2003) of the ILC. The Report indicates the progress on implementing the recommendations. The Committee notes that at least two of the recommendations are scheduled for implementation in the current reporting year, and looks forward to further elaboration in the next Annual Report.

***Outcome and output structure***

3.12 The ILC has one outcome, to:

Provide cultural, social, environmental, and economic benefits for Aboriginal people and Torres Strait Islanders by assisting in the acquisition and management of an Indigenous land base.<sup>2</sup>

3.13 The one outcome leads to one output:

Assistance in the acquisition and management of land.

3.14 The National Indigenous Land Strategy (NILS) provides the framework for land acquisition program under four streams:

- Cultural Acquisition Program
- Social Acquisition Program;
- Environmental Acquisition Program and
- Economic Acquisition Program

3.15 A revised NILS was released in February 2004.

3.16 In her Report, the Chairperson noted that a moratorium was placed on acquisitions in the Economic Acquisition program pending new guidelines.<sup>3</sup> In evidence, the Acting General Manager explained:

The issue was that the applications we were getting were for very expensive pieces of land that appeared to be benefiting only a very few people. It really was not equitable to be spending millions of dollars buying land with businesses that only involved a very small number of people. Because this was very much a trend that they observed, the board decided to revise the economic program guidelines to come up with a better set of guidelines to make it more widely available.<sup>4</sup>

3.17 In further discussion, the Committee was advised by the Corporation's Business Planning Director:

---

2 Indigenous Land Corporation Annual Report 2003-2004, p. 26.

3 ILC Annual Report 2003-2004, p. 1.

4 *Committee Hansard*, 16 March 2005, p. 15.

...many of the applications we were getting under the business program were from people who really did not have the expertise or the capacity to run businesses. ...The guidelines now speak of the need for applicants to form an arrangement with a suitable partner to bring expertise to the business proposal. The ILC is able to fulfil that role if necessary. We have had a couple of applications that have fulfilled those requirements.<sup>5</sup>

3.18 The Committee looks forward to the inclusion in the next Annual Report of details of the application of the new guidelines, and their impact on the work of the ILC.

3.19 The ILC received 73 applications during the reporting period, of which almost half were under the social acquisition program. The report indicates that 'a significant proportion'<sup>6</sup> were for urban-based property. The Committee has a long-held interest in the involvement of the ILC in urban projects, and would like to see the exact figures included in the next Annual Report.

3.20 The amount spent on direct land acquisition was \$5,840,924, less than half the amount spent the year before. The report notes that eleven acquisition proposals were submitted, and nine were approved; however, while these were approved, in some cases the acquisition was not completed within the reporting period.

3.21 The reduction in expenditure can at least partly be explained by the settlement period extending across the end of the reporting period. Further, this was the first full year of the Corporation's new land acquisition strategy, which shifted the emphasis from land acquisition to long term sustainable planning.

3.22 Four properties were divested to indigenous corporations during the reporting period, compared to none last reporting period.

3.23 Two properties were sold, after determining that the properties were not capable of delivering sustainable benefits to the applicant group.<sup>7</sup>

3.24 The Committee accepts that this was a reasonable response to this situation, however, it notes that both properties were sold for less than their purchase price, at a total net cost to the ILC of \$872,000. The Committee acknowledges that these properties were purchased under the previous program structure, and that under the new structure it will not often be necessary to sell property at what amounts to a loss.

### ***Policy and strategy development***

3.25 The Committee notes that the reporting period saw major revisions of the principal policies of the Corporation. The Corporation's revision of the associated

---

5 *Committee Hansard*, 16 March 2005, p. 16.

6 ILC Annual Report 2003-2004, p. 30.

7 ILC Annual Report 2003-2004, p. 36.

---

public documents included refining and simplifying the text, to provide greater clarity concerning key activities and concepts.

### ***Impact of changes in ATSIC***

3.26 At the hearing, the Committee raised the issue of the effect on the Corporation of the abolition of ATSIC and the Regional Councils.<sup>8</sup> There are two principal implications: first, two new ILC board members are needed to replace the two ATSIC representatives. (The Chair of ATSIC was an ex-officio member and will not need to be replaced); second, the transfer of particular ATSIC properties to the ILC. The Chairperson indicated that she had already contacted the Minister regarding this.

3.27 The ILC also voiced some concern about the loss of the Regional Councils and ATSIC as resources for advice and consultation. The ILC legislation required it to 'have regard to the desirability' of consulting ATSIC in relation to the development of the National Indigenous Land Strategy. Regional Councils were required to be consulted where that region was affected by any regional Indigenous Land Strategy (paragraph 191P (5) (a)).

3.28 *The Aboriginal and Torres Strait Islander Act 2005* has no analogous requirements in relation to National or Regional Indigenous Land Strategy. The ILC noted that there will now be a gap in the available sources of consultation, and expressed the situation as being 'a real dilemma'.<sup>9</sup> The Committee suggested to the ILC that the consultation role might be undertaken by the Indigenous Co-ordination Centres,<sup>10</sup> and the ILC also suggested that Native Title Representative Bodies and Land Councils might be a source of information in this area.

### ***Staffing***

3.29 The information provided on staffing shows a small reduction in the number of Indigenous staff employed, and a similar reduction in the overall number of staff. The Report notes that a more comprehensive HR strategy is to be developed over the 2004-2005 reporting year. The ILC has discharged its obligations in relation to cultural awareness training, leave (including study leave), and performance management.

### ***Financial management***

3.30 The Committee notes that Table 5 of the Report provides an excellent snapshot of the financial statements for the year ended 30 June 2004, compared to those of the previous year. The market value of investments has not changed, and the Report notes that these are being relied upon to cover the two year gap between the

---

8 *Committee Hansard*, 16 March 2005, pp 13-14.

9 *Committee Hansard*, 16 March 2005, p. 17.

10 *Committee Hansard*, 16 March 2005, p. 7.

last allocation by government, and the beginning of the Corporation relying on income from the return on the Land Fund.

3.31 In relation to the Land Fund, the Committee also notes that the Chairperson has raised questions with the Minister for Finance and the Minister of Immigration and Multicultural and Indigenous Affairs regarding the administration of the Land Fund.<sup>11</sup> In particular these questions concern the use of the expression 'rate of realised return' contained in the statute. Other matters include:

- The Land Fund's reserving policy;
- Minimum payments from the Land Fund to the ILC post 2003-2004; and
- The use of any funds in excess of the Land Fund target for 30 June 2004.

3.32 The Committee indicated at the hearing that it would appreciate being kept apprised of the outcome of these requests for advice, as they are integral to the satisfactory operation of the ILC.

3.33 The Committee notes that the ILC's financial statements received an unqualified audit certificate.

3.34 The Committee observed that in the financial statements on page 100 of the Annual Report, there is a figure of \$866,000 for 'Loans to Indigenous Corporations'. In the last reporting period that figure was \$866,000. The Committee asked the ILC what the loans were and to whom were they made.<sup>12</sup>

3.35 The ILC indicated that the loans were for land management applications and livestock, then took on notice the reporting of arrangements made to repay the loans.

3.36 In a written response to the Committee dated 20 April 2005, the ILC advised the Committee:

The ILC's financial statements are prepared in accordance with Australian Accounting Standards, which do not require presentation of loan repayments. The ILC does not provide discussion of its loans elsewhere in the Annual Report as it is not seen as a significant part of its operations.<sup>13</sup>

3.37 Attached to the list of responses was a schedule of loans to indigenous corporations. The schedule showed that of ten loans, one was paid in full, four are up to date or better in repayments, three have deferred payment to later this year or next, and two have outstanding amounts. Payment of one is imminent, and the ILC is working with another which owes the ILC funds due to the collapse of the industry for which the loan was granted.

---

11 ILC Annual Report 2003-2004, p. 22; *Committee Hansard* 16 March 2005, pp 4–5.

12 *Committee Hansard*, 16 March 2005, pp 7–8.

13 Correspondence from the ILC concerning Questions taken on Notice, 20 April 2005.

3.38 While it may not be an Australian Accounting Standard requirement to provide these details, the Committee would like to have information regarding loans made by the ILC, as they involve a significant amount of funds. Accordingly, the Committee suggests that the forthcoming Annual Report include details of the loans as provided in the response by the ILC.

### ***Unquantifiable contingencies***

3.39 The Annual Report of the ILC also notes the position in relation to its exposure to HIH. The ILC held an investment in Wisdom (FAI) No 2 Trust, and the Annual Report states that the recoverability of the investment is unknown at the date of the report<sup>14</sup> but in any case the investment has no market value; this is unfortunate as the amount involved is approximately \$5 million. The Report indicates that a Statement of Claim has been served on the external advisor in the matter; however it appears most unlikely that little, if anything will be recovered by the Corporation.

### ***Consultants***

3.40 The ILC reduced its expenditure on consultants from \$1,399,085 in 2002-2003 to 1,075,282 in 2003-2004. The Corporation explained at the hearing that this is partly due to the establishment of an in-house legal section rather than the use of consultants to undertake the legal work of the Corporation.<sup>15</sup>

3.41 The Committee noted the significant reduction in legal costs, but would like to see included in the next annual report, some analysis of the efficiencies and savings gained from retaining in-house legal expertise.<sup>16</sup>

3.42 The Committee also expressed some concern at internal audit fees. The cost in the last reporting period was \$40,491 and in this reporting period the cost was \$237,800. In evidence, the Corporation explained that the figure for the previous period was for only part of the reporting period, as the internal audit program was only being established. The fee for the 2003-2004 reporting period represents the fee for the full reporting period.<sup>17</sup>

### ***Presentation and style***

3.43 While the Committee notes some problems with the tables on pages 162, 166 and 167, the Report is easy to read. The comparative tables containing information from the last report as well as the current report are particularly useful.

---

14 ILC Annual Report, 2003-2004, p. 111

15 *Committee Hansard*, 16 March 2005, p. 19.

16 *Committee Hansard*. 16 March 2005, p. 19.

17 *Committee Hansard*, 16 March 2005, p. 19.

***Conclusion***

3.44 The Committee observes that the Corporation has taken note of comments from previous Committee reports, and has acted on them. The Committee encourages the Corporation in its next report to provide the information referred to above.