

Parliament of the Commonwealth of Australia

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

Examination of Annual Reports for 2003-2004

June 2005

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ISBN 0 642 71540 8

This document was prepared by the Secretariat of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account and printed by the Senate Printing Unit, Parliament House, Canberra.

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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).

1.2 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.

1.3 In the view of the Committee, the analysis of the Annual Reports is an opportunity for agencies to receive constructive assistance to improve performance and accountability.

Reports considered

1.4 Pursuant to these requirements, this report examines:

- the National Native Title Tribunal (NNTT) Annual Report 2003-2004; and
- the Indigenous Land Corporation (ILC) Annual Report 2003-2004.

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 17 November 2004.

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 During the reporting period, funding for the operations of the ILC was provided from the Land Fund pursuant to Division 10 of Part 4A of the ATSIC Act. ATSIC was responsible for reporting on the Land Fund under section 193H of the ATSIC Act. ATSIC also had investment powers concerning the Land Fund.

1.8 The Annual Report on the Aboriginal and Torres Strait Islander Land Fund is usually provided as an annexure to the ILC Annual Report. On this occasion, there was a delay in the auditing of the Fund, which resulted in a qualified audit. The Audit was not available in time for the publication of the ILC Annual Report. The practical consequences of the audit are discussed in Chapter 3.

1.9 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

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

- Wednesday 9 March 2005; and
- Wednesday 16 March 2005.

1.11 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

1.12 The Committee considered and adopted the report at a private meeting on 11 May 2004

Chapter 2

The National Native Title Tribunal Annual Report 2003-2004

The National Native Title Tribunal

2.1 The NNTT'S functions are set out in section 108 of the *NT Act*. They include:

- applications;
- inquiries;
- determinations;
- mediation in Federal Court proceedings;
- providing assistance or mediation when requested; and
- conducting research.

Formal reporting 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' 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.

2.5 The information prescribed by the Requirements includes:

- review by Departmental Secretary (or equivalent);

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

- departmental overview;
- report on performance;
- management and accountability;
- financial statements; and
- other mandatory information.

2.6 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

Compliance

2.7 The Tribunal's report for 2003-2004 complies with all of the formal requirements set out above.

The Report

The President's Overview

2.8 The Annual Report contains a detailed and comprehensive account of the reporting year. In addition, the public hearing provided an opportunity to expand on the information contained in the Annual Report. The President highlighted a number of matters in his overview and in evidence to the Committee. They include:

- developments in Native Title Law;
- establishment or discontinuance of alternative legislative regimes in states;
- policies and procedures of governments;
- the procedures and orders of the Federal Court; and
- the roles and capacity of native title representative bodies.

2.9 The President also made further observations regarding matters of significance to the Tribunal during the year. In particular:

- The 10th anniversary of the commencement of the Native Title Act and the establishment of the Tribunal occurred during the reporting year. Native Title has come to be negotiated in many ways within the structure of the Act.
- The Tribunal's work continues to be affected by external factors. For example, the pace of mediation, as well as the number of determinations registered in the Tribunal was affected by judicial decisions and appeals from significant judgements.

3 *Requirements for Annual Reports*, p. 5.

-
- There was a steady increase in the number of ILUAS negotiated and registered under the Native Title Act.
 - In future act work, particularly in relation to mining and exploration, there have been shifts in the nature of the work and in the attitudes of the parties. Examples include the reduction in the number of objections to the use of the expedited procedure under the Act as well as the mining industry's development of partnerships with indigenous communities.
 - The Tribunal's role in assisting parties continues, particularly in relation to the provision of a range of geospatial mapping tools, predominantly to those in remote locations.⁴

Challenges

2.10 The Report notes a Federal Court decision acknowledging the continued uncertainty and complexity of native title in which the Court recognises that:

...it always takes time for the ramifications of new law to be worked out. This is because courts develop the principles underlying new legislation on a case by case basis. They must wait until the relevant cases arise.⁵

2.11 The Committee notes that the President, in his Report and in his remarks to the Committee highlights the fact that increasingly, both indigenous groups and governments are exploring a range of options to settle proceedings which may commence as native title proceedings but may be resolved in ways other than a native title determination.⁶ State and Territory governments also have a role to play in exploring options, especially those which do not involve a determination of native title.⁷

2.12 From this emerges a picture of an evolving understanding of what can be meant by native title. This has implications both for the nature of the business of the Tribunal and the way in which it undertakes that business.

Work of the Tribunal

2.13 The Tribunal has a single outcome: the recognition and protection of native title. Four output groups are used to deliver this outcome:

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

4 *Committee Hansard*, 9 March 2005, pp 1–2.

5 *National Native Title Tribunal (NNTT) Annual Report 2003-2004* p. 5 (case name not given)

6 *Committee Hansard*, 9 March 2005, pp 4–5.

7 *NNTT Annual Report 2003-2004*, p. 5

- assistance, notification and reporting.

Financial performance

2.14 The Report notes that the Tribunal's actual expenditure for the 03-04 financial year was \$32.22m which was close to the estimate in the Additional Estimates Statements for the Attorney General's Portfolio.⁸

2.15 At the public hearing, there appeared to be some discrepancies between the figures quoted in Table 1 (p. 39) and Figure 3. The Chair asked if the Tribunal could take the question on notice. The Tribunal responded promptly, and advised the Committee:

The figures in the top half of Table 1 on Page 39 of the Annual Report are appropriation only total. The other revenue is in the bottom half (line item; Total Revenue from other Sources).

The amounts on Page 41 are appropriation and other revenue combined. The Revenue in 2003-04 was from three main sources; assisted register searches, geospatial mapping and conference/forum attendance charges.

Assisted searches revenue was attributed to outputs 1.1.1 (\$22,000) and 1.1.2 (\$1,000) accounting for the difference between \$3,726,000 and \$3,749,000 under output 1.1. Geospatial mapping and conference/forum attendance revenue was attributed to output 1.4.1 (\$212,000) – this accounts for the difference between \$11,497,000 and \$11,709,000 under output 1.4.⁹

2.16 The Committee observes that the costs set out on p.41 are inclusive of all revenue, not only Government contributions. In other words, the Tribunal spends its revenue from all sources, not just one, and this is reflected in the figures on p. 41.

Outcome and outputs

Output group 1.1: Registrations

2.17 The Registrar of the Tribunal is required to apply a registration test to most of the applications which come to the Tribunal. The Committee observed that the Annual Report states that 137 applications had not been accepted for registration.¹⁰ The Registrar explained that applications fail for a range of reasons, but the Tribunal gives written reasons for the failure of an application, and commonly, defective applications are amended and resubmitted.¹¹

8 *NNTT Annual Report 2003-2004*, p. 38.

9 Correspondence from NNTT to Committee Secretary 6 April 2005 responding to Questions on Notice from Committee hearing 9 March 2005.

10 *NNTT Annual Report 2003-2004*, p. 42.

11 *Committee Hansard*, 9 March 2005, p. 19.

2.18 The Committee notes that there were 59 applications registered in this reporting period, compared to 110 in the 2002-2003 year. The unit cost was \$44,269, compared with an estimated \$35,584 based on last year's unit cost. The overall cost was \$2,613,076 compared to an estimate of \$2,135,000.

2.19 The Tribunal estimated that 70% of its applications would be decided within two months of receipt from the Federal Court. The actual result was 31% of applications determined within the deadline. Last year the figure was 44.5%.

2.20 The Committee understands from previous years that estimating these costs and volumes is at best an inexact science. From year to year, the Tribunal appears able to absorb increases in costs over the estimates, and so its overall budgetary position is not compromised. However, the Committee remains concerned at a unit cost of \$44,269 per registration test, which presumably reflects the amount of time and resources which go into providing support for registration applications.

Output group 1.2: Agreement-making

2.21 Agreement-making is a growing area for the Tribunal. The categories of agreement-making are:

- indigenous land use and access agreements;
- claimant, non-claimant and compensation agreements; and
- future act agreements.

2.22 The cost and number in each category is set out below together with the estimate in each case.

Table 1: Agreement making

Category of agreement	Estimated number	Actual Number	Estimated cost	Actual cost
Indigenous Land use and access	15	15	\$111,027	\$177,702
Claimant, non-claimant and compensation agreements	150	198	\$13,325,00	\$9,010,516
Future Act agreements	15	55	\$513,000	\$1,937,315

2.23 While the overall financial result is positive, the Committee notes that as with the application registrations, it remains difficult to predict with any accuracy the cost

and number of agreements made. The Committee is aware that this has been a difficulty for the Tribunal over a period of time, and acknowledges that the extent and character of the Tribunal's work will continue to be difficult to predict at least in the short term. More positively, the Committee also observes that the cost of claimant, non-claimant and compensation agreements was significantly less than the estimate, with 48 more agreements than the predicted 150.

2.24 The Committee noted that Queensland in particular accounts for the majority of ILUAS registered (30 of 46) and the Northern Territory accounts for 13 of the remaining 16.¹²

2.25 There is no clear reason why Queensland figures so prominently in the registration of ILUAs, although the President of the Tribunal noted in his evidence that, in the case of Queensland in particular, the state government encourages them.¹³

Output group 1.3: Arbitration

2.26 This group includes future act determinations and objections to expedited procedure. In evidence, the President told the Committee:

Future act consent determinations are becoming an increasingly common means of finalising negotiations, and there has been a reduction in the number of objections to the use of the expedited procedure under the act — in part, at least, because heritage protection regimes have been negotiated in Western Australia and Queensland which are aimed at meeting a major cause of objections to the expedited procedure.¹⁴

2.27 The Committee has an interest in the arbitration process as used by the Tribunal. At the public hearing the President was asked his view about the references in the *NT Act* to negotiating 'in good faith'¹⁵, and how the Tribunal satisfies itself that negotiations in future act matters have in fact been undertaken 'in good faith'. The President indicated that the Tribunal has developed a body of law, about the criteria which evidence good faith negotiations.¹⁶ These indicia appear in Tribunal determinations and Court judgements and give potential parties a good idea of what is meant by negotiating 'in good faith'.

2.28 The Committee notes the importance of maintaining integrity of the process at all stages of proceedings, and commends the Tribunal for its achievement in this area.

12 *Committee Hansard*, 9 March 2005, pp 22–23.

13 *Committee Hansard*, 9 March 2005, p. 23.

14 *Committee Hansard*, 9 March 2005, p. 2.

15 See for example, Parts 2,3, and 15 of the *Native Title Act 1993*

16 *Committee Hansard*, 9 March 2005, p. 6.

2.29 The Tribunal estimated 35 future act determinations and there were 34 for the year. The target of determining 70% within six months of application was well exceeded – 94% were determined within the time set.

2.30 The second element of this output is the objections to the expedited procedure. The Tribunal's report notes that this is used in Western Australia, the Northern Territory and Queensland, with the other states either using their own procedures or opting not to use the expedited procedure provisions at all.¹⁷

2.31 There were 761 objections finalised, compared to 917 in the previous reporting period. In this reporting period the costs exceeded the estimate, while in the last period they were less.

Output group 1.4: Assistance, notification and reporting

2.32 Under section 108 of the Act, the Tribunal has the function of providing assistance, or mediating, in accordance with any provision of the Act (section 108 1B). The Tribunal complies with this in three ways:

- through contacts – assistance given over the telephone or by letter;
- through events – education programs, information sessions, fact sheets and research for parties on agreement-making; and
- through initiatives – these include capacity building for participants in the native title process.

2.33 The Committee found the breakdown of the types of assistance shown in Figure 9 (p. 77) to be particularly useful in identifying the areas of demand. It is clear that the Application/Registration process attracts the most requests for assistance followed by the Future Act process and Mediation. Also notable was the significant increase in the use of the Tribunal's website in the reporting period.

2.34 The geospatial assistance available from the Tribunal includes map preparation, register search services, and three dimensional visualisation of overlapping applications and agreements. In particular, the Committee notes a pilot project involving the Federal Court to enable the visualisation of native title matters on the internet. The Committee looks forward to hearing of further developments in this area in the next Annual Report.

Corporate Governance

2.35 The Committee notes that the Tribunal has a number of internal groups which support the members' professional role and the strategic management areas of the Tribunal. In particular, the Committee notes that the Agreement-Making Strategy Group has prepared a guide to Tribunal practice titled 'Mediating Native Title

17 NNTT Annual Report 2003–2004, p. 73.

Applications', which has been 18 months in preparation. The group also developed a curriculum for members and employees who are engaged in native title mediation.

2.36 The Tribunal also has a National Future Act Strategy Group, an ILUA Strategy Group, a Research Strategy Group and an Information and Knowledge Management Strategy Group.

2.37 This last group has been created from a new Information and Knowledge Management Division which the Tribunal advised the hearing will integrate the existing technology to:

allow us to ultimately link all the operating systems within the organisation. For example, you would have the future act systems interacting with the claimant application systems, with the assistance database, with the Indigenous land use agreement database, so that you would integrate all the tribunal systems...

2.38 The Committee considers that the governance structures described in the Report, allow the Tribunal to inform itself thoroughly regarding the Tribunal's needs in all of the relevant areas, and to act on that information in a positive way. The ongoing training and support for Members is particularly noteworthy, as the nature of the mediation work appears to require continuously expanding expertise in a specialised area.

Human Resources

2.39 The Committee was advised of the engagement of the Chief Information Officer at the SES Band 1 level, who will be responsible for the Information and Knowledge Management Division.¹⁸

2.40 The Tribunal has undertaken a number of learning and development strategies for staff including corporate compliance, skills development and professional and career development.

2.41 The Committee notes that there continues to be a relatively high turnover of staff, reaching 10 per cent in the reporting period.¹⁹ The report does not advance any reason for this, although in past years the Committee has been advised that given the length of time the Tribunal has been operating, some movement in long term staff is to be expected.

2.42 The Committee considers that some analysis of staff resignations should be undertaken by the Tribunal, and reported in the next Annual Report, given that the figure has been close to, or at, ten per cent for the last two reporting periods.

18 *Committee Hansard*, 9 March 2005, pp. 25–26.

19 NNTT Annual Report 2003-2004, p. 100.

Indigenous employees

2.43 The Committee notes that of the Tribunal's ongoing employees, 13.8 per cent are Indigenous. This has increased by 0.9 percent over the previous reporting period. There are Indigenous study opportunities, and the Tribunal maintains an Indigenous Advisory Group. It is not clear from the Report exactly where in the Tribunal the Indigenous employees are located, and the Committee would be interested to know for example, how many, are involved in case management, or in other areas which have direct contact with Indigenous clients.

Clients

2.44 The Committee observes from the Annual Report that the Tribunal undertook an evaluation of its external communication during the reporting year. The report indicates that stakeholder satisfaction varied according to the length of time that person or organisation had been in the system. The Committee is interested in the initiatives which will flow from this, and looks forward to seeing the results in the next annual report together with the results of the 2004-05 client survey.

Conclusion

2.45 The Committee commends the tribunal on its comprehensive and accessible Annual Report 2003-2004, and looks forward to the Report 2004-2005, incorporating the Committee's suggested inclusions.

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.¹ 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.²

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.³ 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.⁴

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.⁵

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'⁶ 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.⁷

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.⁸ 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'.⁹ The Committee suggested to the ILC that the consultation role might be undertaken by the Indigenous Co-ordination Centres,¹⁰ 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.¹¹ 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.¹²

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.¹³

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 report¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷

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.

Chapter 4

The Aboriginal and Torres Strait Islander Land Fund Annual Report 2003-2004

4.1 The Aboriginal and Torres Strait Islander Land Fund was established under Part 4A Division 10 of the *Aboriginal and Torres Strait Islander Commission Act 1989* (the ATSIC Act).¹

4.2 Section 193I of the ATSIC Act requires the preparation and submission of an annual report on the Land Fund's activities. 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.

4.3 In the past, the Land Fund Report has been included as an appendix to the Annual Report of the Indigenous Land Corporation. However, this year, the report was not available in time for the submission of the Corporation's Annual Report. The delay was due to a qualified Audit Report for two of the ATSIC Accounts: the Land Fund and the Aboriginals Benefit Account (not related to the Land Fund or the ILC).

4.4 The Land Fund Accounts are audited as part of the ATSIC Financial Statements. During the reporting period, the ANAO undertook an audit of Special Appropriations. This disclosed that since its inception, the amounts drawn down to the Land Fund from the Official Public Account were in excess of those authorised. The reason for this is contained in Note 13 to the Land Fund Account Financial Statements which appear as part of Appendix 10 to the Aboriginal and Torres Strait Islander Commission Annual Report. The note says:

The audit identified a discrepancy in the indexation rate applied that has resulted in excess appropriations being transferred to the Land Fund within the Consolidated Revenue Fund, and on-paid to the Indigenous Land Corporation under s192A... Aboriginal and Torres Strait Islander Commission Act 1989...²

1 *The Aboriginal and Torres Strait Islander Commission Act 1989* was replaced by the *Aboriginal and Torres Strait Islander Act 2005* on 24 March 2005. This change does not affect the period under examination.

2 Annual Report of the Aboriginal and Torres Strait Islander Commission 2003-2004, p. 165.

The accounts were also qualified because the type of investments made by the Land Fund did not fit the definition of allowed 'Deposits with Banks'; they were 'medium term notes' which the ANAO concluded were not deposits but debts with banks.³

Implications for the ILC

4.5 The ILC's Annual Report notes the ANAO review, and the discrepancy in the amounts paid to the ILC. At the public hearing the ILC told the Committee:

There is an amount of \$6.2 million. This audit undertaken by ANAO – there were a number of similar audits – identified that an incorrect indexation figure was used to calculate the annual appropriation of funds to the ILC from the land fund; therefore, the draw-down was incorrect.⁴

4.6 The ILC advised the Committee that after discussions with the ANAO and the Department of Finance, the funds were repaid in January of this year.

4.7 The matter of the investment strategy for the Land Fund will in future be regulated under s.193G of the *Aboriginal and Torres Strait Islander Act 2005*. It was formerly regulated under s.193G of the *ATSIC Act*.

Legislation

4.8 For the past two reporting periods, the Committee noted proposed amendments to the *Financial Management and Accountability Act 1997*, which 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 Indigenous Land Fund to the Indigenous Land Account.

4.9 That Committee reported in August 2003 and the *Financial Framework Legislation Amendment Act 2005* commenced on 22 February 2005. Accordingly, the Aboriginal and Torres Strait Islander Land Fund is now known as the Aboriginal and Torres Strait Islander Land Account from that date. This will be reflected in the next Annual Report of the ILC.

Senator David Johnston
Committee Chair

3 The Aboriginal and Torres Strait Islander Commission Annual Report 2003-2004, pp 6–7.

4 *Committee Hansard*, 16 March 2005, p. 11.

APPENDIX 1

Witnesses who have appeared before the Committee at public hearings

Canberra, Wednesday 9 March 2005

National Native Title Tribunal

Mr Graeme Neate, President

Mr Christopher Doepel, Registrar

Canberra, Wednesday 16 March 2005

Indigenous Land Corporation

Ms Shirley McPherson, Chairperson

Mr Leonard Owen, Acting General Manager

Mr Garry Cook, Business Planning

