

## Chapter 3

# The National Native Title Tribunal Annual Report 2004-2005

### The Indigenous Land Corporation

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

3.2 The ILC as an independent statutory authority 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 remains 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*.

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

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1 The Land Fund was renamed the Land Fund 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 1993*.

Annual Report of DIMIA.<sup>2</sup> 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 February 2006 in the House of Representatives and on 28 February 2006 in the Senate.

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**

#### ***Chairperson's report***

3.10 The Chairperson notes in her report that 2004-05 marks the end of direct appropriations from the Commonwealth for ILC operations. The main source of funding is now derived from the 'realised real return' from the investments of the Aboriginal and Torres Strait Islander Land Fund. The Land Fund is administered by DIMIA, which is responsible for calculating the payment due to the ILC for 2004-05, which was \$4.038 million.

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2 Noting that under changes to ministerial arrangements announced on 24 January 2006, responsibility for Indigenous affairs has moved to the new Department of Families, Community Services and Indigenous Affairs.

3.11 The Chairperson expressed concern that the term 'realised real return' is not defined in the Aboriginal and Torres Strait Islander Act. The calculation involves the distribution of cash gains and losses and the retention of accrued gains and losses. The ILC believes that this interpretation is inconsistent with the intention of the Act, specifically as it relates to the perpetual retention of the real value of the fund, and may allow the fund to lose its real value over time. The ILC has presented an alternative interpretation of the term 'realised real return' and continues to consult over this issue with DIMIA and relevant Ministers, through the Land Fund Consultative Forum (p.2). The Committee believes that the issue of 'realised real return' should be addressed and resolved as soon as possible.

### ***Outcome and output structure***

3.12 The ILC has one outcome, to:

Provide economic, environmental, social and cultural benefits for Aboriginal people and Torres Strait Islanders by assisting in the acquisition and management of an Indigenous land base (p.28)

3.13 The one outcome leads to one output:

Assistance in the acquisition and management of land.

3.14 The annual report continues the approach of reporting on the ILC's operations, first implemented in 2003-04. While still following the outcome and output structure, it also reports directly against the Corporate Plan, and therefore the key performance indicators identified in the ILC Portfolio Budget Statements. The report notes that this follows best-practice guidelines on annual reporting as recommended by the ANAO and suggestions made by this Committee (p.28).

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

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

3.16 The report notes that the ILC Board reviewed the NILS in December 2004, and confirmed its approach that proposed acquisitions must demonstrate viability and sustainability and that applicant groups must show the commitment and capacity necessary to achieve the benefits expressed in applications. The Board also confirmed its intention to utilise its strategic land acquisition and land management mechanisms to focus on employment, training and the delivery of social and cultural benefits in regions and specific industries, including the pastoral and tourism industries (pp.2-3).

3.17 The report noted that:

The Board takes a long term-view in strategic land acquisition and, consequently, divestment may take place over a longer-term period while the ILC is an active partner. Land will not be granted unless the ILC is satisfied that the project's future is viable and sustainable. Strategic Land Management projects may be shorter-term but must focus on developing the capacity for land management over regional areas, and employment and training in specific industries (p.3).

3.18 The ILC received sixty applications during the reporting period, compared with 73 in 2003-04, of which more than half were under the Social Acquisition Program. The report indicates that 'a significant proportion', as in the previous year, were for urban-based properties (p.33). As noted in previous reports, 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.

3.19 The amount spent on land acquisition was \$8.1 million (including improvement to infrastructure on ILC-held land), an increase on the \$5.8 million expended in the last financial year. The report notes that eleven acquisition proposals were submitted, and nine were approved (the same as in the last reporting period). While nine acquisitions were approved, three purchases were under negotiation at the end of the reporting period and a further twenty applications were under active assessment as at 30 June 2005 (pp.34,89).

3.20 A further fifteen properties that were owned by the former ATSIC were transferred to the ILC in March 2005. The ILC will conduct a review of the properties and, where possible, they will be divested to appropriate Indigenous groups (pp.34,43).

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

3.21 The report notes that in the reporting period the Corporation implemented a number of new policy development initiatives including amendments to the application process to provide prospective applicants with information targeted to their needs and the relevant program stream. The land acquisition and land management application assessment policy and procedure notes were also revised and staff training was undertaken in their use and application (p.74).

### ***Staffing***

3.22 Information on staffing shows that Indigenous staff represented 20.1 per cent of total staff, a slight reduction from 23.5 per cent reported for 2003-04. Information is included in the report on salaries by EEO group and Indigenous/non-Indigenous staffing in various ILC offices (pp.85-86).

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### ***Financial management***

3.23 The Committee notes the current report includes a useful table summarising the financial statements for the year ended 30 June 2005, with comparisons with the previous year (p.89). A similar table was provided in last year's report.

3.24 The table shows that the market value of investments increased from \$236 million in 2003-04 to \$251 million in the reporting period, although this included \$7.5 million former Regional Land Fund monies transferred from ATSIC in March 2005 (p.89).

3.25 As noted previously, the ILC's main source of funding is from the Land Fund. Until 2003-04 this was a percentage of a direct appropriation to the Land Fund. From 2004-05 the ILC receives the realised real return from the investments of the Land Fund. The ILC received \$4.0 million on 30 June 2005, which equated to the realised real return from the investments of the Land Fund for the 2003-04 financial year. By comparison, Land Fund revenue in 2003-04 was \$54.7 million (pp.88-89).

3.26 The report noted that the Corporation maintained its investment portfolio in accordance with its Statement of Investment Objectives and Policy during 2004-05. For the shorter-term investment portfolio it utilises a passive manager for the shorter-term cash portfolio; and maintains a balance of \$5 million in-house to ensure sufficient liquid assets are available to meet organisational costs. Objectives for the longer-term investment portfolio are to achieve returns (net of investment fees) that at least exceed the average rate of inflation (as measured by the CPI) by four per cent over five years; and to limit the probability of the portfolio achieving negative returns (p. 90). The Committee looks forward to the ILC reporting on the extent to which these objectives have been met in future reports.

### ***Litigation***

3.27 The report also notes the position of the Corporation in relation to its exposure to HIH. The ILC has instituted proceedings against its former external investment advisor seeking recovery of \$5 million (plus interest) lost on an investment in the Wisdom (FAI) Trust No.2 that failed with the collapse of the HIH group of companies. The proceeding is before the NSW Supreme Court and is expected to be heard in 2006 (p.92).

### ***Consultants***

3.28 Expenditure on consultants was reduced slightly from \$1,075,282 in 2003-2004 to \$983,600 in 2004-05. The Corporation noted that over recent years it has significantly reduced the use of consultants, in particular by employing specialist staff to undertake legal, property negotiation and conveyancing; and investing in the skills development of staff (p.145).

3.29 In its last report the Committee suggested that the ILC include some analysis of the efficiencies and savings gained from retaining in-house legal expertise, but notes this has not been included in the current report.

3.30 The Committee expressed some concerns in relation to audit fees in its last report, but notes a reduction in internal audit fees in this reporting period – from \$237,800 in 2003-04 to \$144,996 in 2004-05 (p.145).

### **Conclusion**

3.31 The report provides a useful overview of the operations of the Corporation and is generally well-structured and 'reader-friendly'. The Committee commends the ILC for improvements to the content of their Annual Reports over recent years.