

Chapter 4

The Aboriginal and Torres Strait Islander Land Fund Account Annual Report 2004-2005

4.1 The Aboriginal and Torres Strait Islander Land Fund Account (the Land Fund) was established in 1995 by the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*. It is now established by the *Aboriginal and Torres Strait Islander Act 2005*.

4.2 Since its inception in 1995 until 30 June 2004, the Land Fund was administered by ATSIC. From 1 July 2004, Aboriginal and Torres Strait Islander Services administered the Land Fund on behalf of ATSIC. On 24 March 2005, with the abolition of ATSIC, responsibility for the administration of the Land Fund was transferred to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). As noted, responsibility for the Fund was then transferred to the Department of Families, Community Services and Indigenous Affairs on 24 January 2006.

4.3 Section 193I of the Aboriginal and Torres Strait Islander 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.

4.4 The Land Fund Annual Report, together with the audited financial statements, is included in the DIMIA Annual Report.

4.5 From 1995-96 to 2003-04, \$121 million (indexed to 1994 values) was appropriated annually to the Land Fund from the Consolidated Revenue Fund. The Land Fund was being built up to become a self-sustaining capital fund by 30 June 2004. In 2003-04, the Land Fund received its final appropriation from the Consolidated Revenue Fund and the ILC received its final drawdown under this method. From 2004-05 and in subsequent years the ILC will receive the 'realised real return' from the investments of the Land Fund. Details of the method of calculation of the realised real return are provided in the report (pp.268-69). The report notes that it is envisaged that the capital base will be sufficient for the annual earnings to replace the government appropriation making it a perpetual fund (p.264).

4.6 The ILC received \$4,038,109 on 30 June 2005, which equated to the realised real return from the investments of the Land Fund for the 2003-04 financial year. This was based on a nominal return of 4.12 per cent and a discount rate of 3.8 per cent. At recent Senate Estimates hearings the relatively low rate of return on investments was commented upon.¹

4.7 The ILC Annual Report noted that the results of the Land Fund for 2003-04 were affected by the following factors:

- interest rates were low;
- repayment of excess appropriations from the Land Fund to the Official Public Account were made;
- investments of the Land Fund considered not to be authorised were sold; and
- the indexation factor used to determine the realised real return was significantly higher than inflation.²

4.8 The report states that DIMIA has interpreted 'realised real return' to be the return of the Land Fund that was manifested in cash in the year, adjusted on the basis of the discount rate under section 193D of the ATSI Act. However, to ensure that all payments to the ILC are in accordance with the ATSI Act, the department has requested an audit by the ANAO of the correct interpretation of 'realised real return' under section 20 of the Audit Act (p. 270).

4.9 The report notes that two ANAO reports published in 2004-05 impacted on the Land Fund.

4.10 In its report on the Management of Special Appropriations the ANAO included a review of the indexation factor applied to the Land Fund as provided by section 193D of the ATSI Act. The audit identified a discrepancy in the way the indexation rate was applied, which resulted in excess appropriations being transferred to the Land Fund and forwarded to the ILC. On the basis of the ANAO calculations, the over-crediting was estimated to be to \$15.8 million. Further refinement of the calculations established that the correct amount of over-crediting was \$16.8 million. The report noted that the excess appropriations (\$16.8 million) were repaid to the Official Public Account (pp.265-267).

4.11 The report also notes that an audit by ANAO, *Investment of Public Funds 2004-2005*, identified that the Land Fund held investments that did not meet the definition of an authorised investment under section 39 of the FMA Act. The Consultative Forum (see below) agreed to sell the investments classified by the

¹ Senate Community Affairs Legislation Committee, *Estimates Hansard*, 15 February 2006, pp.41-42.

² ILC, *Annual Report 2004-05*, p.88.

ANAO as non-compliant as long as there was no net loss on the sale of the group as a whole. The investments in question were sold with a net profit of \$810,041 (p.267).

4.12 In relation to the investment policy of the Land Fund, the report stated that the Minister has appointed a Consultative Forum (under section 193G of the ATSI Act) to consider this matter. The department has recommended that the Forum outsource the investment advisory services, investment management and custodial services through open tender. If the Forum agrees to this approach, tenders are expected to be requested in the first quarter of 2005-06 (p.270).

Legislation

4.13 The Committee previously 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 *Financial Framework Legislation Amendment Act 2005* commenced on 22 February 2005. The relevant amendment altered the title of the Aboriginal and Torres Strait Islander Land Fund to the Aboriginal and Torres Strait Islander Land Fund Account.

Senator Nigel Scullion
Committee Chair

