

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 2004-2005

March 2006

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ISBN 0 642 71631 5

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 Native Title and the Aboriginal and Torres Strait Islander Land Account 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 Annual Report 2004-2005;
- the Indigenous Land Corporation Annual Report 2004-2005; and
- the Aboriginal and Torres Strait Islander Land Fund Account (Land Fund) Report 2004-05.

National Native Title Tribunal

1.5 The NNTT is established under Part 6 of the NT Act. The annual report of the NNTT was presented to the Deputy President on 23 December 2005 and tabled in the Senate and in the House of Representatives on 7 February 2006.

The Indigenous Land Corporation and the Land Fund Account

1.6 The ILC is a statutory authority established under section 191A of the ATSIC Act and continuing under section 191A of the *Aboriginal and Torres Strait Islander Act 2005*. The Land Fund Account report is included in the Annual Report of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

1.7 The annual report of the ILC was tabled in the House of Representatives on 16 February 2006 and in the Senate on 28 February 2006.

Adoption of the Report

1.8 The Committee considered and adopted the report at a private meeting on 14 March 2006.

Chapter 2

The National Native Title Tribunal Annual Report 2004-2005

The National Native Title Tribunal

2.1 The NNTT'S functions are set out in section 108 of the NT Act. They include: dealing with applications, responding to inquiries, making 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.

2.5 The information prescribed by the Requirements includes:

- 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 2005.

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

- 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 2004-2005 complies with all of the formal requirements set out above.

The report

The President's overview

2.8 The President highlighted a number of matters of interest in his overview including:

- developments in the law on native title;
- policies and procedures of governments;
- Federal Court procedures and orders; and
- the roles and capacity of native title representative bodies.

2.9 The report noted that the nature and volume of the work undertaken by the Tribunal varies significantly over time, as well as between individual States and Territories. Much of the work is driven by parties who request Tribunal assistance, and by the Federal Court which refers native title applications to the Tribunal for mediation and supervises the mediation processes – 'these and other factors, including the negotiating stances of parties, make it difficult to predict accurately the number of agreements and when they will be finalised' (p.2).

2.10 The report also drew attention to a number of other external factors affecting the Tribunal including various legislative and policy changes at the national level, including the abolition of ATSIC; the restructuring of Commonwealth service delivery to Indigenous Australians by adopting a whole-of-government approach; and the proposed reduction in real terms of funding to the native title system over coming years – 'the practical implications of those changes for the native title system have yet to be identified' (p.2).

2.11 The report also identifies a number of trends within the Tribunal including shifts in the volume of registration, notification and mediation of native title determination applications; forms of assistance offered by the Tribunal; and future act

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

work (pp.8-13). This information is particularly useful and allows the Committee to better gauge the Tribunal's progress from year to year.

2.12 The overview section of the report also predicts a number of trends in native title law and practice. These include 'predictions' that the law in relation to native title will become clearer; the volume of native title work will increase; agreement-making will become the usual method of resolving native title issues; there will be an increased focus on 'second generation' native title issues (such as the adequacy of the structural arrangements to administer native title once it has been formally recognised); the Federal Court will continue to affect, if not drive, native title processes; and the resolution of native title issues will not, of itself, resolve other social issues (pp.15-26).

Performance

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
- assistance, notification and reporting.

2.14 In 2004-05, the Tribunal completed a review of the outputs by which it reports its performance. The objective was to capture more accurately the complexity of changes in workload and the nature of the work influenced by these external factors. In the 2005-06 financial year, the Tribunal will introduce a revised outputs structure that, it is argued, more clearly reflects the purpose of the Tribunal and its changed operating environment. It will also adopt a new outcome statement – 'resolution of native title issues over land and waters', which it argues better identifies its role and responsibilities than the previous outcome statement – 'recognition and protection of native title'.

2.15 The Tribunal has also introduced effectiveness indicators for the outcome. These indicators will help to assess the quality of agreement-making processes and the impact of the Tribunal's work on the type of native title outcomes achieved by parties (pp.13,34). The Committee welcomes these developments and looks forward to the Tribunal's reporting against these criteria in future reports.

Outcome and outputs

Output group 1.1: Registrations

2.16 The Tribunal's registration responsibilities are twofold. First, the Tribunal applies statutory registration conditions to claimant applications and to ILUAs. Second, the Tribunal is responsible for the upkeep of public registers required by the Act to record information relating to native title.

2.17 The Committee notes that there were 54 applications registered in this reporting period, compared to 59 in the last financial year. The unit cost was \$43,095, compared with \$44,289 in 2003-04. The overall cost in 2004-05 was \$2,327,121 compared to an estimate of \$2,693,230. The report commented that the trend of a decreasing registration test workload continued in the current reporting period. Although there was a decrease in the overall number of decisions made, there was a noticeable shift in registration test workloads between the Tribunal's individual registries (p. 43).

2.18 The Tribunal estimated that seventy per cent of its applications would be decided within two months of receipt from the Federal Court. The actual result was 28 per cent of applications determined within the deadline. Last year the figure was 31 per cent. The Tribunal acknowledged that the timeliness of decisions was not met (as in previous years) and advances a number of reasons to explain this situation (p. 46).

Output group 1.2: Agreement-making

2.19 Agreement-making is defined as the work carried out to achieve a native title or related result with the active participation of two or more parties. The categories of agreement-making are Indigenous land use and access agreements, claimant, non-claimant and compensation agreements, and future act agreements.

2.20 The cost and number in each category is set out below together with the estimate in each case (pp.60,64,70).

Table 1: Agreement-making

Category of agreement	Estimated number	Actual number	Estimated cost	Actual cost
Indigenous land use and access	27	6	\$3,066,012	\$1,197,011
Claimant, non-claimant and compensation agreements	195	418	\$9,868,950	\$13,374,097
Future Act agreements	72	40	\$2,522,304	\$1,418,736

2.21 The above data indicate that during the reporting period, the Tribunal finalised six ILUA negotiation matters. While this appears a substantive decline in activity since the last reporting period when fifteen agreements were recorded, the Tribunal explained that the output figure only reflects assistance provided for 'stand alone'

ILUAs – that is, those ILUAs that do not flow from a native title determination application (p. 61).

2.22 Figures on claimant, non-claimant and compensation agreements saw a dramatic increase in the reporting period – more than double the number of agreements than in the previous reporting period. The Tribunal noted that the trend is consistent with the increased number of consent determinations and lodged ILUAs (p.64).

2.23 In relation to future act agreements, the report noted that Western Australia continues to account for the bulk of future act mediation assistance. On a national basis there has been a decrease in referral of matters to the Tribunal for mediation assistance (p. 71).

2.24 The Committee notes that the cost of claimant, non-claimant and compensation agreements exceeded the cost estimates, while the cost of Indigenous land use and access agreements and future act agreements were significantly less than the estimate.

Output group 1.3: Arbitration

2.25 This output group includes future act determinations and finalised objections to expedited procedure.

2.26 The Tribunal estimated fifty future act determinations and there were 43 for the financial year. The target of determining seventy per cent within six months of application was almost met – with 67 per cent determined within the time set (although this was down on last year's performance when 94 per cent were determined within the time set).

2.27 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 (p. 77).

2.28 Statistics indicate that there were 1,230 objections finalised, compared to 761 in the previous reporting period. In this reporting period the costs exceeded the estimate as in the previous reporting period.

Output group 1.4: Assistance, notification and reporting

2.29 This group includes assistance to applicants and other persons; notification; and reports to the Federal Court.

2.30 The Tribunal has three categories of assistance activities:

- contacts – assistance given over the telephone or by letter;
- events – education programs, information sessions, fact sheets and research for parties on agreement-making; and

- initiatives – these include capacity building for participants in the native title process.

2.31 The report noted that the number of people contacting the Tribunal for information and assistance was lower than anticipated in 2004-05, continuing the previous year's trend. The Tribunal stated that this was in part attributable to the fact that information about the various native title processes has reached most of its target audience – 'many of the Tribunal's clients and stakeholders are now experienced and do not need to contact the Tribunal to obtain information' (p.82).

2.32 Statistics indicate that the most common type of assistance requested was information about native title applications and the registers, including searches of the registers. People also contacted the Tribunal for information on future act processes and mediation (p.82). Also notable was the significant increase in the use of the Tribunal's website in the reporting period.

2.33 During the reporting period, the Tribunal's geospatial services unit continued to be enhanced. Apart from educational forums and claimant workshops, the Tribunal has developed a self-service system, known as 'Native Title Vision' to allow stakeholders to see and analyse spatial information on native title matters via the internet. This was further enhanced in March 2005 through a partnership with Geoscience Australia, which significantly increased the amount and quality of information to stakeholders. This is discussed at pp.88-89 of the Annual Report.

Financial performance

2.34 The report notes that the Tribunal's actual expenditure for the 2004-05 financial year was \$31.918 million. This was \$2.079 million less than the estimate in the Attorney General's Portfolio Additional Estimates Statements. The report explained that 'there were variations from estimates for several outputs, and this resulted in a slight reduction in the Tribunal's overall workload' (p.37). Details are provided on the cost of each output group and outputs in the reporting period (p.38).

2.35 The Tribunal stated that it is likely to face budgetary constraints in future years. The report noted that Budget papers published in May 2004 stated that the Tribunal's appropriation and expenditure grew steadily from 1994 to 2004-05. The 2005-06 and forward estimates years show a slight decrease in appropriation from 2004-05. The level of appropriation will remain relatively flat for the duration of the next four year budget cycle. The Tribunal observed that rising costs will erode the value of that funding, and continuing work demands are likely to put pressure on the Tribunal. The Tribunal added that:

The effect of the budgetary constraints on the Tribunal will become clearer in the years ahead. It is apparent, however, that to meet the challenges of the new budgetary circumstances there will need to be some restructuring of the organisational side of the Tribunal ... The Tribunal is also looking at its internal decision-making processes and other activities to ensure that it concentrates on the performance of its core functions (p.14).

Corporate governance

2.36 The Tribunal has a number of internal groups which support the members' professional role and the strategic management areas of the Tribunal. These groups include the Strategic Planning Advisory Group, Agreement-Making Strategy Group, National Future Act Liaison Group, an ILUA Strategy Group, and a Research Strategy Group.

2.37 The report noted that the focus for the Tribunal in 2004-05 has been on enhancing the leadership skills of senior managers. Learning and development activities continued in the areas of corporate compliance, skills development and professional and career development (p.103).

2.38 The Committee considers that the Tribunal's governance structures are comprehensive and assist it in gaining an objective understanding of its needs in the relevant areas of activity.

Workforce planning

2.39 The Committee notes that there continues to be a relatively high turnover of staff, reaching seventeen per cent in the reporting period. This figure has been close to, or at, ten per cent for the last two reporting periods prior to 2004-05.

2.40 In its last report, the Committee suggested that some analysis of staff resignations should be undertaken by the Tribunal. Some information is provided in the report. Data obtained from exit interviews shows that most employees leave the Tribunal because they have secured alternative employment. The second most compelling reason for leaving is to undertake family/caring responsibilities (p.104).

2.41 While the Committee notes that the Tribunal has made some effort to analyse the reasons for the relatively high staff turnover, further details would be useful; for example, whether the experience with the Tribunal had enhanced the person's skills so as to make them competitive in other areas. The Committee considers that staff turnover should be carefully monitored and strategies to address the issue should be given priority by the Tribunal.

Indigenous employees

2.42 Of the Tribunal's ongoing employees, 13.1 per cent are Indigenous. This has decreased by 0.9 percent over the previous reporting period. The Tribunal pointed to its relatively high proportion of Indigenous employees compared with other agencies. The report notes that the average proportion of ongoing Indigenous employees in Commonwealth public service agencies was 2.4 per cent (as at November 2004) – in the same reporting period, Indigenous employees made up fourteen per cent of the Tribunal's ongoing workforce. The Tribunal ranked fifth (of 75 public service agencies) in the number of Indigenous employees (p.105).

2.43 In its last report the Committee requested that further information be provided on areas within the Tribunal where Indigenous employees are located, especially in areas which have direct contact with Indigenous clients. Information in the report indicates that of the Tribunal's 34 Indigenous employees, 31 are employed in the service delivery division, two in corporate services and one in information management division. Information on the classification levels and location of Indigenous employees by State/Territory are also provided in the report (pp.105, 120).

Clients

2.44 The Tribunal commissioned research into the satisfaction of its clients and stakeholders, which took place in April-May 2005. This followed baseline research completed in 2003.

2.45 The Tribunal's overall satisfaction rating was 6.77 (out of a maximum of 10). Only six per cent of 149 clients surveyed were dissatisfied (rating below 5). In the 2002-03 research the dissatisfaction level was 16 per cent.

2.46 Clients and stakeholders identified five areas for potential improvement, including:

- speed, in relation to claims, notification, staff response and advice;
- interaction, in relation to engagement and 'having a say' in the operation of the Tribunal;
- practical help, including resources, better information and more advice;
- simple, efficient processes; and
- innovative and proactive approaches to resolution of claims.

2.47 The Tribunal noted that the results of the research will be used as part of its continuous improvement program. It will also be used to develop qualitative measures for ongoing measurement as part of its new output and outcome framework to be introduced in 2005-06 (p.113).

Claims Resolution Review

2.48 In September 2005 the Attorney-General announced the establishment of a Claims Resolution Review to consider the process by which native title applications are resolved.⁴ The review will consider ways in which the NNTT and the Federal Court can work together more effectively to achieve sustainable outcomes for all parties. The Committee looks forward to the outcome of this review and the Tribunal's response to this important issue.

4 Attorney-General, 'Practical Reforms to Deliver Better Outcomes in Native Title', *Media Release*, 7 September 2005.

Conclusion

2.49 The Annual Report provides a well structured and comprehensive overview of the Tribunal's activities with a clear emphasis on performance reporting. The Committee is pleased to see that suggestions made in its last report for additional information have been included in the current Annual Report.

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.¹ The Land Fund Report is included in the

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.² 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.

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).

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.

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

