

about the ilc

Purpose

The ILC is an independent statutory authority established to provide economic, environmental, social and cultural benefits for Aboriginal persons and Torres Strait Islanders by assisting in the acquisition and management of Indigenous-held land.

To assist in achieving its purpose, the ILC received an annual draw down from the Aboriginal and Torres Strait Islander Land Fund (the Land Fund) from 1995–1996 until 2003–2004. From 2004–2005 onwards, the ILC will receive the annual realised real return from the investments of Land Fund to fund all of its activities.

Enabling Legislation

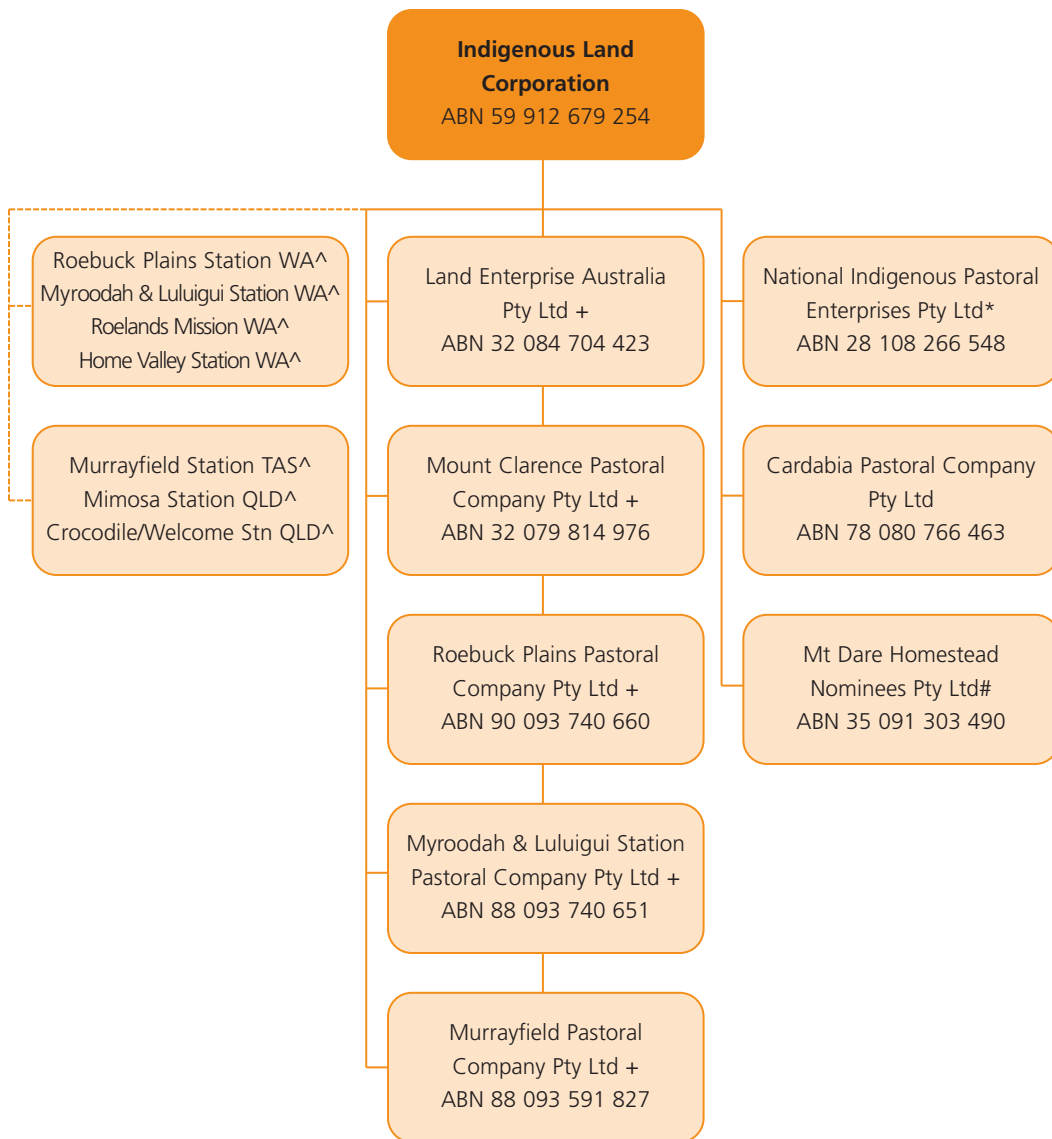
The establishment of the Land Fund was part of the Australian Government's response to the High Court's decision on the Mabo case. The first part of the response was the enactment of the *Native Title Act 1993* (NTA), while the establishment of the Land Fund, and subsequently the ILC, formed the second part.

The ILC came into existence on 1 June 1995, following passage of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*. This repealed Part 10 of the NTA and amended the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) by adding a new Part 4A establishing the ILC as a Commonwealth Authority (s.191A ATSIC Act) with land acquisition and land management functions (s. 191C ATSIC Act).

The *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* had the principal aim of abolishing the Aboriginal and Torres Strait Islander Commission (ATSIC). It also renamed the ATSIC Act as the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act). The substance of Part 4A regarding the ILC was largely preserved, subject to some changes flowing from ATSIC's abolition. In particular, the two ATSIC Commission positions on the ILC Board were replaced by two positions to be appointed by the Minister.

Some further provisions were inserted to both clarify and enhance the powers of the ILC (e.g.: s. 191D (1A) and s. 191EA ATSI Act). Money that formerly constituted the Regional Land Fund and fifteen properties that had been owned by ATSIC were vested in the ILC.

Figure 1: Structure of the ILC and its Subsidiaries



^ Commercial pastoral operations on ILC-held properties
 + Ceased operations
 * Employment subsidiary only
 # Holds licences on Mt Dare Homestead only as from 1/4/02

Responsible Minister

The Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon Amanda Vanstone, is the Portfolio Minister responsible for the ILC and is the primary parliamentary spokesperson on matters associated with the ILC.

The Minister is not empowered to direct the ILC in relation to any of its activities, except as expressly provided for in the ATSI Act¹ or under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The ILC, under section 15 of the CAC Act, is required to inform the Minister of any events of significance such as involvement in business ventures. The ILC is also required by the CAC Act² to keep the Minister informed of its operations and provide the Minister, and additionally the Minister for Finance and Administration, with such reports, documents and information in relation to the operations of the ILC as required from time to time.

The ILC is required to provide the Minister with a copy of the National Indigenous Land Strategy (NILS) and a copy of any changes to the NILS³. The Minister is required to table these in Parliament⁴. The ILC is required to prepare Regional Indigenous Land Strategies (RILS) and provide the Minister with a copy of any RILS on request⁵.

In December 2004, the Prime Minister requested that the Minister for Finance and Administration assume joint oversight responsibilities for the ILC. A draft Joint Ministerial Oversight Arrangements document, which sets out legislative and protocol arrangements to facilitate joint Ministerial oversight of the ILC and the Land Fund, was developed. At 30 June 2005, the draft arrangements were under consideration by the Department of Finance and Administration and the Department of Immigration and Multicultural and Indigenous Affairs.

¹ s. 191L

² s. 16

³ s. 191N(6)

⁴ s. 191N(7)

⁵ s. 191P(8)

Functions & Powers

FUNCTIONS

The Aboriginal and Torres Strait Islander Act 2005 provides that:

191C The ILC has the following functions:

- (a) The land acquisition functions referred to in section 191D;
- (b) The land management functions referred to in section 191E;
- (c) Such other functions as are conferred on the ILC by this Act;
- (d) To do anything incidental to or conducive to the performance of any of the preceding functions.

191D (1) The land acquisition functions of the ILC are as follows:

- (a) To grant interests in land to Aboriginal or Torres Strait Islander corporations;
- (b) To acquire by agreement interests in land for the purpose of making grants under paragraph (a);
- (c) To make grants of money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land;
- (d) To guarantee loans made to Aboriginal or Torres Strait Islander corporations for the purpose of the acquisition of interests in land.

191E (1) The land management functions of the ILC are as follows:

- (a) To carry on, or arrange for the carrying on of, land management activities in relation to Indigenous-held land under the agreements with holders of the land;
- (b) To carry on, or arrange for the carrying on of, land management activities in relation to land held by the ILC;
- (c) To carry on other land management activities in relation to Indigenous-held land;
- (d) To make grants of money for the carrying on of land management activities in relation to Indigenous-held land;
- (e) To make loans of money (whether secured or unsecured) for the purpose of carrying on land management activities in relation to Indigenous-held land;
- (f) To guarantee loans made for the purpose of carrying on land management activities in relation to Indigenous-held land.

Under section 191F (3), the functions of the ILC are additional to, and not instead of, any functions conferred on a body or person by or under:

- (a) Any other law of the Commonwealth, or
- (b) A law of a State or Territory.

POWERS

Section 191H (1) of the ATSI Act provides that the ILC has the power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

Section 191H (2) provides that the powers of the ILC under Section 191H (1) include, but are not limited to, the following powers:

- (a) To enter into contracts and agreements;
- (b) To invest money of the ILC;
- (c) To appoint agents and attorneys and act as an agent for other persons;
- (d) To form, and participate in the formation of, companies;
- (e) To subscribe for and purchase shares in, and debentures and securities of, companies;
- (f) To enter into partnerships;
- (g) To participate in joint ventures and arrangements for the sharing of profits;
- (h) To accept gifts, grants, bequests and devises made to it;
- (i) To act as a trustee of money and other property vested in it on trust;
- (j) To charge for the provision of services by it.

The ILC has the power to form subsidiaries to perform functions corresponding to the ILC's functions (s. 191G ATSI Act). Section 4(2) of the ATSI Act defines a subsidiary in the same manner as subsidiary is determined under the *Corporations Act, 2001*.

PRIORITY PROVISIONS

In undertaking its functions (s. 191F (2)) the ILC is required to give priority to:

- (aa) Ensuring that as far as is practicable, Indigenous people derive social or cultural benefits as a result of the performance of the ILC's functions;
- (a) Ensuring that it has access to necessary skills and resources required to perform its functions;
- (b) Maximizing the employment of Indigenous people;
- (c) Maximizing the use of goods and services by businesses owned and controlled by Indigenous people.

LIMITS ON BORROWING

The ILC has the power to borrow money, but section 193L (2) limits the amount of borrowings of the ILC. The ILC made no borrowings during the reporting period.

LIMITS ON GUARANTEEING

Section 193N places limits on the amount of funds the ILC may guarantee in a financial year. The ILC made no new guarantees in the reporting period.

BUSINESS PRINCIPLES

When acting commercially, the ILC must act according to sound business principles (s. 191F(1)).

Aboriginal and Torres Strait Islander Land Fund (Land Fund)

LAND FUND APPROPRIATIONS

From 1995–1996 until 2003–2004, \$121m (indexed to 1994 values) was appropriated annually to the Land Fund from the Consolidated Revenue Fund. The legislative scheme set out in the ATSIC Act, as it was then called, required approximately 66% of the amount to be invested in building the capital base of the Land Fund. From 1 July 1997, the remaining 34% was drawn down annually to the ILC⁵ for the performance of its statutory responsibilities.

In 2003–2004, the Land Fund received its final appropriation from the Consolidated Revenue Fund and the ILC received its final drawdown under this method.

Table 1 provides an illustration of the notional and actual funding allocations to the Land Fund and to the ILC during the period of establishment of the Land Fund⁶.

From 2004–2005 and onwards the ILC will receive the realised real return on the investments for the Land Fund as defined in section 193C of the ATSI Act. This will be the only source of recurrent funding to the ILC for the performance of its statutory responsibilities.

The ILC received its first payment under this method on 30 June 2005.

From its inception 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, at the abolition of ATSIC, responsibility for the administration of the Land Fund was transferred to the Department of Immigration and Multicultural and Indigenous Affairs.

The Land Fund is a special account as defined in the *Financial Management and Accountability Act 1997* (FMA Act) and will always remain the property of the Commonwealth. The FMA Act⁷ restricts the Land Fund to investing in authorised investments being:

- Securities of the Commonwealth or of a State or Territory;
- Securities guaranteed by the Commonwealth, a State or Territory;
- A deposit with a bank, including a deposit evidenced by a certificate of deposit; and
- Any other form of investment prescribed by the regulations.

Consequently, the Land Fund is precluded from investment in equity and property assets.

⁵ In 1995–1996 and 1996–1997, a portion of the draw down from the Land Fund (\$21 million indexed) was allocated to ATSIC to fund the ATSIC Land Acquisition and Management program. The ILC's involvement in land management commenced on 1 July 1997.

⁶ The amounts shown in the table are, as noted, notional figures and actual figures. The total shown in the table does not represent the Land Fund Target. The formula for the calculation of the target amount is specified in section 193AA(2)-(3) of the ATSIC Act.

⁷ S. 39

Table 1: Notional Allocations to and from the Land Fund (1)

	Allocation to the Land Fund		Transferred to the ILC(3)		Transferred to ATSIC		Retained in the Land Fund		Balance of the Land Fund Actual (\$m)
	Notional (\$m)	Actual (2) (\$m)	Notional (\$m)	Actual (\$m)	Notional (\$m)	Actual (\$m)	Notional (\$m)	Actual (\$m)	
1994-1995	200	200.0	25	25.0	-	-	175	175.0	189.7
1995-1996	121	123.2	24	24.4	21	21.4	76	77.4	288.0
1996-1997	121	126.7	24	25.1	21	22.0	76	79.6	396.5
1997-1998	121	129.8	45	48.3	-	-	76	81.5	527.1
1998-1999	121	133.7	45	49.7	-	-	76	84.0	638.2
1999-2000	121	136.3	45	50.7	-	-	76	85.6	784.5
2000-2001	121	139.2	45	51.8	-	-	76	87.4	940.7
2001-2002	121	141.5	45	52.6	-	-	76	88.8	1,095.2
2002-2003	121	144.0	45	53.6	-	-	76	90.4	1,290.7
2003-2004	121	146.7	45	54.7	-	-	76	92.0	1,415.8

(1) A variation of this table has been produced in successive ILC Annual Reports to illustrate in simple terms the gradual establishment of the Land Fund.

(2) The funding allocations are indexed from 1995-1996 to maintain real value.

(3) Payments from the Land Fund to the ILC over this period are detailed in Section 193A of the ATsIC Act.

corporate governance

Board Appointments

Following passage of the ATSI Act, the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister) is now responsible for appointing all ILC Board Directors, including the Chairperson and Deputy Chairperson. The Chairperson and at least four Directors must be Aboriginal persons or Torres Strait Islanders. Before passage of the ATSI Act, the ATSIC Chairperson was an ex officio member of the Board and another Board member was appointed from the ATSIC Commissioners. Former ATSIC Chairperson, Mr Geoff Clark, and ATSIC Commissioner, Mr Steve Gordon, ceased to be ILC Directors on 24 March 2005.

At 30 June 2005, the Minister had yet to appoint two replacement Directors to the Board.

The ILC Board governs the proper and effective performance of the ILC and determines ILC policy. The strategic management framework at Figure 2 illustrates how the Board governs proper and effective performance. Key objectives of the framework include:

- Achieving the ILC's objectives as specified in the ATSI Act;
- Providing effective and accountable strategic leadership; and
- Exercising control over the ILC's operations, including appropriate risk-management strategies.

Policy Setting & Strategic Directions

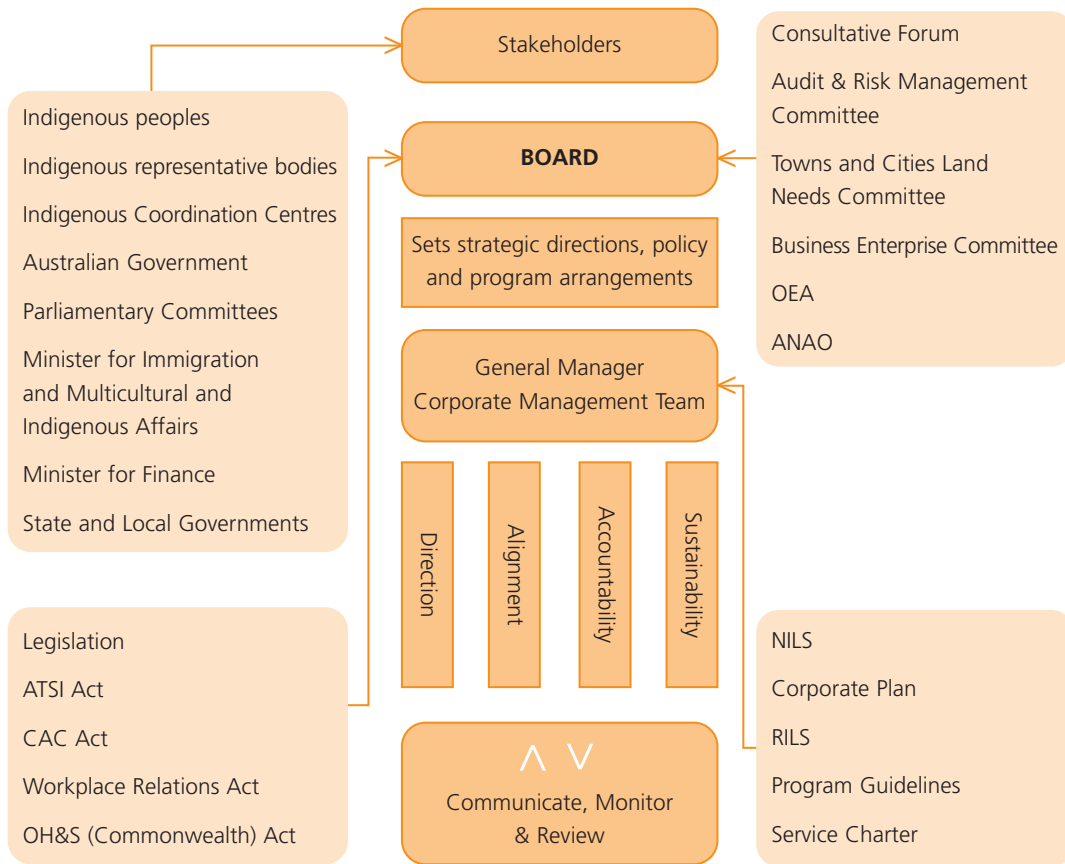
Key policy drivers are the NILS, Corporate Plan 2003–2006 and Board decisions.

NILS: The NILS sets strategic directions, defines the key principles to be followed in assisting in the acquisition and management of Indigenous land and establishes the ILC's program structure for the following year. Each December, the ILC Board reviews and, if necessary, revises the NILS and, as required, provides a copy to the Minister for Immigration and Multicultural and Indigenous Affairs.

ILC Corporate Plan 2003–2006: Drawn from the NILS, the Corporate Plan sets out the ILC's purpose, key objectives and strategies, illustrates the program structure, and expresses ILC values.

Board decisions: Nine Board meetings were conducted in 2004–2005 where land acquisition and management proposals were considered, performance and accountability was monitored, and policy decisions made.

Figure 2: ILC Corporate Governance Framework



Governance Strategies

1. Strategic directions set by the Board
2. Strategic planning and budgeting
3. Roles and responsibilities statements
4. Internal controls and risk management
5. Board committees
6. Performance monitoring and reporting
7. Information and communication technology
8. Human resource management strategy
9. Staff Consultative Committee
10. Indigenous Advisory Group
11. Legislative compliance
12. Stakeholder relationships