

PURPOSE

The ILC is an independent statutory authority established to provide cultural, social, environmental and economic benefits for Aboriginal persons and Torres Strait Islanders by assisting in the acquisition and management of an Indigenous land base. To assist in achieving this the ILC received an annual draw down from the Aboriginal and Torres Strait Islander Land Fund Account (the Land Fund) until 2003-2004. From 2004-2005 onwards the ILC will only receive the annual realised real return of the Land Fund to fund all of its activities.

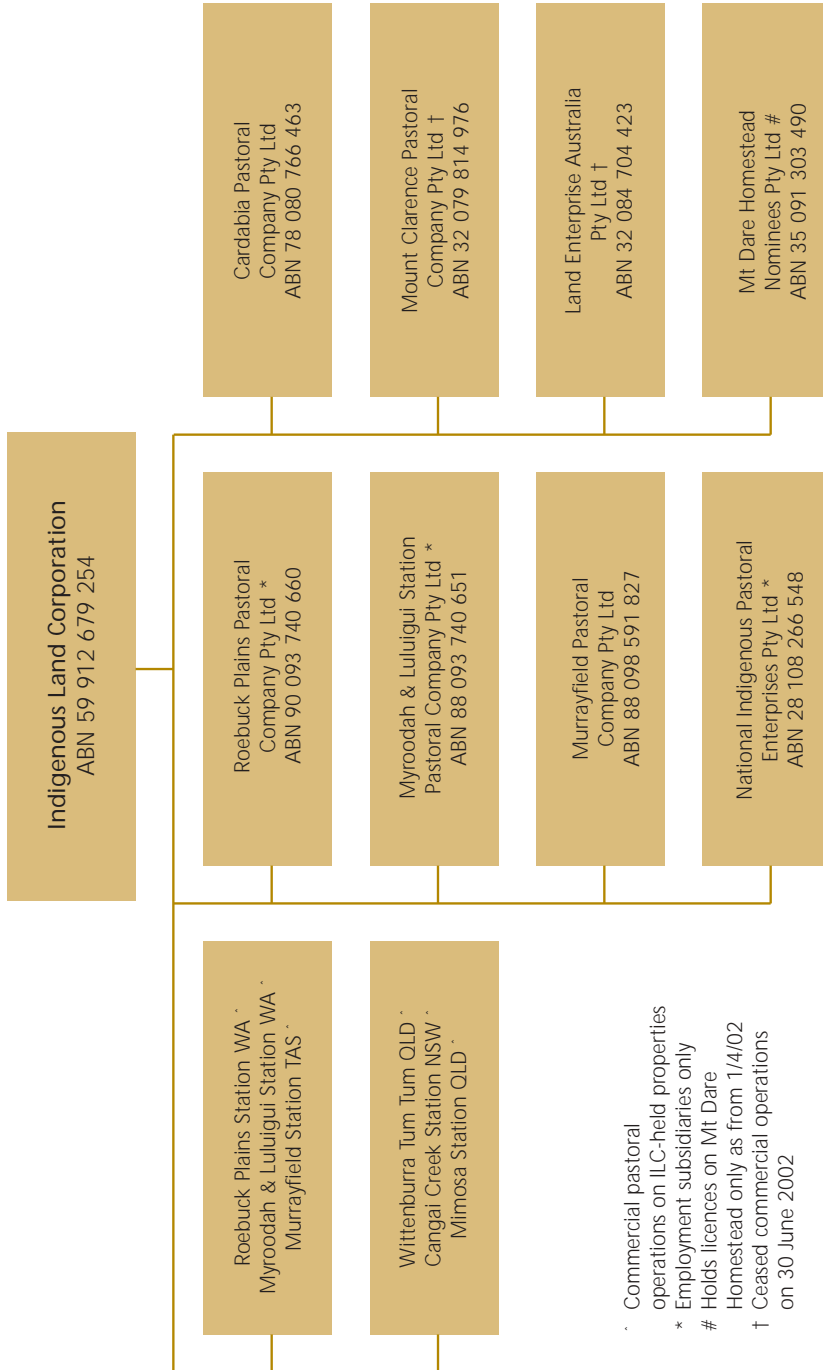
The establishment of the Land Fund was part of the Australian Government's response to the High Court's decision on the Mabo case. The first part of the response was the enactment of the Native Title Act 1993, while the establishment of the Land Fund, and subsequently the ILC, formed the second part.

ENABLING LEGISLATION

The ILC came into existence on the 1st June 1995 following passing of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*, which repealed Part 10 of the Native Title Act 1993 and amended the *Aboriginal and Torres Strait Islander Commission Act 1989 (the ATSIC Act)* by inserting into the ATSIC Act a new Part 4A. The ILC was established as a Commonwealth Authority (s.191A ATSIC Act) with land acquisition and land management functions (s. 191C ATSIC Act).



FIGURE 1: STRUCTURE OF THE ILC AND ITS SUBSIDIARIES



RESPONSIBLE MINISTER

The ILC is accountable to the Parliament through the Minister for Immigration and Multicultural and Indigenous Affairs. The Minister is responsible for appointing five of the seven ILC Board of Directors (s. 191X(1) ATSI Act), but is not empowered to direct the ILC in relation to any of its activities except as expressly provided for in the ATSI Act (s. 191L) or under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The other two Directors of the ILC are the ATSI Chairperson (appointed as an ex officio member during their term as ATSI Chairperson) and an ATSI Director elected by the ATSI Board. 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 NILS (s. 191N(6)). The Minister is required to table these in Parliament (s. 191N(7)).

The ILC is required to provide the Minister with a copy of a Regional Indigenous Land Strategy (RILS) on request. 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 section 16 of the CAC Act to keep the Minister informed of its operations and provide the Minister, and additionally the Minister for Finance, with such reports, documents and information in relation to the operations of the ILC as required from time to time.

FUNCTIONS

Section 191C of the ATSIC Act provides as follows:

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 the 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). Subsection 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) maximising the employment of Indigenous peoples
- (c) maximising the use of goods and services by businesses owned and controlled by Indigenous people.

Limits on Borrowings

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 loan monies the ILC may guarantee in a financial year. The ILC made no new guarantees in the reporting period.

ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND ACCOUNT

Business Principles

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

Land Fund Appropriations

From 1995-1996 until 2003-2004, \$121 million (indexed to 1994 values) was appropriated annually to the Land Fund by the Australian Government. The legislative scheme set out in the ATSIC Act requires 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 ILC¹ for the performance of its statutory responsibilities. Table 1² provides an illustration of the notional funding allocations to the Land Fund and to the ILC during the period of establishment of the Fund, based on 1994-1995 dollar values (the financial year of the first special appropriation to the Land Fund and the actual funding allocations received).

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 Australian Government. The FMA Act restricts the Land Fund to only investing in authorised investments (Section 39) 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
- any other form of investment prescribed by the regulations.

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

In 2004 the Land Fund received its final appropriation from the Australian Government of \$146.7m. ILC's final payment under this arrangement of \$54.7m was also received. From 2004-2005 onwards, the ILC will receive the realised real return from the Land Fund as defined in section 193C of the ATSIC Act. This will be the only source of recurrent annual funding to the ILC for the performance of its statutory responsibilities.

Under its legislation the ILC has the flexibility to invest funds and to roll over funds not expended in previous years. The Land Fund met the target value as specified in action 1993AA (2)-(3) of the ATSIC Act as at 30 June 2004.

1. In 1995-96 and 1996-97 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.

2. 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.

**TABLE 1:
NATIONAL ALLOCATIONS TO AND FROM THE LAND FUND (\$M)⁽¹⁾**

	Allocation to the Land Fund	Transferred to the ILC ⁽³⁾	Transferred to ATSIC	Retained in the Land Fund	Balance of the Land Fund
1994-1995 (\$,m)					
Notional	200	25	-	175	
Actual ⁽²⁾	200.0	25.0	-	175.0	189.7
1995-1996 (\$,m)					
Notional	121	24	21	76	
Actual	123.2	24.4	21.4	77.4	288.0
1996-1997 (\$,m)					
Notional	121	24	21	76	
Actual	126.7	25.1	22.0	79.6	396.5
1997-1998 (\$,m)					
Notional	121	45	-	76	
Actual	129.8	48.3	-	81.5	527.1
1998-1999 (\$,m)					
Notional	121	45	-	76	
Actual	133.7	49.7	-	84.0	638.2
1999-2000 (\$,m)					
Notional	121	45	-	76	
Actual	136.3	50.7	-	85.6	784.5
2000-2001 (\$,m)					
Notional	121	45	-	76	
Actual	139.2	51.8	-	87.4	940.7
2001-2002 (\$,m)					
Notional	121	45	-	76	
Actual	141.5	52.6	-	88.8	1,095.2
2002-2003 (\$,m)					
Notional	121	45	-	76	
Actual	144.0	53.6	-	90.4	1,290.7
2003-2004⁽⁴⁾ (\$,m)					
Notional	121	45	-	76	
Actual	146.7	54.7	-	92.0	
Target Value of the Fund⁽⁵⁾					1,431.6

- (1) This variation of this table has been produced in successive ILC Annual Reports to illustrate in simple terms the gradual establishment of the Land Fund. To avoid confusion, dollar values have been retained at their notional values in subsequent reports.
- (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.
- (4) The 2003-2004 Financial Statements of the Land Fund have not been finalised at the time of preparing this report
- (5) The target value of the Land Fund is calculated in reference to section 1993AA(2)-(3) of the ATSIC Act.