

# CHAPTER ABOUT THE ILC

## **Purpose:**

The ILC is an independent statutory authority established to provide economic, environmental, social and cultural benefits for Aboriginal people and Torres Strait Islanders by assisting in the acquisition of land and management of Indigenous-held land. To assist in achieving this purpose, the ILC receives an annual drawdown from the Aboriginal and Torres Strait Islander Land Account.

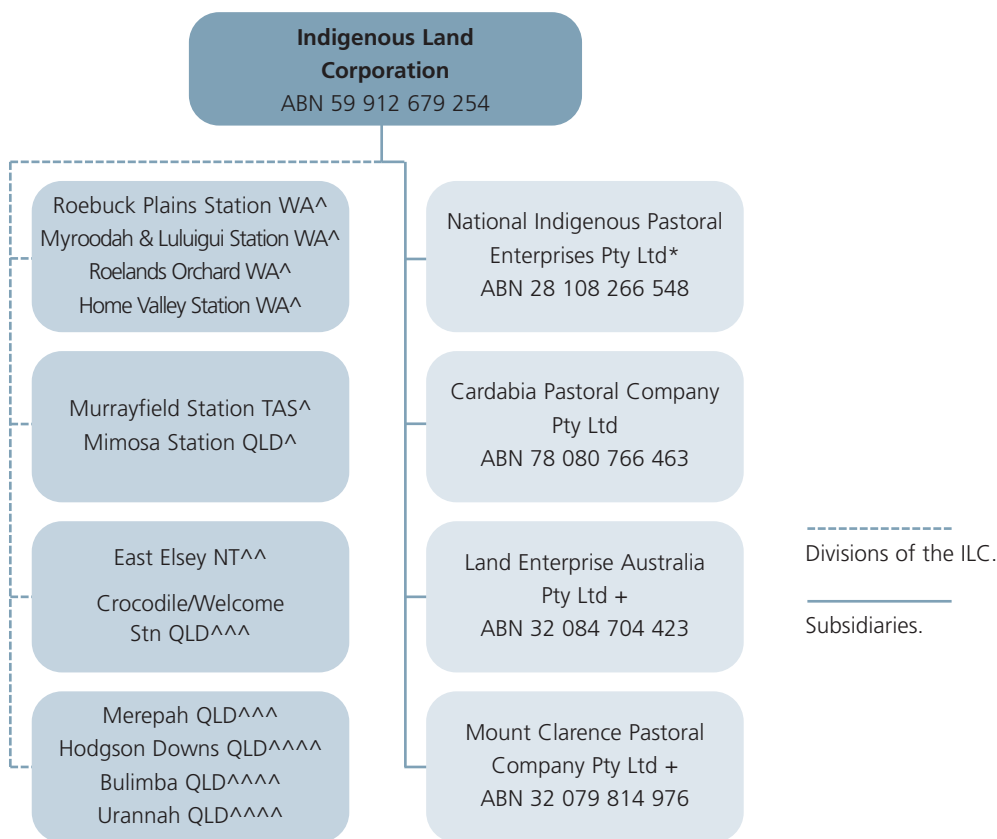
## Enabling Legislation

The establishment of the Land Account was part of the Australian Parliament’s response to the High Court’s decision in the Mabo case. The first part of its response was the enactment of the *Native Title Act 1993* (NTA), while the establishment of the Land Fund, and subsequently the ILC, was 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 This repealed Part 10 of the NTA and amended the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) by adding a new Part 4A, establishing the ILC as a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<sup>1</sup> with land acquisition and land management functions<sup>2</sup>.

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). It also made some consequential amendments to Part 4A, deleting references to ATSIC and investing the ILC with some of the former roles of ATSIC, but otherwise preserving substantive provisions relating both to the ILC and the Land Account.

Figure 1: Structure of the ILC, its Businesses and Subsidiaries.



- ^ Commercial operations on ILC-held properties.
- ^^ Commercial operations on ILC-leased properties.
- ^^^ Commercial operations commencing on ILC-held properties.
- ^^^^ Commercial operations commencing on ILC-leased properties.
- + No activity for the period.
- \* Employment subsidiary only.

<sup>1</sup> S.191A ATSI Act  
<sup>2</sup> S. 191C ATSI Act

## Responsible Minister

The Minister for Families, Community Services and Indigenous Affairs the Hon Mal Brough is the Portfolio Minister responsible for the ILC. He is the primary parliamentary spokesperson on matters associated with the ILC and he appoints to the Board.

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

The ILC is required by the CAC Act to inform the Minister of any events of significance<sup>3</sup>, such as the establishment of a new company. The ILC is also required<sup>4</sup> to keep the Minister informed of its operations and provide the Minister, and additionally the Minister for Finance and Administration, with 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 NILS<sup>5</sup>. The Minister is required to table these in Parliament<sup>6</sup>. The ILC is required to prepare Regional Indigenous Land Strategies (RILS) and provide the Minister with a copy of any RILS on request<sup>7</sup>.

In December 2004, the Prime Minister requested that the Minister for Finance and Administration assume joint oversight responsibilities for the ILC. A Joint Ministerial Oversight Arrangements document, which sets out legislative and protocol arrangements to facilitate joint Ministerial oversight of both the ILC and the Land Account, became effective on 30 March 2007.



*Minister for Families, Community Services and Indigenous Affairs  
the Hon Mal Brough.*

<sup>3</sup> S.15 CAC Act

<sup>4</sup> S.16 CAC Act

<sup>5</sup> S.191N(6) ATSI Act

<sup>6</sup> S.191N(7) ATSI Act

<sup>7</sup> S.191P(8) ATSI Act

## Functions and Powers

### FUNCTIONS

*The Aboriginal and Torres Strait Islander Act 2005* provides (191C) that 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:**

- 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 acquisition of interests in land.

**191E (1) – The land management functions of the ILC are:**

- a) To carry on, or arrange for the carrying on of, land management activities in relation to Indigenous-held land under agreement 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, not instead of, any function 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 devices 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.



*Building a spear trap cattle yard on Lamboo Station.*

### 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;
- g) Ensuring that it has access to necessary skills and resources required to perform its functions;
- h) Maximizing the employment of Indigenous people;
- i) 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. 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)).



River frontage at the Boundary Bend orchard enterprise.

## Aboriginal and Torres Strait Islander Land Account

The Aboriginal and Torres Strait Islander Land Account<sup>8</sup> (Land Account)<sup>9</sup> was established in 1995 to provide a secure stream of income to the ILC in perpetuity.

The Land Account is a Special Account as provided for by section 20(1) of the *Financial Management and Accountability Act 1997* (FMA Act). The FMA Act restricts the Land Account to investing in authorised investments<sup>10</sup>, which are:

- 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 regulation.

The Land Account and its investments are administered by FaCSIA under delegation from the Minister for Finance and Administration.

The Minister for Families, Community Services and Indigenous Affairs appoints a Consultative Forum to determine the investment policy of the Land Account. Two ILC Directors, as nominated by the Board, are members of the Consultative Forum (refer Chapter 2 Corporate Governance).

Between 1995 and 2004, the Australian Government made an annual appropriation of \$121m (indexed to 1994 values) to the Land Account. The Land Account was to be built up to become a self-sustaining capital fund by 30 June 2004.

Approximately 63% of the annual appropriation was retained in the Land Account. The remaining 37% (\$45m indexed annually) was directed to the ILC for the performance of its statutory functions. The final payment to the ILC under these arrangements, in 2004, was \$54.7m.

From the beginning of 2004–2005, Government appropriations to the Land Account concluded and, from then, the ILC began receiving the realised real return on investments of the Land Account. This is the only source of recurrent funding to the ILC for the performance of its statutory functions. Funding received from the Land Account since 1 July 2004 is set out in Table 1.

<sup>8</sup> Division 10 of ATSI Act

<sup>9</sup> Formerly known as the Aboriginal and Torres Strait Islander Land Fund and the Land Fund.

<sup>10</sup> S.39 FMA Act.

Table 1: Funding Received from the Land Account Since 1 July 2004.

Financial Year	Method	Amount (\$m)
2004–2005	Realised real return on the investment of the Land Account	4.0
2005–2006	Realised real return on the investment of the Land Account	23.8
2006–2007	Realised real return on the investment of the Land Account	96.4 <sup>11</sup>

When the *Land Fund and Indigenous Land Corporation (ATSIC Amendment Act)* was drafted in 1995, it was envisaged that the realised real return would provide the ILC with “a certain and regular funding stream after the first ten years”<sup>12</sup>. However, the ILC’s experience is that the realised real return is not certain, specifically due to the following:

1. The term “realised real return” is not defined in the ATSI Act and, consequently, various interpretations can be applied, which results in different levels of funding to the ILC.
2. When determining the realised real return, the Act requires that the implicit price deflator for gross non-farm product (trend) index is to be used as the measure of inflation. This index factor is significantly different from year to year, as compared to the Consumer Price Index.
3. A narrow interpretation of allowable investments by the Department of Finance and Administration.

When the ILC Board met with the Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, in April 2007, it raised with him its concerns over the above three issues and, subsequently, the Chairperson wrote to him requesting that the Act be changed to allow a minimum level of funding to be paid to the ILC annually from the Land Account. The ILC’s proposal will ensure that the Land Account continues to grow in line with the consumer price index and provides the ILC with steady income to ensure its activities continue. The ILC is now working with FaCSIA on these matters.

<sup>11</sup> This payment included a correction of an underpayment from 2004-2005 and 2005-2006 of \$24.5m.

<sup>12</sup> Page 21 Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill 1994 Explanatory Memorandum Part B.