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The Indigenous Land Corporation: a new approach to land acquisition and land management?

J.C. Altman and D.P. Pollack

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Summary

The Indigenous Land Corporation (ILC) is a relatively new Commonwealth statutory authority. Although it commenced operations on 5 June 1995, it has only recently started its functional operations of land acquisition and management. However, it is new not only in the sense of its short operational existence, but also in the unique policy mechanisms enshrined in its enabling legislation that aim to provide better outcomes in indigenous land acquisition and land management.

This Discussion Paper explores those unique policy mechanisms and contrasts them with past Commonwealth policies and practices of indigenous land acquisition and management. It is argued that notwithstanding these mechanisms, the potential for success for the ILC lies in its ability to substantially address long-standing issues in indigenous land acquisition and land management. Since the early 1970s a number of Commonwealth agencies have been charged with policy and program responsibility for indigenous land acquisition and each institution has displayed a comparatively different approach. We suggest that the role of land acquisition as a measure designed to promote policies of self-determination and self-management for indigenous Australians has rarely been clearly defined. There has been continual shifting between cultural, social and economic objectives; some approaches have focused purely on rural and remote acquisitions, while others have allowed urban land purchase.

The paper demonstrates the combined outcome of market acquisition programs and land rights legislation, noting that it is the latter which has been most successful in addressing indigenous aspirations to land. More than 15 per cent of the Australian continent is currently under the control of indigenous interests. Notably, most of this land is located in the rangelands and a large proportion is marginal, overgrazed and degraded, and requires significant financial commitment to restore. The extent and type of land that makes up the indigenous estate raises significant policy implications for the ILC as one of its major functions is to assist indigenous people to manage their land regardless of whether that land was acquired by the ILC or another agency or granted through land rights or other laws.

The ILC pursues a policy of acquisition of land purely on the basis of cultural attachment as a means to address indigenous dispossession - an approach which is derived from the Corporation's primary purpose prescribed in the legislation. While the ILC's policy is based on the sound objective of restoring a land base to traditional ownership, arguably, in strictly enforcing its cultural criteria, commercially viable land which may facilitate important long-term economic development for indigenous groups can be neglected. Marginal land, on the other hand, because of its cultural significance and ready availability might more easily be purchased. The challenge for the ILC is how to balance cultural and commercial aspirations.

A key feature of the legislation is the ILC's power to establish subsidiaries. This option could add a powerful potential for new policy approaches. In particular, the tensions between cultural and economic development objectives can be addressed in ways that have not been possible before. For example, a land management subsidiary could sub-lease land from traditional owners for commercial operations. There is a view that commercial success requires large tracts of land to generate essential economies of scale: sub-leasing on a large regional basis could provide indigenous interests with such opportunities.

Although we note that it is too early to definitely assess the performance of the ILC a number of key developments can be observed:

- the ILC is making considerable progress towards quantifying indigenous land holdings throughout Australia. The completion of this task will be important as it will provide an essential and rigorous base for further policy refinement and development;
- three subsidiaries have been established and are in the early stages of development;
- an overarching subsidiary, Land Enterprise Australia, has been established which has a strict commercial focus and will provide the basis to enhance the ILC's prospects of achieving better economic outcomes on indigenous-owned land, particularly in its role as a mentoring agency; and
- investment performance of the Land Fund, from which the ILC is funded, indicates that the goal of financial self-sufficiency will be achieved, thus providing financial resources independent of the budget well into the next century.

The ILC's strategic and proactive, yet cautious, approach augurs well for improved outcomes in indigenous land acquisition and management that should exceed earlier efforts by others over the past 25 years. The paper concludes by noting that the policy mechanisms enshrined in the legislation and implemented by the ILC are indeed a fundamentally new approach because:

- the statutorily guaranteed income stream for a Commonwealth statutory authority is unprecedented in indigenous land acquisition and management;
- the powers to establish subsidiaries is a significant break with the past; and
- the ILC has considerable autonomy and flexibility in dividing income between administration, land purchase, land management and investment.

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Introduction

The Indigenous Land Corporation (ILC) is an independent statutory authority, with functional responsibility to assist indigenous people to acquire and manage land. The creation of the ILC and the National Aboriginal and Torres Strait Islander Land Fund (the Land Fund), formed the second part of the former Keating Government's proposed three-part response to the High Court's 1992 Mabo decision which recognised native title as a unique form of indigenous property right at common law. Essentially, the purpose of the Land Fund is to provide a funding mechanism for the acquisition of land for those indigenous people who could not benefit from the recognition of native title.

The ILC is funded from the Land Fund, which will receive $1.29 billion in government appropriations over the ten-year period 1995 to 2004.[1] Under its statutory framework the Fund is to become self-sustaining by 30 June 2004 (ILC 1997: 74). Accordingly, about two-thirds of the annual appropriations to the Land Fund are directed to investment, while the ILC's drawdown from the Fund for land acquisition and management operations is limited to about one-third. The high proportion committed to investment is to ensure that the Land Fund will be self-sustaining with an estimated capital base of $1.1 billion at the end of the government's ten-year financial commitment, thus ensuring continuation of the Fund without further government support.

This discussion paper examines the rationale for the establishment of the ILC and the Land Fund and explores the unique policy mechanisms which are intended to provide better outcomes in indigenous land acquisition and land management. The paper begins by briefly outlining the history of Commonwealth institutional involvement in purchasing land for indigenous Australians, and reviewing the different policies and practices of those institutions. In order to demonstrate the legacy of past land acquisition and management policies, and the possible extent of the ILC's land management responsibilities, indigenous land-holdings in Australia are estimated. It is argued that while it may be premature to assess the performance of the ILC to date, its ultimate success or failure will rely on strategies to address long-standing issues relevant to past and present government institutions. The paper then explores current ILC strategies and operations, noting that the statutory framework in which it operates provides an unprecedented approach to indigenous land acquisition and management and offers optimism for improved future outcomes.

Background

Commonwealth functional responsibility for acquiring land for indigenous interests can be traced from the mid 1960s and early 1970s when a number of social, political, legal and international developments converged causing the

Commonwealth to address the questions of indigenous rights and access to land. As Palmer (1988: 9) notes, prior to the 1967 referendum, which empowered the Commonwealth to make special laws for indigenous Australians, the purchase or allocation of land reserved for Aboriginal use was a State matter, except for the Commonwealth's responsibility in the Northern Territory.

In the year following the referendum, the new Office of Aboriginal Affairs (OAA) persuaded then Prime Minister, Gorton, to set up the Capital Fund for Aboriginal Enterprises. The purpose of the fund was to lend money to purchase commercially-viable properties for indigenous people. However, many pastoral leases which indigenous people wished to buy did not meet the 'commercial' test employed by the Capital Fund, and the OAA agitated for a more flexible approach (Rowse 1992: 15). A more substantial commitment was made in January 1972 when then Prime Minister, McMahon, announced a program of acquiring properties for indigenous communities, for which an initial $5 million plus $2 million per annum for the next four years was to be provided.[2] Under the scheme properties were acquired under the Lands Acquisition Act, and this involved problems in both acquisition and in subsequent allocation of the title (Department of Aboriginal Affairs (DAA) 1974: 12).

Later in 1972, the Whitlam Government came to power with a far-reaching reform agenda and a platform to enact legislation for Aboriginal land rights. A fully fledged federal Aboriginal Affairs department was established, combining the small OAA with the Commonwealth's larger Aboriginal Welfare Branch of the Northern Territory Administration (Altman and Sanders 1991: 5). The Whitlam Government undertook to provide up to $5 million per annum over a ten-year period for land purchases for indigenous interests throughout Australia. It was also decided that purchases might be by way of grants to the intended indigenous communities to enable them to purchase titles themselves (DAA 1974: 12). One of the more significant Whitlam initiatives was the establishment of the Woodward Royal Commission to inquire and report as to the means by which, not whether, Aboriginal land rights could be recognised in the Northern Territory. Woodward not only recommended a framework for the recognition and claiming of land rights over vacant Crown land in the Northern Territory, he also recommended the creation of a body to acquire land for indigenous people in all States and Territories.

Woodward's recommendations resulted in the creation of the Aboriginal Land Fund Commission (ALFC). The ALFC operated from May 1975 to June 1980 (Palmer 1988: 6) and assumed the role of land acquisition from DAA. As an independent statutory authority the ALFC was controlled by five appointed commissioners, three of whom were indigenous, and the day-to-day administration was carried out by a secretariat of about seven public servants (Palmer 1988: 42). ALFC acquisitions were premised on the recognition that land remained primarily of social and cultural value to Aboriginal communities. In its five years of operations the ALFC purchased 59 properties for Aboriginal communities, at a total cost of $6 million (ALFC 1980: 1). These properties were predominantly pastoral properties in rural and outback Australia as the general

directives under the Act precluded the purchase of land in metropolitan areas (Bourke 1983: 254).

Notably, the ALFC's role was that of a purchasing agency only, and was not, at least theoretically, responsible for post-purchase management assistance and advice (Rowley 1986: 257). As most acquisitions were cheap and in poor condition, being located on the margins of the pastoral zone, the land was seldom viable and unlikely to provide an economic base for Aboriginal communities with or without heavy injections of capital (Aboriginal and Torres Strait Islander Commission (ATSIC) 1992: 1). Following purchase, the ALFC carried no further responsibility for the cattle station communities or their businesses, leaving that to DAA or State/Territory departments. This resulted in considerable tensions between the ALFC and the DAA or State governments, as the ALFC inevitably and indirectly committed other agencies to funding post-purchase management and development.[3]

In 1980 the Aboriginal Development Commission (ADC) replaced the ALFC as the agency charged with the responsibility for indigenous land acquisition. The Fraser Government established the ADC to focus on economic development for indigenous communities (Turner 1997: 6). Indigenous enterprise development and housing programs were integrated into the new Commission. High expectations were held of the ADC concerning the potential for economic viability for the smaller and medium-sized properties acquired in eastern Australia for the culturally fragmented Aboriginal communities then living in towns and isolated mission settlements (ATSIC 1992: 2). Furthermore, high expectations were held in respect to post-purchase development given the integrated nature of the ADC program structure.

However, the ADC moved cautiously in acquiring land for a number of reasons. First, there was the problem of land improvement investment. For example, some indigenous land owners told the McLeay Committee, which investigated the ADC's operations in 1984, that the ADC had been unable to meet their needs for investment capital after purchase (Rowse 1992: 15). Second, the ADC Commissioners seem to have questioned the value of land purchases explaining that fewer properties of traditional significance were coming onto the market, and asking prices were increasing. The Commission hoped that as the States and Territories began to legislate for land rights the demand on ADC's funds to purchase properties would lessen (ADC 1987: 67). Third, it appears that the ADC had been more constrained than the ALFC by having to prioritise funds for housing, enterprises and land from the same appropriation (Rowse 1992: 15). Palmer (1988: 158) demonstrates that only a range of 2 to 6 per cent of total ADC expenditure per year was allocated for land purchases between the 1980-81 and 1984-85 financial years.

ATSIC was established on 5 March 1990 and assumed most functions of the DAA and ADC including land acquisition and management. ATSIC's Land Acquisition and Management Program deemed that funds were to be directed to communities where, in comparison with other areas, there were significant unmet

needs (ATSIC 1994a: 19). Land could be purchased for economic, social, cultural or traditional purposes. Like the ADC, ATSIC was constrained by the need to fund land acquisitions from a single appropriation meant for a plethora of program objectives. Nevertheless, it is evident that ATSIC facilitated the acquisition of more properties than any of its predecessors. In the two financial years 1992-93 to 1993-94 ATSIC assisted with the acquisition of 119 properties expending over $38 million (ATSIC 1993: 38; ATSIC 1994b: 42).

Apart from the Land Acquisition and Management Program, other mechanisms within the ATSIC structure provided for the acquisition of land. The Aboriginals Benefit Reserve[4] (ABR), established by the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), which operates like a small secretariat within ATSIC's Northern Territory State Office, was also active in the purchasing of land specifically for the benefit of Aboriginal communities in the Northern Territory. The ABR has acquired eight pastoral properties at a total cost in excess of $19 million. Another mechanism is the Regional Land Fund (RLF), created by s.68 of the ATSIC legislation, which allows ATSIC regional councils to allocate moneys from their annual discretionary budgets to the RLF for future land purchases. Funds in the RLF are invested and when accumulations are adequate regional councils may withdraw the accumulated amount to acquire land. The utilisation of the RLF was relatively slow in its early years of operation, however some 22 properties have now been acquired through the RLF.[5]

With the establishment of the ILC, ATSIC's Land Acquisition and Management operations were wound down. During a two-year transitional phase (1995-97) both ATSIC and the ILC received drawdowns from the Land Fund to acquire land. However, ATSIC's program responsibility effectively ceased on 30 June 1997, and specific and prime responsibility for indigenous land acquisition and management was shifted to the ILC. Nevertheless, ATSIC's interest in land acquisition and management continues, not only as a partner in post-purchase funding and development, but potentially as a facilitator of acquisitions through the RLF, and the ABR in the Northern Territory.

Indigenous land ownership

ATSIC estimates that there were 330 parcels of land acquired for indigenous interests through specific land acquisition programs by Commonwealth institutions between 1972 and 1997 (excluding ILC acquisitions). Apart from specific land acquisition programs, the ADC and ATSIC have acquired a significant number of parcels of land with the use of other programs funds for the purpose of acquiring land for housing. The area of land acquired specifically for housing or through other programs has never been quantified. Other Commonwealth agencies have acquired land for indigenous interests, either outright or as contributors. For example, the Department of Prime Minister and Cabinet contributed $1.7 million to purchase Bauhinia Downs in the Northern Territory, as part of the McArthur River Mine negotiations (Farley 1994: 173), and

in 1994 the then Commonwealth Department of the Environment contributed to the acquisition of Starke Station in North Queensland. It is also most likely that other State and Territory programs have also contributed to the acquisition of land for indigenous interests from a variety of programs.

The plethora of institutions, programs and legislation that have facilitated the transfer of land to indigenous interests makes it extremely difficult to quantify the amount of land under Aboriginal ownership in Australia today. There exists no comprehensive information source which identifies all current indigenous land holdings, although both the ILC and the National Native Title Tribunal (NNTT) are collecting data for their respective operations. Previous attempts to establish a consolidated database have been fraught with problems such as reconciling Aboriginal place names with those listed on the public record and other inadequacies in quality control such as the actual dates of acquisition (ATSIC 1992: 9).[6] The team that evaluated ATSIC's land acquisition program in 1992 commented that DAA and ATSIC need to share some responsibility for the absence of an accessible and complete database (ATSIC 1992: 9).

However, what is evident from the available statistics is that past Commonwealth land acquisition programs have contributed only marginally to indigenous aspirations for land. Although market acquisition programs predate major land rights legislation, it is the latter which has facilitated the transfer of the major proportion of land to indigenous people. Significantly, grants of land through the processes of the ALRA account for half of the indigenous land estate Australia-wide (see Table 2). This is as a result not only of the application of the ALRA, but also of the availability of significant amounts of vacant crown land in the Northern Territory that could be claimed. In South Australia, State land rights legislation has also facilitated the transfer of extensive tracts of land in the north-west.

Table 1. Parcels and area of indigenous land by State/Territory

State/Territory	Parcels of indigenous land	Area of indigenous land (000 km^2)	Area of State/Territory (000 km^2)	Indigenous land as proportion of State/Territory (percent)
NSW (incl. ACT)	1,195	1.6	804	0.2
Qld	121	42.0	1,727	2.5
WA	259	326.0	2,526	13.0
NT	200	584.0	1,348	43.4
Vic	13	14.0	228	6.1
SA	39	190.0	984	19.3
Tas	15	4.8	68	7.0
Total	1,842	1,162.4	7685	15.1

Note: The Australian Capital Territory is included in the ILC Region of New South Wales.

Source: ILC Regional Indigenous Land Strategies.[7]

Table 1 estimates the number of parcels of indigenous land, the total area of indigenous land in each State and Territory, as well as identifying the proportion of each State and Territory under indigenous ownership. As this table demonstrates, the majority of parcels of land held by indigenous interests, simply on a numerical basis, are located in New South Wales (approximately 70 per cent of all parcels) while compared to other States and Territories there is only a small area of land under indigenous control in New South Wales. This might suggest, based purely on the number of parcels of land, there may be more indigenous land owners in New South Wales than in any other part of Australia. Indeed, there exists no empirical study to prove otherwise. What is apparent is that, generally, indigenous land holdings in southern Australia are small, reflecting different land use and land tenure systems compared to areas of northern Australia where there are extensive tracts of pastoral and grazing tenements.

Table 2 estimates the distribution of indigenous land in each State and Territory, the per capita land holdings by population and square kilometres and the proportion of the indigenous estate in each State and Territory. As can be readily observed less than 1 per cent of the total area of indigenous land holdings can be found in Victoria, New South Wales and Tasmania where approximately 38 per cent of indigenous people reside. This partially reflects the great unevenness between States/Territories, firstly as to whether they have land rights at all, and secondly, in those that do, in the provisions that have been made and the amount of land that can reasonably be made available through a claim process. In some States and Territories land rights laws apply to the entire State (for example, New South Wales and the Northern Territory), while in others the statute relates only to specific areas within the State or Territory (for example, South Australia, Tasmania and Victoria).

Table 2. Indigenous land in Australia and its distribution

State/Territory	Indigenous land (000 km^2)	Indigenous population (1996) Census)	Land per capita (sq km^2)	Proportion of Australian share of indigenous land
NSW (incl. ACT)	1.6	104.4	0.02	< 1.0
Qld	42.0	95.5	0.44	3.6
WA	326.0	50.8	6.42	28.0
NT	584.0	46.3	12.62	50.2
Vic	14.0	21.5	0.65	1.2
SA	190.0	20.5	9.29	16.4
Tas	4.8	13.9	0.35	< 1.0

Source: ILC Regional Land Strategies; Australian Bureau of Statistics 1996 Census.

Although land rights legislation has not been enacted in Western Australia, the proportion of the area of land under indigenous ownership is comparatively higher than in many other States. As demonstrated in the tables, both in terms of

per capita indigenous ownership (6.4 square kilometres per person) and of the proportion of the area of the State under Aboriginal ownership (13 per cent), the ownership of land by indigenous interests rates third behind the Northern Territory and South Australia. While there are significant areas of reserve lands in Western Australia, these considerable land holdings are attributed in part to the impact of market acquisition in Western Australia.

It should be noted that there are extreme regional variations within States and Territories also. Most indigenous-held land in South Australia is located in the north-west of the State. Most indigenous land in Western Australia is located in the Kimberley and Western Desert while there is very little indigenous-held land in the south-west (ILC 1998a: 67).

The statutory framework

The National Aboriginal and Torres Strait Islander Land Fund was created by Section 201 of the *Native Title Act 1993* (NTA). However, the NTA did not specify the administrative arrangements for the fund. Through a process of negotiations between government, ATSIC and other stakeholders, it was finally agreed that a new organisation be established with land acquisition and management functions which was adequately resourced to address the question of indigenous dispossession. It was decided that an autonomous body was needed with the ability to focus specifically on the long-term management of the indigenous estate and to act commercially in the market place.

A Bill to establish the ILC and to specify the operations of the Land Fund was initially introduced into Parliament in June 1994. This Bill was significantly amended in the Senate and referred to a Senate Select Committee. On 28 February 1995 a new Bill was introduced. The *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act* was passed by the Senate on 21 March 1995 and assented to on 29 March 1995. The Act effectively repealed Part 10 of the NTA and amended the *Aboriginal and Torres Strait Islander Act 1989* by inserting a new Part 4A. The legislation came into effect on 1 June 1995 (ILC 1996a: 60).

The Preamble to the legislation which established the ILC states that the purpose of the fund is to address the widespread dispossession of indigenous peoples who, because of their dispossession and forced removal from their traditional land, would be unable to assert native title or regain any of their land through native title processes. The purpose and primary functions of the ILC are specified in the legislation as follows:

> S.191B—Purposes of the Indigenous Land Corporation:
>
> (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.
>
> S.191D—The land acquisition functions of the Indigenous Land Corporation:

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

S.191E—The land management functions of the Indigenous Land Corporation:

(a) to carry on, or arrange for the carrying on of, land management activities in relation to indigenous-held land under 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 Indigenous Land Corporation;
(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.

The ILC is overseen by a board of directors appointed by the Minister for Aboriginal and Torres Strait Islander Affairs who, in making these appointments, must consult with the Minister for Finance and ATSIC. The primary responsibility of the Board is to ensure the proper and efficient performance of the functions of the ILC and to determine the policy of the Corporation with respect to any matter (s.191W). The board consists of seven members of which five, including the Chairperson, are Aboriginal or Torres Strait Islander people. One of the five members must be an ATSIC Commissioner. The Minister must also ensure that at least two appointed ordinary members of the board have experience in business or financial management. Apart from the Chairperson, appointments are on a part-time basis.

Stringent planning requirements are a feature of the ILC's statutory framework. The legislation requires the ILC to prepare and periodically review a National Indigenous Land Strategy (NILS) (s.191N). The NILS is a disallowable instrument which must be tabled in the Parliament. The purpose of the NILS is to inform indigenous people and the Australian public of the strategies, policies and priorities which will guide ILC land acquisition and land management functions. The ILC is also required to prepare Regional Indigenous Land Strategies (RILS) (s.191P) which outline the ILC's priorities for acquisition and management of land in each State and Territory.[8] There is no requirement for the tabling of the RILS although there are obligations placed on the ILC by the legislation to consult with ATSIC regional councils in the formulation of strategies.

The ILC has more similarities with the ALFC than any of its predecessors. Just as the ALFC was created in order to acquire land for those indigenous people who were not to benefit from the enactment of land rights legislation, similarly the ILC was created to provide a land acquisition mechanism for groups who were

unable to benefit from the future recognition of native title. Both organisations had comparatively restricted program objectives compared with the ADC and ATSIC. Nevertheless, while both organisations were separate statutory authorities with Boards of Directors comprising of indigenous and specialist non-indigenous representatives, there are obvious distinctions. Most notable is the ILC's role in post-purchase management, the ILC's ability to acquire land in urban areas, the innovative onus on planning embedded in the ILC legislation and its potentially formidable commercial powers to create subsidiaries. More significant is the guaranteed income stream to the ILC which is unprecedented in indigenous land acquisition and management, and which permits the ILC to pursue long-term planning strategies.

The scope of the ILC's land acquisition interest

The first NILS became effective on 1 May 1996 and is essentially the Corporation's strategic operational plan for the period 1996-2001. During that period the ILC will receive $253 million from the Land Fund. Although the ILC has legislative responsibilities for assisting indigenous people to acquire and manage land in ways which provide social, cultural, environmental and economic benefits, the first NILS gives priority to the acquisition of land which is of cultural significance to indigenous people. The NILS applies the following criteria in order to determine cultural attachment:

> traditional attachment—significance of land based on customs and traditions which pre-date colonial occupation (for example, traditional homelands, sacred sites, fishing places);
>
> historical attachment—significance of land based on events which have occurred since colonial occupation of the region, and may have resulted in disruption of pre-contact customs and traditions (for example, massacre sites, burial sites, former missions, workplaces etc.);
>
> contemporary attachment—significance of land based on the more recent assertion and recognition of indigenous rights (both land rights and cultural heritage), and aimed at re-establishing indigenous identity or recognition in an area (for example, special land and/or buildings in rural or urban centres) (ILC 1996b: 13).

The onus on land purely based on cultural attachment means that land with significant commercial potential, or the acquisition of successful businesses which own land, cannot be acquired. The ILC contends that although it has some responsibility to address issues of indigenous economic development it is not a major player in the economic development arena. It does, however, see itself as a partner in the move toward greater economic wellbeing for indigenous peoples (ILC 1998b: 2). Moreover, the ILC takes the view that the acquisition of businesses which own land, or development of indigenous commercial enterprises, falls more appropriately within the ambit of ATSIC or the Commercial Development Corporation.

However, in the post-purchase phase and in order to facilitate the operations of properties with commercial viability, the ILC has powers to form subsidiaries. Subsidiaries can be formed as either an association or a proprietary limited company. The ILC currently operates three rural-based subsidiaries: Mogila Merino Stud Pty Ltd (north-west New South Wales), Mount Clarence Pastoral Station Pty Ltd (near Cooper Pedy in South Australia), and Cardabia Pastoral Company Pty Ltd (mid-coast Western Australia). The first subsidiary, Mogila, incorporated in May 1997, recorded a modest profit during the 1997-98 financial year (ILC 1998a: 40). Mount Clarence, however, is currently operating at a loss due to the need for funds injection and lower than expected wool yields in its first year of operations (ILC 1998a: 41). The ILC reports Cardabia, which was incorporated in November 1997, as performing satisfactorily.

In performing its land acquisition functions, the ILC is required by statute to search any relevant registers of the NNTT to ascertain whether any claims have been lodged, accepted or determined in relation to land under consideration for acquisition. This does not necessarily preclude the ILC from acquiring land under native title claim. However, given the ILC's resources, and the possibility that such land might come under indigenous control, land under claim would appear to be of less priority. Notably, s.47 of the NTA provides that claims can be lodged over pastoral leases held by native title claimants and that prior extinguishment, in such circumstances, is to be disregarded.[9] Therefore, prospectively, the ILC may be called upon to play a strategic role in the acquisition of pastoral leases in order to preserve native title rights.

Table 3. Private held (freehold) land and leasehold land in Australia, 1993: a summary

State/Territory	Private ('000 km^2)	Percentage of State/Territory	Leasehold ('000 km^2)	Percentage of State/Territory
NT	6.4	5	668.2	49.6
SA	158.3	16.1	418.5	42.6
Qld	625.2	36.1	939.3	54.3
ACT	Nil	0	0.9	0
NSW	405.6	50.5	308.9	38.5
Vic	155.3	68.3	0.1	0
WA	204.9	8.1	900.1	35.6
Tas	27.2	39.8	0	0
Total	1582.9	20.5	3236.0	42.1

Source: AUSLIG 1993.

Notwithstanding the strategic options available to the ILC to acquire land to preserve native title rights, or to participate within the framework of an Indigenous Land Use Agreement (see Smith 1998), the ultimate focus of ILC acquisitions will be private or freehold land, which is clearly unavailable for native title claim, and leasehold land, most of which is also unavailable for claim. As Table 3 indicates, privately held land accounts for 20.5 per cent of land in

Australia and leasehold for 42 per cent. A higher proportion of private land is located in the southern States while the major portion of leasehold, which is primarily pastoral land, is located in Queensland, Western Australia, the Northern Territory and South Australia.

It should be noted that the ILC is restricted from acquiring some forms of leasehold land. Queensland's *Land Act 1994* , for example, prevents corporations from purchasing and owning Grazing Homestead Freeholding Leases or Grazing Homestead Perpetual Leases. These leases represent 5,805 properties covering a total area of 37,100 sq. kms (ILC 1998b: 17). It appears that the intent of the legislation is to prevent substantial areas of Queensland from coming under the concentrated control of a few corporations. The Government's rationale is that the economic development of these areas would be better accomplished through individual and family ownership of the leases rather than corporate ownership. This legislation subsequently prevents the ILC from performing its primary function in a substantial part of Queensland (ILC 1998b:17).

Operations

The ILC commenced operations on 1 June 1995 and the first Board meeting was held on 5-6 June 1995 (ILC 1996a: 60). The primary focus of operations for the first two years was the establishment of the administrative structure, and the completion of the NILS and RILS and other related policy documents. Land purchases were essentially restricted until the tabling of the NILS in Parliament in May 1996, although several acquisitions were approved by the Board during the 1995-96 financial year.

The ILC established its head office in Adelaide and divisional offices were located in Brisbane, Perth and Adelaide. The organisation currently has a staff base of 35 permanent officers who, apart from the General Manager, are employed under s.129S of the ATSIC Act with broadly similar conditions to those of the Australian Public Service. The head office develops and coordinates financial, administrative, and legal policy and provides research, information technology and public information services on a national basis. The Eastern Divisional Office (Brisbane) has regional jurisdiction for Queensland, Torres Strait and New South Wales, the Western Divisional Office (Perth) for Western Australia only and the Central Divisional Office (Adelaide) for South Australia, Victoria, Tasmania and the Northern Territory. Operational activities in divisional offices include the assessment of acquisitions and land management registrations, the collation of statistical data for a variety of management tools and the facilitation of planning to prospective and current indigenous landowners.

The ILC has adopted a substantially different approach to that of its predecessors in its approach to land acquisition and divestment. Although the ILC is permitted to make grants to incorporated indigenous bodies to acquire land, the approach adopted is that the ILC acquires the land and later divests it. This permits the ILC to act strategically in the market place free from the time

restrictions of bureaucratic application processes, allows it to undertake improvements before divestment, and also permits the ILC to undertake the necessary consultations with prospective land owners in order to establish the most appropriate land holding entity.

Instead of operating with an application-based system, the ILC has developed a Register of Land Needs. Indigenous organisations and unincorporated groups are able to register land acquisition proposals based on land needs. At the same time, regional indigenous entities such as ATSIC regional councils and Native Title Representative Bodies (NTRBs) are requested to submit regional overviews to the ILC. These documents, together with the NILS and RILS, assist the ILC to determine the priority of acquisitions from the registrations in the Land Needs database as properties become available on the market. The database currently has in excess of 400 entries which account for an area of 13 million hectares across the country.

The main tenet of the ILC's policy is to divest title to land it has purchased to an indigenous corporation which represents the traditional owners of the land (ILC 1998a: 46). This means that in the majority of cases the group or corporation which first sought the purchase of the land is not ultimately the land holding body. The ILC's rationale for its divestment policy is to prevent the ILC itself from becoming an agent for dispossession by purchasing land for one group in the traditional area of another. The ILC acknowledges the difficulties in implementing the policy in all parts of Australia. Indeed, the recent decision by the ILC Board to divest its Tasmanian land holdings to the Aboriginal Land Council of Tasmania demonstrates that there is a degree of flexibility within the policy and that practical solutions can be found providing such proposals are supported within the local Aboriginal community.

ILC land acquisitions

Since the commencement of its land acquisition function, to 31 July 1998, the ILC has facilitated the settlement of 50 properties. Table 4 lists the number and area of acquisitions in each State and Territory. A further 49 properties have been approved by the Board, most of which will be settled during the 1998-99 financial year.

The ILC estimates that in area its land acquisitions to date account for 0.0072 per cent of the area of land in Australia. While most acquisitions have been in Queensland (14) and New South Wales (11), larger areas of land have been purchased in South Australia and Western Australia. Although only two parcels of land were bought in the Northern Territory the total area of land acquired is almost double that in New South Wales. It appears that the trend in land acquisitions by the ILC reflects that of other Commonwealth institutions in that a higher number of parcels of land are being purchased in New South Wales, where land costs are comparatively higher, while cheaper and larger areas of land

are being acquired in the range lands of Western Australia, South Australia and the Northern Territory.

Table 4. ILC land acquisitions by State/Territory, to 31 July 1998

State/Territory	Area (hectares)	Total properties settled	Total property costs by region ($ million)	Average cost per hectare ($)
NSW	53,310	11	11,464,723	215
NT	87,100	2	1,554,250	18
Qld	147,992	14	14,098,000	95
SA	714,709	6	3,793,234	6
Tas	48,960	2	897,500	18
Vic	844	8	3,173,500	3,760
WA	480,458	7	4,924,100	10
Total	1,533,374	50	39,905,307	26

Notes: The majority of these properties were acquired and settled in the 1997-98 financial year. No properties were acquired during 1994-95 or 1995-96. Fifteen properties were settled in 19996-97. Property costs are essentially based on improved value and do not include related expenses to the ILC of legal fees, consultancy reports etc.

Source: ILC (August 1998).

The first year the ILC had sole program funding responsibility for management of indigenous-held land was 1997-98. Although the ILC was empowered to provide land management assistance to indigenous landholders prior to 1 July 1997, the ILC and ATSIC agreed that ATSIC should continue to take responsibility for land management through its Land Acquisition and Management Program during the two-year period (1995-97) when both organisations received an allocation from the Land Fund. Significantly, the ILC has inherited responsibility not only to assist with the land management activities on the land it has acquired, but also for all indigenous land Australia-wide, whether the land was purchased or granted through legislation.

Cash management and investment

The operational activities of the ILC do not include the administration of the Land Fund, nor does it possess powers to direct the activities of the Land Fund. The investments of the Land Fund, which is a reserve fund within the Commonwealth Public Account, are administered by ATSIC under delegation from the Minister for Finance (ILC 1997: 75). Investment policy is monitored through a ministerially-appointed Consultative Forum which meets twice a year and is comprised of ILC directors, ATSIC representatives and other such persons the Minister considers appropriate.

As noted, a key requirement of the legislation is that the Land Fund becomes self-sustaining. The aim is that the Land Fund will hold $1,106 million

(in 1994-95 terms) by June 2004 when government appropriations to the fund cease. This will be achieved by investing approximately 66 per cent of the annual government allocations to the fund over the ten-year period and assuming a growth of 4 per cent to accumulated reserves. After the first payment to the Land Fund of $200 million[10] in 1994-95, $121 million (indexed) will be appropriated to the fund by the Commonwealth Government from the 1995-96 to 2003-2004 financial years (ILC 1997: 75) from which $45 million per annum (indexed) is allocated to the ILC. The remaining $76 million per annum is invested. Government allocations are inflation-linked and the legislation provides for top-up funding should the fund not achieve its anticipated rate of return.

Table 5 outlines the resources earmarked for the purchase of land, land management, and investment and demonstrates how the objective of self-sustainability is to be achieved.

Table 5. Projected financial operations of the Land Fund (based on 1994/95 figures)

Year ended 30 June	Income[a] ($million)	Drawdown from the Land Fund ($ million)	Investment[b] ($ million)	Accumulated reserves[c] ($ million)
1995[d]	200	25	175	183
1996	121	45	76	270
1997	121	45	76	360
1998	121	45	76	455
1999	121	45	76	553
2000	121	45	76	655
2001	121	45	76	761
2002	121	45	76	872
2003	121	45	76	986
2004	121	45	76	1,106
Total	1,289	430	859	

Notes:
a Note that in 1995 and 1996, new money is only $100 million per annum as $21 million earmarked for land purchases by ATSIC was offset from this appropriation.

b. That statute requires that savings rate be set at 87.5 per cent in year one and 63 per cent in years two to ten.

c. Assuming a rate of return on accumulated reserves of 4 per cent, $1,106 million will generate a self-sustaining $44 million from 2005 for operation of the ILC. The total amount of new money appropriated ($1,289 million in 1994 dollars) is only slightly above accumulated reserves at year ten.

d. Although the ILC did not become fully operational until 1 June 1995, funds were expended during the initial implementation stages during 1994-95. However these were operational expenses and no land was acquired.

During the initial period of administration of the fund by ATSIC, concerns were raised as to the ability of the Land Fund to reach the indexed target of $1,106 million by June 2004 due to the restrictive nature of investments permitted under the Audit Act.[11] These concerns were substantially supported by a consultant engaged by ATSIC to analyse the potential of investment within these

constraints. However, the Department of Finance and Administration argued that the restrictive nature of investments under the Audit Act had been significantly overstated and, unless the existing top-up provision were to be removed, offered little support for wider investment powers (ILC 1997: 77).

The legislative constraints of the financial regime in which the Land Fund operates has not prevented the Fund from out-performing the expected 4 per cent growth target to date. Table 6 indicates the financial performance of the Land Fund from the 1995-96 financial year to 30 June 1998.

Table 6. Financial performance of the National Land Fund 1995-96 to 1997-98

Year ended 30 June	Anticipated accumulated reserve ($ million)	Investment return (per cent)	Actual accumulated reserve ($ million)
1996	270	4.83	288
1997	360	5.32	396
1998	455	7.05	527

Note: Investment returns are adjusted to take inflation into account based on inflation indicators from the Department of Finance and Administration. Real returns are 8.38 per cent for the year ending 30 June 1995; 7.86 per cent for 1996; 7.84 per cent for 1997; and 10.26 per cent for 1998.

Source: ILC 1997: 79; 1998a: 102.

What is apparent is that the real return on investments was in excess of the return required to ensure the capital base of the Land Fund achieves the target of $1,106 million in 2004. Hence, the required real return to reach the target had dropped to 3.9 per cent by 30 June 1997 and more recently to 3.7 per cent as at 30 June 1998. The fund is therefore currently in a position to grow beyond the target or at least to buffer any declines in returns from investment over the next six years. However, as the legislation currently stands, the ILC could receive all real returns from investments from July 2004 onwards. This raises concerns of the viability of the target amount growing after 2004, as there is no statutory mechanism to ensure accumulated returns are re-invested. The fund could potentially stagnate or, in real terms, actually decline. ATSIC and the ILC are aware of this situation and are examining measures to remedy it. One possible solution, other than amendments to the legislation, would be an agreement that the ILC continue to drawdown only the equivalent of the $45 million it currently receives, thus ensuring the potential growth of the fund.

The ILC also apply cash management and investment strategies to a proportion of its annual drawdown together with its carried forward reserves from previous financial years. A key operational aim of the ILC is to balance the need for efficient and effective administration with low administrative overheads so as to maximise the amount of funding availability for its land acquisition and management programs (ILC 1997: 29). Accordingly, returns from investments are

used to meet administrative and operational costs. During the 1997-98 financial year the ILC was able to offset its operational expenditure of $4.1 million with income from investments of $5.1 million (ILC 1998a: 78).

Future Directions and Challenges

As the first NILS gives priority to the acquisition of land for cultural purposes as a means to address dispossession it raises a number of policy issues for the ILC. The application of such a criterion is problematic due to the variable factors associated with indigenous dispossession across Australia and, arguably, the criterion can be applied widely to include all indigenous people who are not landowners. This raises complex policy dilemmas for the ILC in terms of the allocation of its resources. Such dilemmas are accentuated in the context that the scope of land tenures available for native title claim were substantially reduced after the 1998 amendments to the NTA. This, together with proposed amendments to the Commonwealth's heritage legislation, could cause indigenous groups to increasingly seek the assistance of the ILC to acquire culturally-significant land.

Exactly who should benefit, and the type of benefits the Land Fund would provide, were salient issues in the course of the parliamentary debates during the passage of the original Bills, and many of the contentious issues have remained. More recently the government proposed an amendment to the legislation which specified a requirement for consideration of 'most disadvantaged/dispossessed' status in ILC decision-making. This would require the ILC to accord priority to the 'most dispossessed' and 'most disadvantaged' in making grants for the acquisition of land (ILC 1996a: 31). The ILC strongly objected to the proposal arguing that 'disadvantage in access to land' probably equates roughly with 'dispossession'. A revised Bill has since included a proposal that the ILC have regard to, or take into account, the needs of those suffering most disadvantage in access to land rather than accord priority to those suffering disadvantage.

The narrowing of the criteria applied by the ILC through legislation would appear to be unnecessary in the context that the NILS already specifies a requirement that the ILC will take into account the prospects of land being available to indigenous people through land rights and other land acquisition laws. However, such laws are not always easily accessible to all indigenous people. Certainly land rights legislation operating in New South Wales and the Northern Territory has assisted many Aboriginal people to gain title to land. As we have noted there are high levels of indigenous land ownership in New South Wales (by parcels of land) and the Northern Territory (by area). Nevertheless, there remain many indigenous people in both regions who have been unable to gain access to land either through land rights statute or by purchase.

The proposed government amendment also seeks to require the ILC to actively take a role in improving Aboriginal socioeconomic wellbeing through its land acquisition program. On the one hand, the ILC would assume a role in which

there are already many active players such as ATSIC. On the other hand, a correlation between land ownership and improved socioeconomic wellbeing is yet to be clearly demonstrated. Analysis of market acquisitions undertaken by ATSIC's Office of Evaluation and Audit in the early 1990s, showed there was an inverse relationship between rural land ownership and standard measures of socioeconomic wellbeing (ATSIC 1992: 3). Similarly, social indicators derived from the five-yearly census indicate that there has been little change in the overall formal economic status of Aboriginal people in the Northern Territory due to the granting of land under the ALRA (Altman 1996: 10). In other words, there would appear to be no clear positive correlation between the amount of land purchased or granted under legislation and the socioeconomic status or wellbeing of indigenous people (ATSIC 1992: 24).

An alternative interpretation is that land has been acquired in areas of greatest relative need, and because of population movements to these properties, improvements to socio-economic standards and opportunities have lagged behind those elsewhere (ATSIC 1992: 3). Of course normative criteria do not always accurately reflect economic, not to mention cultural, social and political benefits to indigenous people from land ownership. Land might be used for unorthodox commercial activities, like wildlife harvesting, or non-market activities, like hunting and gathering (see Bomford and Caughley 1996). Such activities improve people's standards of living, but are not measured by official statistics. Furthermore, because of the historical legacy associated with dispossession, exclusion from the mainstream provisions of the Australian state, and other consequences of past government policy and practice, improvements in socioeconomic standards may take decades to rectify (Altman 1996: 10).

The ILC's current focus is primarily on restoring and enhancing an indigenous land base and therefore possible land use, in the post-acquisition period, is of only secondary importance in decisions about acquisitions. However, the major challenge for the ILC, and the criteria upon which many may ultimately judge it, lies not in the amount of land it acquires, but in its approach to land management. A large proportion of the indigenous estate lies within the geographic area referred to as 'the rangelands' (nearly 75 per cent of the Australian continent), most of which is 'unimproved' marginal land under pastoral leasehold tenure (ILC 1998a: 30). Past management practices in the rangelands have led to environmental degradation of significant areas and call into question the long-term sustainability of current land uses (ILC 1998a: 30). Potentially, a major portion of ILC resources may be needed to address this land degradation legacy or to establish alternative land use strategies.

The indigenous estate now comprises about 15 per cent of the Australian land mass and presents further policy dilemmas in respect to ILC resources. The first step, and one which the ILC is currently addressing, is to accurately identify the extent of the indigenous estate and the range of its land management issues and needs. The area of land under Aboriginal ownership will expand as land is gained through native title processes and ILC acquisitions. There are also some 1,200 unresolved land claims in New South Wales, 11 per cent of the Northern

Territory remains under claim, and areas of Queensland may also be granted to indigenous interests through that State's land rights legislation. Given the ILC's current resources ($45 million indexed) and the estimated current indigenous land holdings (about 1.1 million sq. kms) the current available resources for land management equate to less than $40 per square kilometre. This does not factor in the land acquisition function nor administrative expenditure of the ILC. What is apparent is that unsubstantiated claims that the ILC is 'so flush with funds it could buy whole regions' (David Barnett, *Australian Financial Review*, 2 April 1998, p.19) fail to understand the complexity of the tasks faced by the ILC, particularly its land management functions and responsibilities that extend well beyond land acquisition.

The ILC cannot conceivably undertake the task of land management of the indigenous estate on its own, although it will be the key coordinating agency. Other indigenous agencies such as ATSIC, land councils, NTRBs and the ABR in the Northern Territory will also be key players in indigenous land management and development. Yet this should not diminish the responsibility of other Commonwealth agencies and State/Territory governments from their land management responsibilities within their respective jurisdictions. These agencies and governments have strategic interests and responsibilities in matters such as the development of agricultural and primary industries, environmental management and socioeconomic wellbeing to mention a few. In essence, the management of the indigenous estate is a collective responsibility. The quest for a comprehensive coordinated strategy for management of the indigenous estate may in future years become the pre-eminent goal for the ILC.

While the management of the indigenous estate is wide-ranging, complex and potentially resource intense, it also presents significant opportunities for a range of socioeconomic developments. Many indigenous people have aspirations for land for commercial, tourism, pastoralism, wildlife harvesting and other agricultural business development. A future goal for the ILC, and one it acknowledges, lies in its ability to assist to establish frameworks and strategies to enhance socioeconomic opportunities for indigenous landowners. One recent initiative of the ILC Board is the incorporation of a commercial subsidiary, Land Enterprise Australia, which will handle all commercial land management projects. Land Enterprise Australia will facilitate the negotiation of joint ventures on indigenous land, particularly in pastoral and agricultural businesses and permit a more clearly defined commercial focus than is presently possible for the ILC. Furthermore, by isolating its commercial risk, ILC assets are protected. The establishment of such an organisation could potentially provide a valuable 'mentoring' service for indigenous land based enterprises. A nationally focused service of this type is overdue in indigenous land management.

Conclusion: A new approach?

Land acquisition has figured prominently among the measures designed to promote policies of self-determination and self-management for indigenous Australians. But history demonstrates that this role has rarely been clearly defined. Our brief historic examination of the policies and practices of Commonwealth institutions charged with responsibility for the acquisition of land, and its management, for indigenous people suggests that there have been significant policy shifts and re-emphases over time, sometimes due to the application of government indigenous policy based on party-political ideology, and sometimes to rectify policy mistakes and to re-jig program objectives to seek better outcomes. There has been continual shifting between cultural, social and economic objectives; some approaches have focused purely on rural and remote acquisitions, while others have allowed urban land purchase.

The type of institutions undertaking these functions have varied considerably. A department of state (DAA), statutory authorities with limited program objectives (ALFC), and others with wide program responsibilities (ADC and ATSIC) have all tried at various times to get the formula right. Their legacy, together with many other unresolved issues, present major challenges for the ILC. Vast areas of land have been acquired by other institutions which are now the management legacy of the ILC. Much of this land is marginal, having been overgrazed and degraded, and will now require significant financial commitment to restore. Concurrently, there are continuing pressures on the ILC to purchase land, especially given the frustration associated with unmet native title aspirations since 1993 and the likelihood that these will be exacerbated by the passage of the *Native Title Amendment Act 1998*.

It is apparent that policy tensions exist within the ILC's current strategic objective of acquiring land for cultural purposes. In some respects this priority relegates other indigenous aspirations for land, most notably for economic development. While the ILC's policy is based on the sound objective of restoring a land base to traditional ownership that aims to avoid conflicts over ownership and to prevent further dispossession, arguably, in strictly enforcing its cultural criteria, commercially viable land which may facilitate important long-term economic development for indigenous groups can easily be neglected. On the other hand, marginal land, because of its cultural significance and ready availability might be purchased. The challenge for the ILC is how to balance cultural and commercial aspirations. The establishment of Land Enterprise Australia, with a strict commercial focus will enhance the ILC's prospects of achieving better economic outcomes on indigenous-owned land.

Similarly, the ILC has the power to establish additional subsidiaries with land management functions at the regional level. This option could add a powerful potential for new policy approaches to indigenous land issues. In particular, the tensions between cultural and economic development objectives can be addressed in ways that have not been possible before. For example, a land management

subsidiary could sub-lease land from traditional owners for commercial operations. There is a view that commercial success requires large tracts of land to allow economies of scale: sub-leasing on a large regional basis could provide indigenous interests with such opportunities.

It is far too early to definitely assess whether the ILC has been successful, given that its operations of land acquisition and management have only began in the last two years. Investment performance of the Land Fund indicates that the goal of financial self-sufficiency will be achieved, thus providing financial resources independent of the budget well into the next century. The ILC is also making considerable progress towards quantifying indigenous land holdings throughout Australia. The completion of this task will be important as it will provide an essential and rigorous base for further policy refinement and development. Overall, it is evident that the ILC is undertaking the preliminary research, data collection and analysis necessary to comprehend the complex environment in which it operates. This strategic and proactive, yet cautious, approach augurs well for improved outcomes in indigenous land acquisition and management that should easily exceed earlier efforts over the past 25 years.

The subtitle of this discussion paper asks whether the ILC represents a new approach to land acquisition and land management. This question can be answered in the affirmative on a number of grounds. First, the statutorily guaranteed income stream for a Commonwealth statutory authority is unprecedented in indigenous land acquisition and management. Second, the above-mentioned commercial powers and powers to establish subsidiaries is a significant break with the past. And finally, the ILC has autonomy and flexibility in dividing income between administration, land purchase, land management and investment. This, though, is a new strength as well as potential weakness: a key challenge for the ILC Board will be to ensure that administrative costs are contained and that expenditure to running cost ratios are continually benchmarked to ensure mean and lean practice.

In the long term, after 2004, the ILC will become an off-budget indigenous institution with enormous potential to further indigenous economic development and reconciliation: it is in this long term and strategic sense that the ILC approach is most fundamentally new.

Notes

1. Much of the literature published about the Land Fund and ILC refer to an amount of $1.46 billion in government appropriations over the ten years. This is an estimate of total government allocations to the Land Fund which are indexed annually.
2. It is estimated that the commitment of $5 million in 1972 equates to $30.5 million in 1997 dollars, and $2 million (1972) equates to $12.2 million (1997).
3. Palmer's (1988) study of the ALFC concludes that its history was one of struggle against a variety of measures each of which diminished the ability of the ALFC to meet

the Aboriginal desire for land. These measures included government cuts to the ALFC budget, and DAA strategies of avoiding, pre-empting, re-orienting, blocking and re-checking ALFC proposals. In Queensland and Western Australia title transfers to Aboriginal communties were either delayed on technical grounds or refused outright.

4. The ABR was formerly the Aboriginals Benefit Trust Account (ABTA). It was renamed as of 1 January 1998 with the enactment of the Commonwealth's *Financial Management and Accountability Act 1997* and consequential amendment to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

5. The balance of the funds in the RLF at 1 July 1997 stood at $8.9 million. An additional $942,527 was deposited in the RLF and interest of $435,449 was credited during the 1997-98 financial year (ATSIC 1998: 42).

6. There are other complications in determining the outcome of land acquisition programs. Pastoral leases acquired in the Northern Territory by a range of institutions have been claimed under the ALRA. Title gained through market land acquisition has, in practice, been later transferred to an Aboriginal Land Trust as s.50 of the legislation permits claims on alienated land provided the land is held by, or on behalf of, Aboriginals. Essentially all land acquired in the Northern Territory by the ABR, ATSIC and its predecessors, has been claimed under the ALRA. As a consequence, analysis of statistical data to gauge the area gained by indigenous interests and its outcomes fall into categories of both land acquisition and grants of land through land rights statute.

7. Although published in 1996, the compilation of these statistics relied heavily on information from AUSLIG dated 1993 and are believed to be understated and did not include land parcels of less than 5,000 hectares. It is known, for example, that the parcels of land held by indigenous interests in Tasmania are at least double those cited. ATSIC's land acquisition database records 19 properties acquired between 1972 and 1997. Pursuant to Tasmania's *Aboriginal Lands Act 1995*, 12 parcels of land were vested to the Tasmanian Aboriginal Land Council following the enactment of that legislation. The parcels of land in New South Wales may also be significantly understated. Since the enactment of the New South Wales Aboriginal Land Rights Act some 1,535 land claims have been granted. ATSIC's database records 66 land acquisitions in NSW and Altman (1994: 70) notes that the New South Wales Aboriginal Land Council had acquired 117 properties through its own program funds.

8. The Australian Capital Territory is included in the New South Wales Regional Indigenous Land Strategy.

9. Notably, land acquired by the ILC in the Northern Territory cannot be claimed under the ALRA due to specific provisions of the enabling legislation. In reality the clause was never applied as no purchases were made in the Northern Territory prior to the effect of the 'sunset' clause on 5 June 1997 which prevented any further claims being lodged with the Aboriginal Land Commissioner.

10. $200 million was allocated to the Land Fund in 1994-95 as an interim measure under clause 201 of the NTA. As the specific legislative arrangements of the Land Fund had

not been established, the Department of the Prime Minister and Cabinet was given responsibility for investing the allocation under interim arrangements (ILC 1997: 74).

11. The *Audit Act 1901* has since been replaced by the *Financial Management and Accountability Act 1997* yet essentially the same provisions and constraints of investment apply.

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