



Australian Government

Indigenous Land and Sea Corporation



The **ILSC GROUP**

PEOPLE. COUNTRY. OPPORTUNITY.

# Returning Country



The Indigenous Land and Sea Corporation works towards our long-term vision for Indigenous people to enjoy the rightful entitlements, opportunities and benefits that the return of country and its management brings.

One mechanism by which we achieve this is by ‘returning country’ to the Indigenous Estate: ***buying land and water-related rights and assets and granting them to Indigenous organisations.***

Historically we have purchased and granted land and water rights that have supported hundreds of ventures across a broad range of enterprises, enabling Indigenous organisations to capitalise on their aspirations to support the protection of cultural and environmental heritage and provide social and economic opportunities across Australia.

#### **Examples of this diversity include:**

- a commercial premises in Bendigo, Victoria where a childcare centre will be constructed for the region’s Indigenous children
- the construction of a purpose-built office building in Sydney providing a range of social, cultural and economic services to the local community
- a working agricultural property that provides training opportunities for Indigenous students to increase employment opportunities and participation in the agricultural industry
- the purchase of a fishing license to establish a commercial enterprise to harvest pipis (small clams known locally as kuti) to create training and employment opportunities for the local community.

**Ownership and management of assets provides greater opportunities to generate long-term benefits and security for Indigenous Australians – economic returns may bring training and job creation; the management and protection of culturally and/or environmentally significant country; improved access to and/or the provision of culturally-safe services; and the creation of inter-generational wealth.**

The granting of land and water ownership may occur immediately on acquisition by the ILSC; it may come later after a lease term by an Indigenous organisation; or it may occur when a suitable owner is found. As of June 2020, over three quarters (203) of the ILSC’s land and water acquisitions had been granted to an Indigenous title holder.

- **Are you an Indigenous-controlled incorporated entity?**
- **Can your entity legally own and hold property?**
- **Will Indigenous people enjoy access, opportunities and benefits from land or waters as a result of your project?**
- **Are you compliant with your incorporating legislation and any agreements you have with the ILSC?**

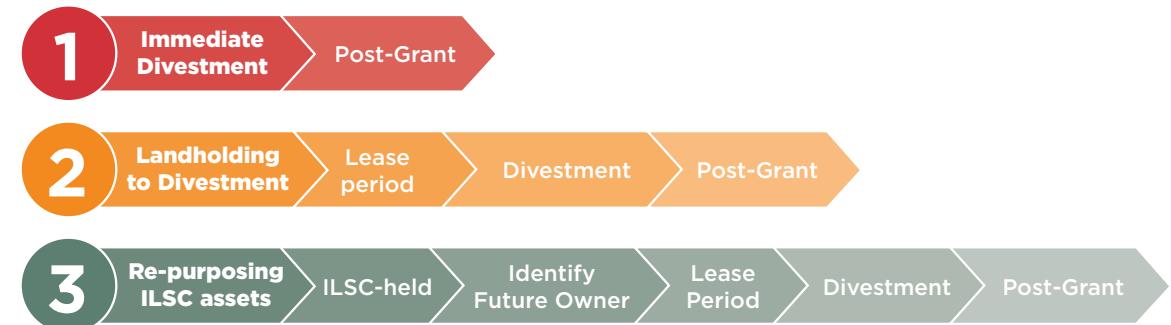
These are the standard criteria which guide the ILSC in its *initial* assessment of an entity’s eligibility to grant land and/or water rights. If you answered ‘yes’ to these criteria, read on to find out the process and responsibilities involved in taking ownership of an ILSC purchased property.

#### **What does the ILSC mean by returning country?**

Returning Country is when the ILSC transfers the ownership of land and water-related rights held by the ILSC to an Indigenous organisation. This is commonly referred to as “divestment”.

#### **3 Pathways to returning country**

Depending on the circumstances, the ILSC will follow one of three separate pathways for returning country:



All three pathways begin with the same step – the **acquisition** of a land or water interest.

#### **Pathway 1: Immediate Divestment**

The Future Owner is able to demonstrate a clear plan for future success and meets all the *Our Country Our Future* divestment criteria (page 4); as a result, the land or water interest is immediately divested on acquisition before it is moved to the final stage of **post-grant**.

#### **Pathway 2: Landholding to Divestment**

The Future Owner requires additional time and support to meet the *Our Country, Our Future* divestment criteria; as a result, the land or water interest moves through a **lease period**, followed by **divestment** and **post-grant**.

#### **Pathway 3: Re-purposing ILSC assets**

Not all businesses succeed and, on occasion, a land or water interest previously purchased through the *Our Country Our Future* program may be returned to the ILSC. For example, this may occur if an Indigenous organisation is wound up after financial hardship results in non-compliance with its regulator.

The ILSC may also be granted a land or water interest from a third party.

In both situations, the ILSC will seek to re-purpose the assets, looking to **identify a Future Owner** through community consultation and to explore new opportunities to derive benefits from the asset. Where there are multiple interested parties and/or Indigenous organisations, the ILSC will conduct an open and transparent Expression of Interest process managed and assessed against the *Our Country Our Future* divestment criteria (see page 4).

Once the Future Owner is established, the organisation would assume ownership following a **lease period** and **divestment**.

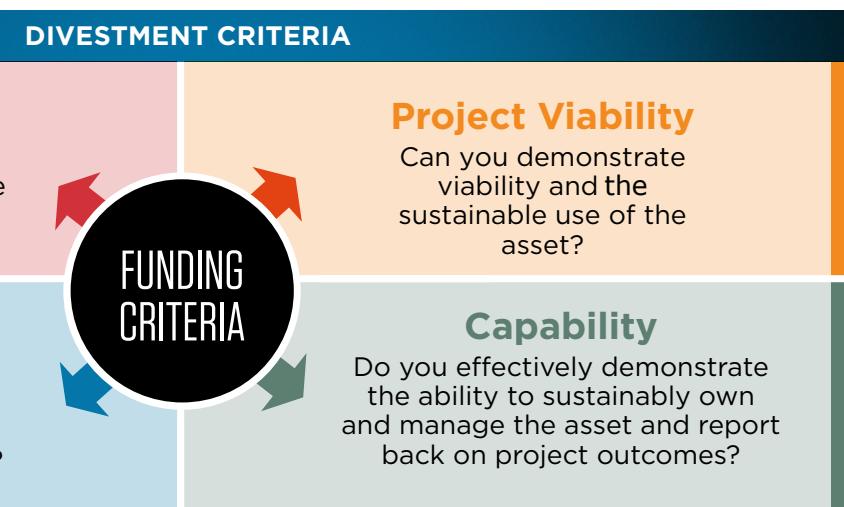
## Our Country Our Future program

Where an Indigenous organisation approaches the ILSC seeking to gain ownership of land or water-related rights for a specific purpose, the ILSC will enable the return of country via either **Pathway 1 Immediate Divestment** or **Pathway 2 Landholding to Investment**. Both pathways are managed through the 'Acquisition' stream of the ILSC's principal funding program *Our Country Our Future* – see [www.ilsc.gov.au/home/partner-with-us/our-country-our-future/](http://www.ilsc.gov.au/home/partner-with-us/our-country-our-future/) for more information.

The following information outlines the **lease period**, **divestment** and **post-grant** steps in more detail, including what is expected of the ILSC and Future Owner. Refer to the diagram and information on page 2 to understand where these steps fit in each pathway.

### Lease Period

During the lease period the ILSC works closely with Future Owners to support the development and implementation of a Divestment Action Plan. The Divestment Action Plan will have a series of activities that the Future Owner will conduct with the following goals in mind:



The ILSC will work closely with the Future Owner to support and monitor the delivery of these activities through the following means:

- Six-monthly progress reports
- Regular property inspections
- Regular meetings to discuss progress and emerging risks
- Asset monitoring
- Monitoring lease compliance
- Regulatory compliance checks
- Meeting land holding costs – paying the bills

These monitoring activities are conducted to build the case for granting the asset to the Future Owner. This can only be done once the Future Owner has demonstrated their ability throughout the lease holding period to meet the Divestment criteria (see next step).

### Divestment

Divestment gives the Indigenous organisation rights to use and enjoy the divested asset and full responsibility for its care, management and maintenance, including holding costs such as rates, management costs and insurances.

Divestment happens through the legal transfer of ownership, through a Deed of Grant co-signed by the ILSC and the Indigenous organisation receiving the asset. The Deed of Grant sets out the permitted uses of the asset, as determined by the outcomes the Indigenous Organisation intends to achieve through owning the asset.

Approval for a Divestment can only be made once the ILSC is confident that the Future Owner can answer yes to each of the following key points under each criterion.

	DIVESTMENT CHECKLIST	YES	NO
<b>Opportunity and Outcomes</b>	<p>The Asset can continue to deliver cultural, social, economic and/or environmental benefits to Indigenous people</p> <p>Property repairs and maintenance works have been completed</p> <p>There is a plan in place to guide the future of the project with clear timeframes and achievable results</p> <p>There are no outstanding compliance issues</p> <p>Cultural heritage, native title and/or traditional owner considerations have been adequately addressed</p> <p>The future owner has demonstrated an ability to monitor and report to the ILSC</p>		
<b>Project Viability</b>	<p>The future owner has the capacity to meet the ongoing landholding costs</p> <p>There is sufficient co-investment to cover current and future costs</p> <p>There is recent evidence of financial performance to support the viability of the activity</p>		
<b>Capability</b>	<p>The future owner has demonstrated good governance</p> <p>The future owner has demonstrated an ability to sustainably manage the property/asset</p> <p>Staff, members and partners have demonstrated the skills and experience necessary to implement the activity</p>		
<b>Financial Health</b>	<p>The future owner has demonstrated sound financial performance and processes</p> <p>The future owner has a sound and stable financial position</p>		

## Post-Grant

After granting a property to an Indigenous organisation, the ILSC continues its involvement through:

- **Supporting ongoing sustainable ownership and management** e.g. through the provision of advice, support or facilitating new partnerships and opportunities to ensure the ongoing successful management of the property.
- **Ongoing monitoring** – the ILSC will continue to monitor progress and delivery of benefits to Indigenous Australians through six-monthly progress reports and regular property inspections for the first five years after divestment.
- **Consent authorities** – when the ILSC divests a property a future owner must enter a Deed of Grant with the ILSC with the aim of securing the asset in the Indigenous Estate in perpetuity. Following divestment, if the Future Owner proposes to discharge their interest in the property (through the sale, lease, mortgage or similar), approval from the ILSC must first be obtained.

The *Aboriginal and Torres Strait Islander Act 2005*, requires that the ILSC retain a ongoing interest in all assets it grants or divests. This interest, commonly a caveat over the title of a land-based asset, ensures the ILSC is consulted and consents to any significant dealing with the divested asset including; mortgaging, sale, lease and/or subdivision. This ensures that assets divested by the ILSC are not later lost from the Indigenous Estate.

The ILSC takes a flexible, case-by-case approach to providing consent for dealings with assets and prioritises the maximisation of value to the Indigenous organisation of the granted asset.



Pictured: Real Jobs Program participants in training in the Northern Territory.

We buy and grant land and water-related rights to Indigenous people

We support Indigenous people to preserve and protect culture through connection to country

We build the capacity and capability of Indigenous people to sustainably manage and protect country

We partner with Indigenous people to drive and influence opportunities for their country

OUR  
ROLE

OUR  
OPERATIONS

OUR  
IMPACT

Indigenous people enjoy opportunities and benefits that the return of country, and its management brings



Australian Government  
Indigenous Land and Sea Corporation



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The Indigenous Land and Sea Corporation (ILSC) is a Commonwealth entity under the Public Governance, Performance and Accountability Act 2013 (PGPA Act). It was established in 1995 under the Aboriginal and Torres Strait Islander Act to provide economic, environmental, social and/or cultural benefits for Indigenous Australians.

*The ILSC acknowledges the Traditional Owners of country throughout Australia and recognises their continuing connection and custodianship of land, waters and culture.*



[www.ilsc.gov.au](http://www.ilsc.gov.au)  
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