



*Independent advisors on public policy - economic assessments  
- strategy - government - stakeholder and indigenous relations*

# EXTERNAL REVIEW OF THE POLICIES AND PROGRAMS OF THE INDIGENOUS LAND CORPORATION

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Aegis Consulting Australia provides government and business with in-depth advice on public policy, cost-benefit and economic assessments, strategy, government, stakeholder management and Indigenous relations. It operates from Brisbane, Cairns, Perth and Sydney.

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## EXECUTIVE SUMMARY

### Background

As part of its regular review of the National Indigenous Land Strategy (the NILS), the Board of the Indigenous Land Corporation (ILC) has commissioned this external review (the review) to examine:

- whether its policies and programs comply with its governing legislation, the *Aboriginal and Torres Strait Islander Act 2005* (the Act); and
- the nature and quality of benefits it delivers for Indigenous people.

The terms of reference for this review are detailed in Chapter 1.

### Purpose and Functions of ILC

The ILC was established in 1995 to acquire and manage land for Indigenous organisations for the purpose of providing Indigenous people with economic, social, cultural or environmental benefits. Currently, more than 80% of ILC projects are in regional or remote Australia where the socio-economic disadvantage of Indigenous people is generally acute and where there are few income-generating activities or employment opportunities.

In fulfilling its purpose and functions, the ILC has program mechanisms that are proactive, where the ILC initiates land acquisition and land management projects itself, as well as reactive, where it seeks applications from Indigenous organisations. The Act allows the ILC to be proactive and states that its functions are in addition to, and not instead of, any functions of other Commonwealth or State government bodies. The review notes that the ILC collaborates on projects that may be initiated by the ILC and/or other parties.

Indeed, the review has included an examination of a range of programs and projects initiated by the ILC in collaboration with other Federal and State government agencies and non-government bodies. The review considers that, without the ILC's involvement, these programs and projects may either have not occurred at all and/or would not have occurred as quickly.

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As the primary legislated purpose of the ILC is to ensure that its land acquisition and management programs are delivering economic, social, cultural or environmental benefits to Indigenous people, its investment and funding decision framework imposes rigorous criteria against which applicants and ILC-initiated programs and projects are assessed. A key criterion for applicants is their capacity and commitment to deliver sustainable benefits consistent with the legislated purpose of the ILC. The ILC continues to monitor the required delivery of benefits approved by the ILC Board even after land grants have been made.

The review notes that the ILC has developed and continuously improved its program guidelines and criteria and administrative practices over a number of years and particularly since the conclusion of its property stocktake in 2002. The review has examined ILC Board papers from 2007 to 2009 and notes that these rigorous criteria are properly and systematically considered in the business cases supporting land acquisition and land management decisions.

The review concludes that its program guidelines and assessment criteria are appropriate given the ILC's:

- statutory responsibility as an Australian Government authority;
- obligation to responsibly spend the proceeds it receives from the Land Account; and
- obligation to act in accordance with its legislated purpose, in particular to ensure achievement of Indigenous benefits.

Under the Act, land acquired by the ILC for an Indigenous organisation must be granted to that organisation within a reasonable time. At 30 June 2010, the ILC had acquired 231 properties and granted 149 (or 65 per cent) since its creation. Thirty five per cent of acquired land has not been granted because:

- the property is currently under lease to the applicant group, allowing time to demonstrate capacity to manage the land in a way that delivers sustainable economic, social, cultural or environmental benefits for Indigenous people; or
- the applicant failed to demonstrate capacity to manage the land in a way that delivers economic, social, cultural or environmental benefits for Indigenous people; or
- after granting, the property has reverted to the ILC because the applicant group has been deregistered or declared insolvent; or
- documentation provided by the proponent group is not complete or not satisfactory; or

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- the proponent group has not satisfied all conditions.

The review concludes that, in meeting its obligation to grant land it acquires, it is reasonable for the ILC to consider the capacity of the applicant group to sustainably manage the land to achieve the claimed economic, social, cultural and/or environmental benefits for Indigenous people.

### **Objectives, Outcomes, Benefits and Indicators**

The ILC's objectives, outcomes, target benefits and performance indicators are set out in its National Indigenous Land Strategy 2007-2012 (NILS) and supporting Regional Indigenous Land Strategies (RILS). The NILS is reviewed regularly by the Board and, when altered, must be tabled in Parliament by the responsible Minister. This is an extra level of accountability with which the ILC must comply, above the normal public sector requirements for agencies to submit annual reports and portfolio budget statements.

The NILS clearly indicates that the primary benefit the ILC is striving to achieve is the improved wellbeing of Indigenous people. In overall terms, the ILC seeks to achieve this through offering programs and developing projects that deliver economic, social, cultural or environmental benefits consistent with its legislated purpose.

To guide its delivery of these benefits, the ILC has a benefits framework that includes thirteen indicators for the purposes of reporting in its portfolio budget statements. One of the general purposes of a benefits framework is to assist an organisation to determine its priorities for spending at any particular time in line with either a cost/benefit or cost/effectiveness approach.

The review has considered whether the ILC should reassess its benefits framework to align with either a cost/benefit or cost/effectiveness model. The review finds that neither of these approaches is suitable to assist the ILC to achieve its legislated purpose. This is because the ILC is obliged to deliver economic, social, cultural or environmental benefits, which are difficult to weigh against each other or to quantify in monetary terms, and do not have outputs in common.



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Accordingly, the review concludes that the preferred approach to guide the ILC's further development and implementation of its benefits framework is its current practice of applying rigorous and systematic program criteria at a threshold level which applicants and ILC-initiated projects must satisfy to attract land acquisition or land management funding structured in ways that allow regular reviews against agreed benchmarks. The strength and commercial/policy skills of the ILC management and Board are important factors in maintaining this preferred approach.

Within the context of the ILC's benefits framework, the stated primary focus of the NILS is to promote education, training and employment outcomes for Indigenous people as this is a comparatively shorter-term indicator of improvements in wellbeing. The ILC seeks to facilitate these outcomes through its land acquisition and management functions:

- by operating businesses in the agricultural, pastoral and tourism sectors;
- by providing residential training facilities;
- through building the capability of Indigenous organisations to operate businesses;
- by initiating and collaborating with other government agencies on national/regional projects to provide Indigenous landowners with training, mentoring, planning and other direct and indirect support; and
- by supporting education outcomes through helping to establish student hostels and training facilities.

The Australian Bureau of Statistics (ABS), in its annual *Measures of Australia's Progress Report*, and the wellbeing framework used by the Australian Treasury, to develop economic policy, consider that building human capital is critical to intergenerational wellbeing and progress. Human capital is built by equipping individuals with capability to choose a life they value and this is achieved through enhanced education, training and employment participation.

The review considers that these priorities of focussing on education, training and employment outcomes are consistent with the legislated purpose of the ILC because they are integral to delivering socio-economic benefits.

Although the ILC prioritises education, training and employment outcomes, the review notes that the ILC provides substantial support for non-economic cultural and environmental heritage protection outcomes consistent with its legislated purpose. For

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example, in 2008-09, the ILC's land acquisition and land management programs resulted in the protection of 83 culturally significant sites and over 350,000ha of land with environmental heritage value was protected or restored. To encourage applications from Indigenous organisations to seek assistance for cultural and environmental heritage outcomes, the ILC accepts applications all year round whereas normally, other than in exceptional circumstances, social and economic applications are open for a set period each year.

These outcomes lead the review to conclude that the ILC is able to strike an appropriate balance in achieving the diverse elements of its legislated purpose.

The review has identified that the ILC's key performance indicators against which it reports in its portfolio budget statements are consistent with and support the achievement of most of the national wellbeing indicators used by the ABS in its *Measures of Australia's Progress Report*.

As a result, the review concludes that the ILC contributes to the multi-dimensional wellbeing of Indigenous people and should not be viewed simply as a land grant agency.

## **SUMMARY OF FINDINGS and RECOMMENDATIONS**

### **Chapter 2 – Legislative Framework**

#### **Finding 2.1 – It is appropriate for the ILC to assess the capacity of Indigenous applicants to manage land**

When carrying out its legislated functions in relation to the acquisition and management of land, the single legislated purpose of the ILC is to exercise these functions for the economic, environmental, social or cultural benefit of Indigenous people. The ILC has discretion under the Act to determine how, where and when it will acquire, manage, divest or otherwise treat with land to deliver one or more of these legislated purposes.

It is appropriate for the ILC to take into account, when making grants of interests in land or financial grants to Indigenous organisations, the capacity of the applicant group to sustainably manage land to achieve economic, environmental, social or cultural benefits for Indigenous people. The ILC is not obliged to make grants of interests in land or financial grants to Indigenous organisations where doing so does not deliver one or more of its legislated purposes on a sustainable basis.

Based on the other findings in this report, the review considers that this level of discretion properly underpins the capacity of the ILC to fulfil its legislated purpose.

### **Chapter 3 – Compliance with Legislative Framework**

#### **Finding 3.1 – It is appropriate for the ILC to receive applications from Indigenous applicants and to initiate projects itself**

It is consistent with its legislated purpose and sensible in public policy terms for the ILC to have proactive and reactive program mechanisms to deliver benefits for Indigenous people, including the operation of land-based businesses.

**Finding 3.2 – The ILC regularly reviews the National Indigenous Land Strategy (NILS)**

Consistent with its legislative requirements, the ILC has prepared, regularly reviewed and revised the NILS and RILS to guide the delivery of its functions under the Act.

**Finding 3.3 – Objectives are consistent with legislative intent**

The objectives of the current NILS are consistent with the legislated purpose and functions of the ILC.

**Finding 3.4 – Outcomes are consistent with legislative intent**

The outcomes expressed in the NILS are consistent with the ILC's legislated purpose and functions. The review notes that it is good public policy for the outcomes expressed in the NILS to be consistent with the Australian Government's Indigenous policy objectives, where these are consistent with the legislated purpose of the ILC.

**Finding 3.5 – The ILC benefits framework is appropriate**

The overarching benefit that the ILC is seeking to achieve is the wellbeing of Indigenous people. Towards this aim, the ILC strikes an appropriate balance between program mechanisms that prioritise social and economic outcomes such as education, training and employment with cultural and environmental heritage outcomes.

The capacity of the ILC to achieve this balance is evidence that it is also able to effectively manage the dual responsibility of acting independently to deliver its legislated purpose, while maintaining consistency with Australian Government policy where appropriate.

The indicators in the ILC's benefits framework reflect that the ILC understands that its program mechanisms need to be able to deliver the benefits stated in its legislated purpose.

**Recommendation**

**The review recommends that the ILC should consider the merits of including achieved Indigenous benefits in the whole-of-government analysis of the wellbeing of Indigenous people.**

**Finding 3.6 – A financial cost/benefit approach by itself is not appropriate to determine benefits**

Because the legislated purpose of the ILC is to deliver economic, social, environmental and cultural benefits for Indigenous people, it is restricted in its capacity to limit its identified benefits and related indicators to those that are more easily subject to a financial cost/benefit analysis.

Accordingly, the review considers that a financial cost-benefit analysis alone is not an appropriate framework for the ILC to use to determine its benefits framework and related programs.

**Finding 3.7 – A cost/effectiveness approach is not by itself appropriate to determine benefits**

As the legislated purpose of the ILC is to deliver economic, social, environmental and cultural benefits for Indigenous people, the benefits it is obliged to deliver do not have a common predominant effect or output value that can be assessed using a single measure.

Accordingly, the review considers that a cost/effectiveness analysis alone is not an appropriate framework for the ILC to use exclusively to determine its benefits framework and related programs.

**Finding 3.8 – Preferred approach to determine benefits**

The review found that the ILC benefits framework is effective in capturing benefits.

### **Recommendation**

**The review recommends that the most effective way for the ILC to monitor whether its benefit framework is delivering results consistent with its legislated purpose is to continue to:**

- **apply benefit realisation thresholds and criteria and robust, appropriate analysis when considering land acquisition and management applications; and**
- **monitor the use of land that it has divested to Indigenous corporations to ensure approved benefits are being achieved.**

### **Finding 3.9 – Ongoing improvements to program management**

The ILC's management of its land acquisition and management programs has changed over time to continuously address identified issues and maximise the opportunity for land to deliver benefits for Indigenous people in a manner and to an extent consistent with the legislated purpose and functions of the ILC.

### **Finding 3.10 – The land acquisition program is structured consistently with the ILC's legislated purpose**

The land acquisition program provides a range of opportunities for Indigenous organisations to seek assistance from the ILC to deliver the benefits that the ILC has legislated responsibility to achieve.

Applying rigorous criteria to land acquisition to ensure the delivery of benefits is consistent with the legislated purpose of the ILC and its financial management obligations as an Australian Government authority.

The purchase of land for Indigenous organisations that do not have the immediate capacity to manage it or deliver benefits is consistent with building the capacity of these organisations over time to deliver the benefits the ILC is obliged to achieve. Building the capacity of Indigenous organisations also maximises the overall scope and reach of the benefits that the ILC must provide.

The ILC's assistance in establishing student hostels is not specifically referred to in the Act, but its assistance is not inconsistent with the Act. In fact, such assistance can be viewed as a fundamental practical instrument that assists the ILC to achieve its legislated purpose to deliver socio-economic benefits for Indigenous people.

The divestment decision-making process is underpinned by a rigorous business case template that enforces a systematic consideration of all appropriate costs, benefits and risks associated with land acquisition and the capacity to achieve benefits.

**Finding 3.11 – The land management program is structured consistently with the ILC's legislated purpose**

The land management program provides a range of opportunities for Indigenous organisations to seek assistance from the ILC to manage land and deliver benefits.

While the criteria that applications must satisfy are rigorous, the ILC's rate of approvals has been consistent over the last two years. Applying rigorous criteria to land management applications to ensure the delivery of benefits is consistent with the legislated purpose of the ILC and its financial management obligations as an Australian Government authority.

The operation of businesses by the ILC is also consistent with its legislated purpose where those businesses deliver legislated benefits or maximises the scope, reach and opportunities for those benefits to be delivered by other organisations.

While the priority placed on training and employment under its program is not required by the Act, it is consistent with the Act. Access to training and employment is a fundamental and practical response that is consistent for the ILC to achieve its legislated purpose to deliver socio-economic benefits for Indigenous people.

The decision-making process is underpinned by systematic consideration of all appropriate benefits, costs and risks associated with land management projects.

## **Chapter 4 – Assessment of Benefits**

### **Finding 4.1 – Overarching benefit is appropriate**

The ILC's selection of Indigenous wellbeing as the overarching benefit it seeks to achieve is consistent with the view of the Australian Treasury that national wellbeing is the ultimate benefit that all government policy aims to secure.

The Treasury and Australian Bureau of Statistics (ABS) consider that the achievement of wellbeing depends on social, economic and environmental progress. Accordingly, the ILC's selection of wellbeing as its key target benefit is consistent with its legislated purpose to deliver economic, social, environmental and cultural benefits for Indigenous people.

### **Finding 4.2 – Consistency of ILC benefits measurement with the approach adopted by the Australian Bureau of Statistics and Australian Treasury**

The ILC's key indicators against which it reports in its portfolio budget statements are consistent with its legislated purpose and the indicators used by the ABS to measure progress towards national wellbeing in its *Measures of Australia's Progress* framework. Accordingly, the ILC indicators support a point-in-time assessment of the wellbeing of Indigenous people and should form part of whole-of-government research and analysis on this subject.

Over 80% of ILC projects are in regional or remote Australia where the socio-economic disadvantage of Indigenous people is generally acute and there are few income-generating activities and employment opportunities. In creating education, training and employment opportunities through its land programs and collaborative projects in regional and remote Australia as well as in other relevant areas, the ILC is acting consistently with the Australian Treasury view that these outcomes are essential to build human capital and intergenerational wellbeing.

The structure, objectives, outcomes and priorities of the ILC, as well as its approach to measuring benefits, mean that it should properly be viewed as a key contributor to the multi-dimensional wellbeing of Indigenous people, rather than as land grant agency only.



**Finding 4.3 – ILC achievements exceed benefit targets**

The ILC's targets, which are attached to its key performance indicators against which it reports in its portfolio budget statement, are consistent with its legislated purpose.

In 2008-09 and 2009-10, the ILC achieved outcomes that exceeded most of the targets attached to its key performance indicators.

**Recommendation**

**In relation to its annual reporting, the Review recommends the ILC should consider reporting against the delivery of the wellbeing framework used in the Measures of Australia's Progress report produced by the ABS. This will assist to define the role of the ILC in promoting the multi-dimensional wellbeing of Indigenous people where this is consistent with its legislated purpose.**

**The Review recommends that the ILC should consider structuring its reporting on employment and training outcomes from its land acquisition and management programs to better enable annual comparisons.**

**Chapter 5 – Accountability and Transparency****Finding 5.1 – Reporting to Parliament**

In terms of public accountability there is no more transparent and scrutinised process than reporting to Parliament. Most government agencies are required to table their annual reports in Parliament (through their responsible Minister) and the ILC is no exception. The ILC has the additional obligation of tabling in the Parliament any revision of the NILS.

This means that the ILC's principal strategy document, its past performance (annual report) and forward program objectives and outcomes, through publishing Portfolio Budget Statements, are subject to Parliamentary review.

The ILC is also subject to the Senate Estimates process where Senate committees question the spending and related programs of government ministers and their agencies.

**Finding 5.2 – Financial management is highly scrutinised**

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The ILC is subject to a high degree of accountability in relation to its financial management. It follows the normal obligations required of government authorities, including oversight by a financial and audit committee at Board level.

The ILC's financial performance is also reported to the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Finance on a monthly basis, and published in the ILC annual reports and portfolio budget statements.

The ILC is subject to annual financial audit and can also be subject to review by the Commonwealth Auditor-General and the Office of Evaluation and Audit.

The ILC follows best practice and has an Audit and Risk Management Committee that meets on a regular basis. It also implements both internal and external audits and evaluations.

### **Finding 5.3 – Articulation of objectives, policies and outcomes is clear and transparent**

The ILC clearly and simply articulates its policies, objectives and the benefits it seeks and achieves via a full range of corporate documents that are publicly available.

### **Finding 5.4 – Performance reporting is rigorously scrutinised**

The ILC currently reports on its performance through its annual reports and portfolio budget statements as expected of an Australian Government authority.

### **Recommendations**

**The Review recommends that the ILC considers improving some aspects of its reporting to make a clearer distinction between annual and aggregate achievements of employment and training outcomes against its portfolio budget statements.**

**The ILC makes a contribution to the multi-dimensional wellbeing of Indigenous people. Accordingly, the Review recommends that the ILC considers developing a new and additional reporting framework that enables the benefits it provides to be**

**included in the national wellbeing indicators in the *ABS Measures of Australia's Progress Report*.**

**Finding 5.5 – Decision making is robust and transparent**

The ILC's decision making process is robust and transparent and subject to the same Freedom of Information laws and Administrative Appeals mechanisms that apply to other Australian Government statutory authorities and agencies.

## 1. CONDUCT OF THE REVIEW

The Indigenous Land Corporation (ILC) is an independent Australian Government statutory authority. It was established in 1995 to acquire and manage land for Indigenous people. Its activities are governed by the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act).

### 1.1 Review Terms of Reference

The ILC commissioned Aegis Consulting Australia (the Consultants) to examine whether the ILC behaves consistently with the ATSI Act, whether the benefits its policies and programs and the benefits it delivers are consistent with its legislation. The terms of reference for the review are as follows:

- 1a. Are the ILC's policies, objectives, outcomes and performance indicators consistent with its charter as described in the Act?
2. Are the ILC's programs and the guidelines relating to each program, consistent with the Act?
3. Examine the benefits being achieved by the ILC and consider whether they are consistent with the Act.
4. Is the ILC accountable and transparent in its articulation of performance indicators and policies, its financial management, decision making and reporting on the achievement of its objectives?
5. Identify any areas of concern or further work that may be required.

### 1.2 Reasons for the Review

Each year, the ILC Board reviews the NILS to ensure it continues to be effective in achieving economic, social, cultural and environmental benefits for Indigenous people through the provision of land acquisition and land management assistance. The ILC Board

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commissioned this review as part of its annual review of the NILS for the following reasons:

- it is 15 years since the ILC was created and this length of operation enables a meaningful analysis of the ILC's contribution to economic, social, environmental and cultural benefits for Indigenous people;
- there is an increasing emphasis in government on policies and programs that can achieve tangible economic and social outcomes for Indigenous people;
- there is increasing awareness that many Indigenous communities are asset rich and that policy and programs should maximise this asset base for tangible economic and social benefits for the Indigenous community;
- there have been criticisms that the ILC's land acquisition and land management criteria, application forms, assessment processes and due diligence are overly complex and rigorous; and
- the global financial crisis has increased focus on real value for money from policies and programs.

- **1.3 Review Methodology**

The Consultants have:

- reviewed a range of ILC material including the NILS and RILS, annual reports, internal reviews, strategy documents including the stocktake, Board papers, program guidelines and investment business cases;
- reviewed a range of external material including legislation governing the ILC, Department of Finance guidelines for benefit assessment, material from the ABS, material from the Australian Treasury, state and national legislation, policies and programs for the acquisition and management of land for Indigenous people; and
- held discussions with and interviewed various ILC stakeholders, including senior executives and successful and unsuccessful applicants for ILC assistance.

## 2. LEGISLATIVE FRAMEWORK GOVERNING THE ILC

The ILC was established in 1995 under the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) as a result of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*.

In 2005, the *Aboriginal and Torres Strait Islander Commission Amendment Act* amended the ATSIC Act by abolishing the Aboriginal and Torres Strait Islander Commission and renaming the ATSIC Act as the *Aboriginal and Torres Strait Islander Act 2005* (the Act).

The 2005 amendments preserved the original 1995 provisions governing the ILC, but also clarified and enhanced the powers of the ILC in relation to its management of the grants it is able to provide to other organisations<sup>1</sup>.

As a result, the ILC is now governed by the *Aboriginal and Torres Strait Islander Act 2005* (the Act), which the consultants have relied on for the purposes of this review.

### 2.1 Legislative Purpose of the ILC

Section 191A of the Act establishes the ILC as a corporation within the meaning of the *Commonwealth Companies and Authorities Act 1997*. It provides that the ILC is a body corporate which may acquire, hold and dispose of real and personal property.

Section 191B of the ATSI Act provides that the purpose of the ILC is to:

- (a) Assist Aboriginal persons and Torres Strait Islanders to acquire land; and
- (b) Assist Aboriginal persons and Torres Strait Islanders to manage Indigenous-held land

so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

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<sup>1</sup> ILC Annual Report 2005-06; p10 and Australian Government, Explanatory Memorandum, Aboriginal and Torres Strait Islander Commission Bill 2005; p6

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This section in the Act provides the same purpose for the ILC as (also 191B) in the original 1995 Act establishing the ILC.

Thus, since its creation, the purpose of the ILC has been to acquire and manage land for the economic, environmental, social or cultural benefit of Indigenous people. The Act provides the ILC with the discretion to acquire, divest, retain, manage or otherwise treat with land as long as it is for one or more of these four primary purposes.

The inclusion of these four primary purposes in the Act implies that the ILC would be acting contrary to its legislated purpose if it dealt with land in a way that did not achieve one or more of these four primary purposes<sup>2</sup>.

The Act vests in the ILC a discretion to apportion any degree of significance it considers appropriate to any or all of these four primary purposes. However, it does provide that, as far as practicable, cultural or social benefits are derived from its functions. Otherwise, the Act is silent on how, in what circumstances or with reference to what issues, policies or regulations the ILC can determine the relative significance of these four primary purposes.

As a result, the ILC has the discretion to determine the relative significance of these four primary purposes with reference to any issue, policy, regulation or other matter within the bounds of what would be considered to be legal and good administrative practice.

For example, the Act gives the ILC discretion to reflect, in its dealings with land, the current Australian Government policy that may prioritise socio-economic development outcomes for Indigenous people.

Where the ILC chooses to prioritise certain outcomes, it must maintain an appropriate balance between these and the other elements of its legislated purpose.

The ATSI Act requires that the ILC has an Indigenous-controlled Board, with five of the current seven directors being Indigenous people. The review considers that this equips the

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<sup>2</sup> This interpretation of the Act is consistent with section 15AA of the *Acts Interpretation Act 1901* (Cth) which states that "In the interpretation of the provision of an Act a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object".

ILC to strike the appropriate balance between the various benefits it is tasked with delivering to Indigenous people.

## **2.2 Legislative Functions of the ILC**

The functions of the ILC have also remained consistent between the 1995 and 2005 Acts. Section 191(C) of the Act provides that the ILC's functions are the acquisition and management of land. Sections 191D(1) and 191E(1) provide more detail about these two primary functions.

Section 191D(1) of the Act provides that the land acquisition functions of the ILC are as follows:

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

Section 191E(1) of the Act provides that the land management functions of the ILC are as follows:

- (a) To carry on or arrange land management activities in relation to Indigenous-held land under agreements with holders of the land;
- (b) To carry on or arrange 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 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 carrying on land management activities in relation to Indigenous-held land.



## 2.3 Performance of ILC Functions

The Act provides guidance on how the ILC should perform its functions.

### 2.3.1 Land Acquisition

With respect to the ILC's land acquisition functions, section 191D(1A) of the Act provides that the ILC may attach any terms and conditions to the grant of an interest in land that it makes. This provides the ILC with reasonable discretion to impose conditions that any grant of interest in land that it makes will deliver one or more of the four primary legislated purposes of the ILC.

Section 191D(1A) was inserted into the Act in 2005 by the *Aboriginal and Torres Strait Islander Commission Amendment Act*. This was to give the ILC the same discretion as the former Aboriginal and Torres Strait Islander Commission with respect to the making of grants<sup>3</sup>.

Within this overall context, section 191D(3) specifies that, when performing its land acquisition functions, the ILC must give priority to:

- (a) pursuing a policy of:
  - (i) acquiring interests in land and granting the interests to Aboriginal or Torres Strait Islander Corporations; or
  - (ii) in cases where the ILC grants money to Aboriginal or Torres Strait Islander Corporations for the acquisition of interests in land – acting as the agent of the Aboriginal or Torres Strait Islander Corporations in connection with those acquisitionsexcept where the circumstances make the pursuit of such a policy impracticable or inadvisable;
  
- (b) in a case where the ILC acquires an interest in land for the purpose of granting the interest to an Aboriginal or Torres Strait Islander Corporation – that grant being made within a reasonable time after the acquisition.

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<sup>3</sup> Australian Government, Explanatory Memorandum, Aboriginal and Torres Strait Islander Commission Bill 2005; p6

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When taken together this set of provisions may appear to create a series of potential conflicts for the ILC in the exercise of its functions. These are as follows:

- Section 191D(1A) provides the ILC with the capacity to attach conditions to the grant of interests in land.
- While section 191D3(a) provides that the divestment of interests in land is a paramount function of the ILC, it also exempts the ILC from performing this where it is not prudent to do so. This reinforces the meaning and purpose of section 191D(1A).
- At the same time, however, section 191D(3)(b) provides that the ILC must make its grants of interests in land within a reasonable time.

It is conceivable that, in some situations, Indigenous organisations may complain that the ILC has not granted interests in land within a reasonable time within the meaning of section 191D(3)(b). To argue this, organisations may seek to rely on section 191D(3)(a) on the basis that it requires the ILC to divest interests in land.

Nevertheless, when read together, sections 191B, 191D(1A) and 191D3(a) of the Act provide a powerful argument that the requirement for the ILC to make grants within a reasonable time would normally be secondary to the obligation to deliver its legislated purpose, namely economic, social, cultural and environmental benefits.

### **2.3.2 Land Management**

With respect to the performance of the ILC's land management functions, section 191E(3) of the Act provides that the ILC must give priority to:

- (a) pursuing sound land and environmental management practices;
- (b) pursuing a policy of granting money or making loans only where the ILC considers that alternative approaches (such as guaranteeing loans obtained from external sources or carrying on land management activities under an agreement with the holders of Indigenous-held land) are impracticable;
- (c) in a case where the ILC carries on, or arranges for the carrying on of, land management activities under agreements with holders of Indigenous-held land – directly involving the holders of the land in those activities.

Paragraph (b) in this section in particular reinforces the overarching theme of the Act which is that assistance provided by the ILC to Indigenous organisations, in order to deliver its legislated purpose, must be guided primarily by financial prudence.

### **2.3.3 Overall Priority Outcomes**

When carrying out its functions, the ILC is required to prioritise outcomes that are consistent with the organisation's purpose as defined in section 191B of the Act. Section 191F(2) of the Act provides that, when undertaking its functions, the ILC must give priority to:

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

## **2.4 Funding**

When the ILC was established, the 1995 Act also created an Aboriginal and Torres Strait Islander Land Account (the Land Account) to provide the ILC with a certain income stream<sup>4</sup>. The Land Account is deemed as a Special Account under section 20(1) of the *Financial Management and Accountability Act 1997* (FMA Act).

The Land Account is administered by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), under delegation from the Minister for Finance and Deregulation.

Between 1995 and 2004, the Australian Government allocated \$121M<sup>5</sup> annually to the Land Account to build its capital value to a level that would enable it to be a self-sustaining fund by 30 June 2004. About 63% of this annual appropriation was retained in the Land

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<sup>4</sup> Section 193X of the Act

<sup>5</sup> This annual appropriation is indexed to 1994 values

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Account, while the remaining 37% was paid to the ILC to enable it to perform its legislated functions. This 37% was equivalent to an average payment of \$45M per year (indexed annually)<sup>6</sup>. In 2004/05, these annual payments to the ILC ceased.

Since 2004/05, the only source of funding for the ILC has been the realised real return from the Land Account. At the time of this report, the capital value of the Land Account is about \$1.8 billion<sup>7</sup>. Between 2004/05 and 2008/09, the annual funding received by the ILC from the Land Account fluctuated dramatically between zero and \$78M and averaged about \$34M<sup>8</sup>.

As the ILC's annual funding depends on the performance of the Land Account, it can vary where external economic conditions affect the realised real return delivered by the Land Account.

Because of this, the ILC must set strict thresholds and conditions for its investments in land acquisition and management projects. Thresholds and conditions that enable the ILC to be prudent and continue investing to deliver the economic, social, environmental and cultural benefits for Indigenous people are consistent with its legislated functions and purpose.

**Finding 2.1 - It is appropriate for the ILC to assess the capacity of Indigenous applicants to manage land**

When carrying out its legislated functions in relation to the acquisition and management of land, the single legislated purpose of the ILC is to exercise these functions for the economic, environmental social or cultural benefit of Indigenous people.

The ILC has discretion under the Act to determine how, where, and when it will acquire, manage, divest or otherwise treat with land to deliver one or more of these legislated purposes.

It is appropriate for the ILC to take into account, when making grants of interests in land or financial grants to Indigenous organisations, the capacity of the applicant group to

<sup>6</sup> ILC, Annual Report 2008-09; p18

<sup>7</sup> ILC, National Indigenous Land Strategy 2007-2012; p4

<sup>8</sup> ILC, Annual Report 2008-09; p19

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sustainably manage land to achieve economic, social, cultural or environmental benefits for Indigenous people. The ILC is not obliged to make grants of interests in land or financial grants to Indigenous organisations where doing so does not deliver one or more of its legislated purposes on a sustainable basis.

Based on the other findings in this report, the review considers that this level of discretion properly underpins the capacity of the ILC to fulfil its legislated purpose.

### 3. COMPLIANCE OF ILC WITH LEGISLATIVE REQUIREMENTS

#### Terms of Reference Being Examined

- 1a. Are the ILC's policies, objectives, outcomes and performance indicators consistent with its charter as described in the *Aboriginal and Torres Strait Islander (ATSI) Act 2005*?
- 2a. Are the ILC's programs, and the guidelines relating to each program, consistent with the ATSI Act?

#### 3.1 Policies, Objectives, Outcomes and Performance Indicators

##### 3.1.1 Policy Approaches

###### Reactive and Proactive Policy

The ILC pursues its functions and purpose through reactive and proactive policies. Under the Act, it is free to apply both of these approaches.

The ILC's reactive policies take the form of seeking formal applications from complying Indigenous corporations for ILC assistance to acquire and/or manage land. This is consistent with the legislated functions of the ILC.

The ILC also takes a proactive approach to achieve its legislated purpose of acquiring and managing land to deliver economic, social, cultural and environmental benefits for Indigenous people. It does this by:

- initiating and undertaking land acquisition and land management projects in collaboration with government agencies, non-government organisations, Indigenous groups and the private sector aimed at delivering:
  - sustainable education, training and employment outcomes; and
  - sustainable social, cultural and environmental outcomes.

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- operating viable pastoral, agricultural and tourism businesses to deliver training and sustainable employment outcomes for Indigenous people.

The policy of having both proactive and reactive program mechanisms is a sensible approach to achieving outcomes in diverse and complex policy areas. Opportunities for delivering the legislated purpose of the ILC may not always arise through applications from Indigenous groups for the purchase and/or management of land. As a result, the delivery of economic, social, cultural and environmental benefits for Indigenous people as required under the Act is likely to be maximised by proactive programs undertaken by the ILC.

Taking a proactive approach to achieving its legislated purpose also enables the ILC to be responsive to individual or whole-of-government initiatives aimed at achieving education, employment, social and other outcomes for Indigenous people.

The Act does not restrict the ILC from operating businesses where doing so is consistent with the legislated purpose of the ILC. The capacity development and employment outcomes arising from the ILC's operation of businesses has resulted in increasing requests from Indigenous landowners for the ILC to lease their land and for the ILC to bring it back into productivity.

**Finding 3.1 - It is appropriate for the ILC to receive applications from Indigenous applicants and initiate projects itself.**

It is consistent with its legislated purpose and sensible in public policy terms for the ILC to have proactive and reactive program mechanisms to deliver benefits for Indigenous people, including the operation of land-based businesses.

### **National and Regional Land Strategies**

Under section 191N of the Act, the ILC must prepare and review on a regular basis a National Indigenous Land Strategy (NILS). The ILC Board regularly reviews, and revises as necessary, the NILS which sets out the ILC's policies, principles, objectives, outcomes sought, and progress indicators relating to the acquisition and granting of land, management of land and related environmental issues.

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The NILS was reviewed each year at the December meeting of the ILC Board<sup>9</sup>. However, the current NILS is for the period 2007 to 2012 (current NILS) and was reviewed in 2009, but not changed.

Under section 191P of the Act, the ILC must also prepare Regional Indigenous Land Strategies (RILS) that serve a similar purpose, cover similar issues and be reflected in the NILS. There are seven RILS – one for each of the six States and one for the Northern Territory. The ACT is included in the RILS for NSW.

The RILS are used by the ILC to analyse regional issues that must be considered in decision making. These issues include data on population characteristics, geographic and environmental matters, industry, economic and employment issues, and Indigenous land holdings<sup>10</sup>.

The NILS incorporates and reflects the various RILS developed by the ILC. The ILC's benefits framework is used to assess the impact of ILC programs and whether the outcomes of the NILS are being achieved.

### **Finding 3.2 - The ILC Board regularly reviews the NILS**

Consistent with its legislative requirements, the ILC Board has prepared, regularly reviewed and revised the NILS and Regional Indigenous Land Strategies to guide the delivery of its functions under the Act.

### **3.1.2 Objectives and Outcomes**

#### **Objectives**

The NILS is the key document describing the objectives and outcomes sought by the ILC and the priorities, policies, principles and programs it will deploy to achieve them. By consolidating these matters in the NILS, the ILC is able to meet the expectation of the Parliament that it will be accountable to the Parliament for its activities and decisions.

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<sup>9</sup> Identified by the consultants in their review of the ILC Board Papers

<sup>10</sup> ILC Annual Report 2008-09; p12



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It is appropriate for the ILC to set out its objectives, outcomes, priorities, policies and programs in the NILS as long as these matters reflect the purpose and functions of the ILC as defined in the Act.

Section 191B of the Act clearly states that the land acquisition and land management functions of the ILC are for the purpose of achieving economic, environmental, social or cultural benefits for Indigenous people. Thus the current NILS must and does have this purpose.

The current NILS explicitly states that the purpose and vision of the ILC is to assist Indigenous people achieve sustainable economic, social, environmental and cultural benefits through owning and managing land<sup>11</sup>.

### **Finding 3.3 – ILC objectives are consistent with legislative intent**

The objectives of the NILS are consistent with the legislated purpose and functions of the ILC.

### **Outcomes**

Consistent with this legislative purpose, the current Portfolio Budget Statements indicate that the ILC's land acquisition and management programs are aimed at delivering the following four broad outcomes for Indigenous people<sup>12</sup>:

- socio-economic development;
- access to education;
- sustainable management of Indigenous-held land; and
- access to and protection of cultural and environmental values.

These outcomes are also consistent with the Closing the Gap policies of the Australian Government which are aimed at addressing the health, education and developmental disparities between Indigenous and non-Indigenous Australians<sup>13</sup>.

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<sup>11</sup> National Indigenous Land Strategy 2007-2012

<sup>12</sup> ILC, National Indigenous Land Strategy 2007-2012; p2

<sup>13</sup> Australian Government, Closing the Gap on Indigenous Disadvantage, February 2009

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The ILC Board can develop or amend the objectives or outcomes in the NILS to reflect the broader policy agenda of the Australian Government at any time. The only restriction on the ILC is that any objectives and outcomes in the NILS must be consistent with the purpose and functions of the ILC as defined in the Act.

It is sensible public policy and good administrative practice for the NILS to reflect and contribute to the implementation of the Australian Government's Indigenous policies, as long as those policies are consistent with the legislative purpose of the ILC.

### **Finding 3.4 – ILC outcomes are consistent with legislative intent**

The outcomes expressed in the NILS are consistent with the ILC's legislated purpose and functions. The review notes that it is good public policy for the outcomes expressed in the NILS to be consistent with the Australian Government's Indigenous policy objectives, where these are consistent with the legislated purpose of the ILC.

### **3.1.3 Outcome Measurement (Progress Indicators)**

#### **Benefits Framework**

The PBS identifies a range of benefits that Indigenous people can receive from ILC outcomes and related programs and treats these benefits as indicators of the progress that the ILC is making towards achieving its outcomes.

#### *Balancing Diverse Economic and Cultural Benefits*

At a high level, the long-term improvement in the wellbeing of Indigenous people is the overarching benefit that the ILC is seeking to achieve<sup>14</sup>.

Towards achieving this overarching benefit, ILC program guidelines focus on the following to achieve benefits<sup>15</sup>:

- creating training and sustainable employment for Indigenous people;
- increasing the capacity of Indigenous people to sustainably manage their land;

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<sup>14</sup> ILC, National Indigenous Land Strategy 2007-2012; p3

<sup>15</sup> ILC, Annual Report 2008-09; p12

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- engaging indigenous people in viable land based enterprises including tourism and agriculture;
- supporting the education of Indigenous youth, through assisting in the establishment of student hostels; and
- collaborating with other agencies to produce effective outcomes.

This approach reflects the ILC's view that providing Indigenous people with training, education and employment opportunities is vital and integral to delivering its legislated purpose and the outcomes sought in the current NILS. In fact, the NILS determines that participation in employment and training is a key short-term indicator of achieving the socio-economic development of Indigenous people.

The ILC can identify and concentrate its efforts on these or any other benefits as indicators of its success in delivering its legislated purpose and defined outcomes. The ILC has the discretion and responsibility to select benefits that best reflect the progress it should be making towards achieving its legislated purpose. However, the ILC's priorities must represent the balance required to comply with the various elements of its legislated purpose.

The review notes that, in addition to the priority it gives to education, training and employment outcomes, the ILC provides substantial support for non-economic, social, cultural and environmental heritage protection outcomes consistent with its legislated purpose. For example, in 2008-09, the ILC's land acquisition program resulted in the protection of 83 culturally significant sites and almost 3500ha of land with environmental heritage value was protected or restored<sup>16</sup>. Funding for cultural and environmental heritage outcomes can also be employment generating, such as is the case with rangers employed as a result of the ILC's involvement in the Indigenous Protected Area (IPA) scheme.

In 2008-09, the ILC also supported the maintenance or revitalisation of culture through 114 cultural events that formed part of 22 projects<sup>17</sup>.

To encourage applications from Indigenous organisations to seek assistance for cultural, social and environmental heritage outcomes, the ILC enables organisations to submit their

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<sup>16</sup> Ibid; p43

<sup>17</sup> Ibid

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applications all year round. This is not the case for socio-economic related applications which are only open for a set period each year.

The acquisition and rebuilding of the Wyanga Aged Care Facility for the Indigenous elderly community in Redfern, NSW, is an example of the ILC's acquisition and divestment under its socio-economic program.

### *Balancing Independence and Australian Government Expectations*

The selection of key indicators like training, education and employment reflects those used by the Australian Government over the last 10 years to assess its own success in delivering socio-economic improvements for Indigenous people. There is nothing in the Act that precludes the ILC from applying the same indicators as the Australian Government as long as those indicators are consistent with the legislated purpose and functions of the ILC.

The embrace of Australian Government policy by an independent body such as the ILC can be contentious. For many decades, political and policy debate in relation to Indigenous policy has revolved around distinctions between land rights for cultural reasons and policy actions that have practical socio-economic outcomes for Indigenous people.

As an independent Australian Government statutory authority, the ILC is legislatively required to independently make judgements that can increase the capacity and opportunities for Indigenous people to own and manage land for economic, social, cultural and environmental benefit. However, as an entity within the administration of the Australian Government, it is also expected to contribute to outcomes sought by Government, which can often be chiefly socio-economic in nature.

The wide discretion provided to the ILC by the Act to deploy proactive and reactive program mechanisms and prioritise benefits that maximise opportunities for Indigenous people properly enables the ILC to avoid any significant conflict in these dual expectations.

Based on the capacity of the ILC to successfully develop and implement program mechanisms to further all of the elements of its legislated purpose, the review concludes

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that the ILC is able to and does effectively act independently and also reflect Australian Government policy where appropriate.

### *Indicators in the Benefits Framework*

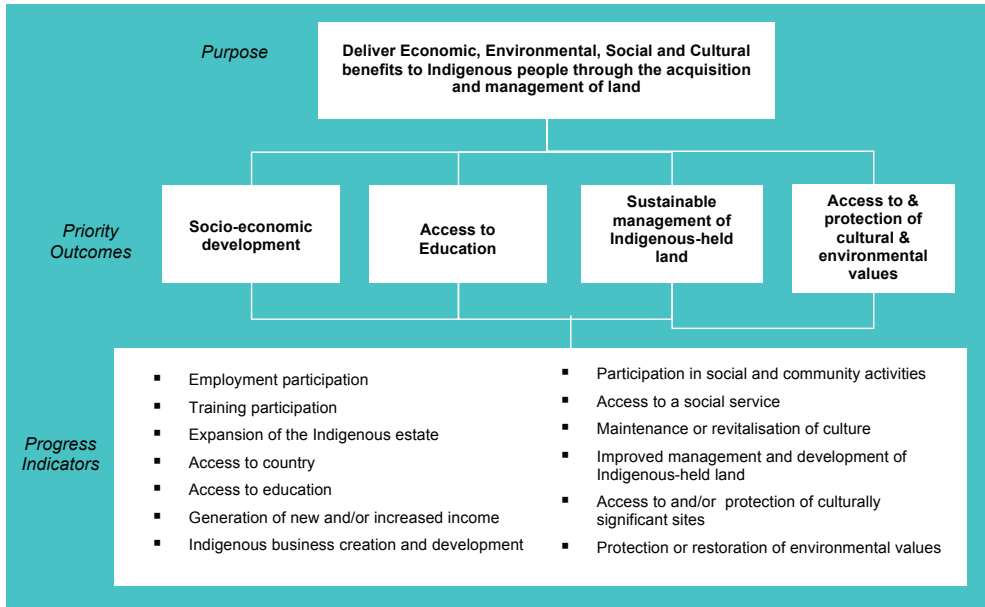
In addition to the overarching benefit of Indigenous wellbeing and the five macro benefits supporting the delivery of this, the ILC deploys at a micro level a more expansive range of specific benefits or indicators that can be used to measure the progress the ILC is making in achieving its objective and main outcomes.

Figure 1 describes the benefit framework utilised by the ILC. The framework links 13 specific benefits to the four main outcomes identified by the ILC. Within the framework, these 13 benefits are treated as progress indicators for all the four main outcomes.

The indicators in the framework reflect the ILC's recognition that it is legislatively required to deliver economic, social, cultural and environmental benefits for Indigenous people and that its program mechanisms should be structured to accomplish this.

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**Figure 1: Benefits Framework Used by the ILC to Identify and Measure Outcomes**



**Finding 3.5 – the ILC benefits framework is appropriate**

The overarching benefit that the ILC is seeking to achieve is the wellbeing of Indigenous people. Towards this aim, the ILC strikes an appropriate balance between program mechanisms that prioritise social and economic outcomes such as education, training and employment with cultural and environmental heritage outcomes.

The capacity of the ILC to achieve this balance is evidence that it is also able to effectively manage the dual responsibility of acting independently to deliver its legislated purpose, while maintaining consistency with Australian Government policy where appropriate.

The indicators in the ILC's benefits framework reflect that the ILC understands that its program mechanisms need to be able to deliver the benefits stated in its legislated purpose.

**Recommendation**

The Review recommends that the ILC should consider the merits of including achieved Indigenous benefits in the whole-of-government analysis of the wellbeing of Indigenous people.

**Assessment of Benefits Framework**

A benefits framework is normally used to assess the costs and benefits or the cost effectiveness of policy and programs in order to ensure that resources are being efficiently and effectively deployed<sup>18</sup>.

The review has considered whether the ILC should be using a cost/benefit or cost/effectiveness analysis process to determine whether its benefits framework and related programs are efficient and effective. The review has made this assessment with reference to the requirements on spending set down for Australian Government agencies by the Department of Finance and Deregulation.

The review considers that this is an appropriate way to approach this issue even though the ILC does not receive and is not spending an annual appropriation from the Consolidated Fund. The review considers that this approach is relevant because the ILC is a statutory authority of the Australian Government, is subject to specific enabling Commonwealth legislation, and funds its programs from the realised return of the Land Account which is administered by FaHCSIA. Further, the ILC's programs have the capacity to support or otherwise affect general Australian Government programs and policies in relation to Indigenous people.

*Cost/Benefit Analysis*

Cost/benefit analysis is generally used to assess the efficiency of the allocation of resources to an activity where for any number of reasons private markets cannot or do not undertake that activity. Thus, typically this approach is used to assess whether public funding to partly subsidise or wholly deliver policies and programs represents what is

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<sup>18</sup> Commonwealth Department of Finance, Handbook of Cost/Benefit Analysis, 2006

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termed *allocative efficiency*<sup>19</sup>. Allocative efficiency relies on the assumption that it is “impossible to make any one person better off without in the process making someone else worse off”<sup>20</sup>.

Because of this assumption, a cost/benefit analysis must assess the opportunity cost of providing or not providing resources to a policy or program. Opportunity cost is the cost of what has to be given up in order to gain some good or service. It must also examine the willingness of people to pay for the benefits they receive from the program or policy to which resources may be allocated. In addition, it must assess the impact of changing the distribution of resources from one person to another.

Accordingly, cost/benefit analysis requires the examination of a range of detailed market structure and efficiency, pricing and social equity issues as well as the apportionment of a monetary value to the identified costs and benefits.

The table below illustrates some costs and benefits of a generic unemployment retraining program. A cost/benefit analysis framework would need to put a monetary value against the relative costs and benefits in order to determine issues such as allocative efficiency. The review has chosen this example because the ILC has prioritised employment, education and training as a key outcome of its functions in order to address long-term unemployment and improve socio-economic opportunities for Indigenous people.

**Table: Costs and benefits of an unemployment retraining programme<sup>21</sup>**

	Unemployed workers who are retrained	Rest of the community
Allocative costs	<ul style="list-style-type: none"> <li>▪ Some foregone work output</li> <li>▪ Foregone leisure</li> </ul>	<ul style="list-style-type: none"> <li>▪ Training costs</li> </ul>
Allocative benefits	<ul style="list-style-type: none"> <li>▪ After-tax wages after training due to rise in output</li> <li>▪ Enhanced wellbeing and self esteem</li> </ul>	<ul style="list-style-type: none"> <li>▪ Possible increased profits for employers</li> <li>▪ Increase in tax revenue from wages due to rise in output</li> </ul>
Distributional transfers	<ul style="list-style-type: none"> <li>▪ Income support while training</li> <li>▪ Loss of unemployment benefits</li> </ul>	<ul style="list-style-type: none"> <li>▪ Income support to trainees</li> <li>▪ Savings in unemployment benefits</li> </ul>

<sup>19</sup> Ibid; p18

<sup>20</sup> Ibid

<sup>21</sup> Ibid; p27



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In the table, the net social benefit of the training program is the sum of the allocative benefits less the allocative costs. The distributional transfers do not affect the net social benefit.

However, the distributional transfers may represent a non-offsetting gain or loss where the dollars (resources) being used to support the programs have a different value to the unemployed compared to the rest of the community (taxpayers). For example, if the dollars are worth more to the users of the programs than to the taxpayer, the difference in value may be a gain to the users. Indeed, what is the value of sustainability and how do you factor in the value of “mentoring assistance”?

A cost/benefit analysis of the ILC’s programs would rely on attributing a monetary value to all of the benefits (indicators) that the ILC has identified in its benefits framework illustrated in Figure 1. These benefits span economic, environmental, social and cultural issues. The review considers that it would be very difficult to accurately calculate a monetary value for most of these benefits.

The Australian Government recognises that it is extremely problematic to determine the monetary value of many public goods and related activities such as health, education, safety, culture and wellbeing, and participation in social and community activities<sup>22</sup>. This is likely to be the case in relation to many of the benefits identified by the ILC, which are quite specific to the Indigenous community’s value system, including access to and protection of culturally significant sites, expansion of the Indigenous estate, maintenance and revitalisation of culture.

**Finding 3.6 – A cost/benefit approach by itself is not appropriate to determine benefits**

Because of the legislated purpose of the ILC to deliver economic, social, environmental and cultural benefits for Indigenous people, the ILC should not be limited in its capacity to identify benefits and related indicators to those that are more easily subject to a cost/benefit analysis.

<sup>22</sup> Ibid:p108

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Accordingly the review considers that a cost benefit analysis alone is not an appropriate framework for the ILC to use to determine its benefits framework and related programs.

### *Cost/Effectiveness Analysis*

A cost/effectiveness analysis attributes a monetary value to the costs of a program or policy, but does not do so in relation the benefits. Instead, benefits are identified in terms of qualitative impacts such as volume of goods or services produced or community benefit. The community benefit includes such things as number of lives saved, number of people educated or number of businesses created<sup>23</sup>.

Accordingly, cost/effectiveness analysis is often used in cases where it is easier to identify than value benefits such as in the health, education and community service sectors. In general, there are at least three scenarios where cost effectiveness analysis can be appropriate. These are where there is a need to<sup>24</sup>:

- prioritise alternative expenditure options to optimise the use of a fixed quantity of resources;
- improve the allocation of resources to achieve set policy objectives of a continuing program or policy; and
- consider a large number of alternatives to achieve a defined policy or program objective.

However, in each of these scenarios a precondition is that the alternatives or options being considered must have a common predominant effect. This is because the aim of cost/effectiveness analysis is to identify and assess a single measure of effectiveness in order to accurately weigh up options. If the effect of the alternatives varies, then comparing their cost effectiveness will be misleading. Accordingly, cost/effectiveness analysis is generally not applied where alternatives have different output values<sup>25</sup>.

This is an important issue when considering whether the ILC should use cost/effectiveness analysis to develop and review its benefits framework and related programs.

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<sup>23</sup> Ibid; p108

<sup>24</sup> Ibid; p109

<sup>25</sup> Ibid; p110

The 13 benefit indicators in the ILC's benefit framework reflect its legislated purpose of delivering economic, social, environmental and cultural outcomes for Indigenous people. The output values associated with economic, social, environmental and cultural benefits vary significantly and thus they are unlikely to share a common predominant effect.

Thus, it would be misleading for the ILC to review its benefit framework and related programs via cost/effectiveness analysis. For example, it would be impossible to identify a single measure for and compare the cost/effectiveness of land acquisition and management programs designed to support business creation and employment with those programs aimed at returning culturally significant land to Indigenous people or indeed any social outcomes.

**Finding 3.7 – A cost/effectiveness approach is not by itself appropriate to determine benefits**

As a result of the legislated purpose of the ILC to deliver economic, social, environmental and cultural benefits for Indigenous people, the benefits it is obliged to deliver do not have a common predominant effect or output value that can be assessed using a single measure.

Accordingly, the review considers that a cost/effectiveness analysis is not an appropriate framework for the ILC to use to determine its benefits framework and related programs.

*Preferred Approach*

As the ILC has a legislated purpose to deliver economic, social, environmental and cultural outcomes for Indigenous people, its benefit framework is required to include a range of often unrelated benefits (indicators) that can only be valued individually and qualitatively.

The review considers that the ILC's current benefit framework appropriately reflects its legislated purpose and that any assessment about the delivery of those benefits can only be made on a case-by-case or project-by-project basis, rather than a whole-of-program or comparative basis.

**Finding 3.8 – Preferred approach to determine benefits framework**

The review found that the ILC benefits framework is effective in capturing benefits.

**Recommendation**

**The review recommends that the most effective way for the ILC to monitor whether its benefit framework is delivering results consistent with its legislated purpose is to continue to:**

- **apply systematic benefit realisation thresholds and criteria and robust business case analysis when first considering land acquisition and management applications; and**
- **monitor the use of land that it has divested to Indigenous corporations to ensure agreed benefits are being achieved.**

## **3.2 Programs and Guidelines**

### **3.2.1 Framework for Program Management**

#### **Key Issues Driving Change in Program Management**

Two key factors in understanding the development of the ILC's management of its legislated land acquisition and management functions are that:

- The nature, structure, administration and priorities of the ILC's functions will change over time to reflect a range of issues including improvements to best-practice public administration, demands from stakeholders and the policies and priorities of the Australian Government.

There is nothing in the Act that precludes the ILC responding to these issues as long as its programs remain consistent with its legislated purpose and functions. Fundamentally, no organisation can remain static in the way it administers its obligations and activities when its operating environment is constantly changing.

- The aspirations, demands and expectations of Indigenous people and Indigenous organisations are very different now compared to 1995 when the ILC was first established.

When the ILC was first established in 1995, the prevailing policy environment and focus was on the recognition of and creation of land rights for Indigenous people, in the wake of the High Court's Mabo decision<sup>26</sup>. Naturally, this was the focus and primary aspiration of Indigenous organisations at that time. Over the last 15 years, the aspirations of Indigenous organisations and people have grown wider and now encompass socio-economic outcomes including business ownership, employment, self employment, education and training.

This change in aspirations is a result of many factors including increasing examples of the success of Indigenous businesses, improved access to education and other services, increased social mobility of Indigenous people and the overall economic growth of the nation.

Thus, a proper test for the ILC is whether it has changed to maintain its relevance and potency given the changing demands and aspirations of its stakeholders and primary beneficiaries of its services.

### **Improvements Arising from Property Stocktake in 2002**

Between 1995 and 2002, the ILC acquired 151 properties. In 2002, the ILC conducted a review of these properties to determine whether their use was delivering benefits for Indigenous people consistent with the legislated purpose of the ILC. The review identified that there were a number of barriers to Indigenous people achieving sustainable benefits from the ILC's land acquisition program, including<sup>27</sup>:

- gaps between the aspirations of some Indigenous organisations and the inherent capacity of the land to deliver on these aspirations;
- gaps between the aspirations of some Indigenous organisations and their capacity to effectively use the land to achieve these goals;

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<sup>26</sup> Mabo and Others v Queensland (No 2), (1992) 175 CLR 1

<sup>27</sup> ILC, Report on Improving Outcomes from Indigenous Land Purchases, 2002

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- a lack of commitment by some Indigenous organisations to the land which had been divested to them; and
- a lack of appropriate land management and skills within some Indigenous organisations that would be necessary to gain sustainable benefits from the land.

To remedy these barriers, the ILC<sup>28</sup>:

- revised its NILS to separate program delivery into four streams – economic, social, environmental and cultural – which are consistent with its legislated purpose;
- established the skills and processes to enable it to help Indigenous organisations build their capacity to own and manage land for economic purposes;
- created a new financial information system and property database; and
- undertook a property remediation program between 2003 and 2008 in partnership with indigenous organisations to improve the capacity of individual properties to deliver sustainable benefits for Indigenous people.

As a result of the remediation program:

- urgent health and safety works were addressed on 52 properties;
- capital development and other works to improve the capacity of land was undertaken on 62 properties;
- property management plans were developed for 48 properties; and
- some properties have been or will be sold, due to lack of interest or commitment.

### **Improvements to Application and Assessment Processes in 2007**

To ensure that the ILC's investment decisions are delivering the benefits identified in its benefits framework, the ILC introduced further changes in 2007 to the processes under which land acquisition and management applications are requested and considered.

#### *Changes to the Project Application Process*

In late 2007, the ILC Board determined to make an annual call for land management and socio-economic land acquisition applications. This was to improve the management of the

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<sup>28</sup> ILC, Remediation Evaluation Report 2009

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application process and the exercise of the ILC's functions<sup>29</sup>. Since that time, the annual application process is managed according to the following timeline:

- Pre-Christmas advertising of a call for land management and acquisition applications
- 30 April (ensuing year) closing date for land acquisition applications concerning socio-economic development outcomes
- 30 June (ensuing year) closing date for land management applications
- August (ensuing year) Board meeting considers land acquisition applications
- October (ensuing year) Board meeting considers land management applications

However, applications for land acquisition projects that are aimed at delivering cultural and environmental heritage protection outcomes are still able to be made all year round<sup>30</sup>.

The restriction on the time by when land acquisitions for socio-economic development outcomes can be made (30 April) also reflects the fact that increasingly most applications fall within this category. For example, in 2009, the ILC received 22 applications under this stream, compared to four lodged under the cultural and environmental streams.

Distinguishing between applications in different streams in this way is a sensible approach as it also enables the ILC to achieve three key outcomes consistent with its legislated functions and purpose.

First, imposing closing dates for the bulk of applications the ILC must deal with supports its capacity to systematically and robustly consider applications. This is important because it is through the proper comparative assessment of how each application meets benefit thresholds and program criteria that the ILC is best able to ensure the integrity of its benefits framework.

Secondly, imposing closing dates on applications with socio-economic development outcomes encourages applicants to apply the same kind of discipline to the planning and preparation of their applications that would be required to own and manage land-based businesses.

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<sup>29</sup> Identified by the consultants in their review of the ILC Board Papers

<sup>30</sup> ILC Annual Report 2008-09; p27

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Thirdly, enabling applications with cultural and environmental heritage protection outcomes to be made at any time of the year satisfies the legislative need for the ILC to ensure that the management of its functions does not preclude or inhibit the ability of Indigenous organisations to apply for land for non socio-economic purposes. As discussed elsewhere in this report, this assists the ILC to maintain an appropriate balance between delivering socio-economic and cultural outcomes for Indigenous people.

Of course, urgent applications or unique opportunities can be and are dealt with at any time.

### *Changes to the Application Assessment Process*

Also, in late 2007, a new template assessment process was introduced to compare and determine between applications received by the ILC. The comparative assessment process is based on an approach recommended by the Australian National Audit Office (ANAO) and is aligned with the program criteria governing land acquisition and management programs in the current NILS<sup>31</sup>. It is also consistent with the Australian Government Department of Finance's *Gateway Review* process<sup>32</sup>.

In order to be successful, land acquisition and management projects now need to meet the following criteria (program criteria)<sup>33</sup>:

- projects need to (a) generate training and employment outcomes and (b) be able to be delivered in collaboration with other agencies or industry partners;
- applicants must be able to demonstrate a strong commitment and capacity to deliver the project;
- projects must be viable and sustainable; and
- properties must be suitable for the proposed land use.

In addition, applications under the land acquisition and management programs need to prove that they cannot achieve their desired outcomes through the land functions of, or assistance from, another Australian or State government agency. This ensures that the

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<sup>31</sup> Ibid

<sup>32</sup> The Gateway Review process is a process under which business cases for spending by Federal government agencies is assessed by an independent panel of public and private sector experts. Under the process, the costs and benefits of spending are examined to ensure value for money and appropriate outcomes.

<sup>33</sup> ILC, Land Acquisition and Management Guidelines



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ILC is not acting to duplicate the functions and role of other agencies and therefore avoids the risk of wasteful spending. This is consistent with section 191F(3) of the Act.

On the face of it, these program criteria may appear to favour projects that can deliver socio-economic outcomes, rather than cultural or environmental heritage ones, particularly because of the need for training and employment outcomes. However, in practice they apply principles that are integral to ensuring the delivery of all the elements in the ILC's legislated purpose. For example, an applicant's commitment and capacity and the suitability of land are as important to ensuring the delivery of cultural and environmental outcomes as they are to support socio-economic ones. In some cases, training and employment outcomes can also be part of cultural and environmental heritage projects, such as the employment of Indigenous rangers as a result of the ILC's involvement in the Indigenous Protected Areas scheme.

As discussed elsewhere in this report, the application of these program criteria since 2007 has not inhibited the ILC from subsequently supporting a vast range of cultural and environmental heritage projects.

Overall, the review concludes that these program criteria are consistent with the objectives and outcomes of the ILC as described in the current NILS. They are well placed to ensure that investment decisions achieve the benefits that the ILC is legislatively obliged to deliver.

### **Evaluation of Property Remediation Program in 2009**

In 2009, the ILC conducted an evaluation of the property remediation program that was undertaken between 2003 and 2008 in response to the 2002 property stocktake.

The evaluation recommended a range of measures, which have now all been implemented by the ILC. These measures include<sup>34</sup>:

- systematic monitoring of Indigenous organisations who own, lease or manage land acquired by the ILC to ensure that they comply with divestment conditions. This enables the ILC to possibly have the land revert to the ILC, where conditions are egregiously breached, so that the delivery of benefits is not compromised;

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<sup>34</sup> ILC, Remediation Evaluation Report 2009

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- implementation of a rigorous post-grant monitoring system in relation to Indigenous organisations and their capacity to manage the land to deliver required benefits;
- application of shorter project management timeframes to ensure that required benefits are delivered more efficiently and effectively;
- integration of project and finance databases to support consistent and effective reporting and accountability to management and the Board; and
- creation of project management teams for larger, complex projects to improve the functional capacity of the ILC.

These measures are consistent with the legislated purpose and functions of the ILC, delivery of the outcomes in the current NILS and implementation of the benefits framework.

### **Finding 3.9 – Ongoing improvements to program management**

The ILC's management of its land acquisition and management programs has changed over time to continuously address identified issues and maximise the opportunity for land to deliver benefits for Indigenous people in a manner and to an extent consistent with the legislated purpose and functions of the ILC.

## **3.2.2 Land Acquisition Program**

### **Structure**

The overarching structure of the ILC's land acquisition program has two main parts:

- Indigenous organisations can apply to the ILC for the acquisition of a property. After acquiring the property, the ILC generally leases it to the applicant organisation until granting the property to the organisation. The ILC makes the grant only when the organisation has demonstrated the capacity to manage the property and deliver sustainable benefits to Indigenous people consistent with the legislated purpose of the ILC. The time between leasing and granting the property depends on whether the Indigenous organisation has the required capacities at the time it makes the application or whether it requires ILC assistance to build that capacity over time.

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- The ILC itself also initiates acquisitions either alone or in collaboration with other government agencies or organisations to deliver its legislated purpose.

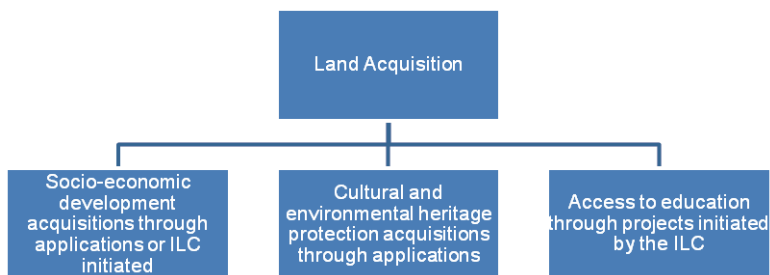
Consistent with the recommendations of the 2009 Remediation Evaluation, the ILC monitors acquired properties even after they have been granted to ensure that benefits are being delivered to Indigenous people consistent with the legislated purpose of the ILC. Since the ILC was established, it has acquired 229 properties at a total cost of about \$226 million. The total land area represented by these properties is about 6 million hectares<sup>35</sup>.

Between 2003 and 2008, applications were sought under the program via four project streams which represent the legislated purpose of the ILC. These streams were<sup>36</sup>:

- Cultural – to acquire land of cultural significance
- Social – to acquire land to deliver social activities or programs
- Economic – to acquire land to run a land-based business
- Environmental – to acquire land to derive environmental benefits

In 2009, the structure of these four streams was amended further to reduce them to three<sup>37</sup>. The figure below illustrates this new structure.

**Figure 2: Land Acquisition Program Structure for 2009**



<sup>35</sup> ILC Annual Report 2008-09; p27

<sup>36</sup> Ibid

<sup>37</sup> Ibid

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The new structure for 2009 reflects the priority afforded in the current NILS to achieving socio-economic development outcomes in the short term through support for and initiation of land-based employment creating businesses and education and training opportunities.

As discussed elsewhere in this review, the priority given to these outcomes is consistent with the legislated purpose of the ILC, and represents responsible expenditure of policy and program funding in line with the Australian Government's Indigenous and government administration policies.

The focus on these outcomes is supported by the process introduced in 2007 and 2009 to govern the request for and assessment of applications and ongoing monitoring of land use after divestment to ensure that ILC investment decisions are delivering benefits on a continuing basis.

Although the access to education stream is a new program not specifically referred to in the legislated purpose of the ILC, it is consistent with this purpose. In many cases, this stream is likely to be essential to support the legislative requirement on the ILC to deliver socio-economic benefits for Indigenous people as education is often the main driver of the kind of social mobility required to achieve socio-economic improvement. The Australian Treasury certainly considers that access to education is a fundamental component of building the human capital necessary for intergenerational wellbeing<sup>38</sup>.

As also discussed elsewhere in this report, there is nothing in the Act that precludes the ILC from being proactive or initiating programs, such as access to education, to deliver benefits to Indigenous people as long as those initiatives are consistent with the legislated purpose of the ILC. Section 191F(3) provides that the ILC should not undertake activities that duplicate the responsibilities of other agencies. In addition, the ILC's internal policy gives priority to initiating programs in collaboration with other Australian and State government agencies. This considerably reduces the risk that initiatives, like access to education, duplicate the role and spending of other government departments or functions.

The ILC is a key Australian Government authority in relation to the holding and management of Indigenous land for use by Indigenous people. Thus, there is a high level of efficacy in its initiation of programs that facilitate and coordinate the intra and inter

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<sup>38</sup> Australian Treasury, 2010 Inter-generational Report, Chapter 6

government allocation of resources to achieve socio-economic and other benefits for Indigenous people.

### **Guidelines for Applicants**

Organisations that make applications under the program can rely on the ILC's handbooks on socio-economic and cultural and environmental heritage protection to guide them through the program criteria that their submissions need to satisfy. These handbooks are reviewed regularly.

As discussed elsewhere in this report, the program criteria reflects the legislated purpose and functions of the ILC, as well as its responsibility as an Australian Government authority to ensure that its spending is effective and efficient.

### **Investment and Divestment (Land Grant) Decision Making**

The review has examined ILC Board papers from 2007-2009 to identify and assess the business cases for investment decisions. The review observed that all land acquisition business cases addressed the following issues:

- Property profile and assets
- Proposed title holding body (applicant) including its financial position and capacity and commitment to deliver benefits
- Benefits of acquisition according to ILC benefits framework
- Sustainability of asset and benefits
- Risk assessment
- Grant conditions and post-grant monitoring
- Details of the grant to be made
- Legal process associated with the acquisition and grant
- Financial issues associated with the acquisition and grant

These issues have been framed in a template for submissions to the Board concerning land acquisition decisions<sup>39</sup>.

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<sup>39</sup> Consultants review of ILC Board Papers

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Where acquisition projects span a number of years, the review noted that there are regular reports to the Board on the project to enable the Board to make any further necessary decisions in relation to the project.

One school of thought may be that the ILC should focus only on acquisitions where land grants can be made immediately. In this scenario, the ILC would be required to only acquire and grant properties where the applicant has the immediate capacity to manage the land and deliver socio-economic, cultural or heritage protection benefits for Indigenous people. Granting land to Indigenous organisations that did not have this immediate capacity would mean that the ILC would be acting contrary to its legislated purpose.

However, if the objective of the ILC and its governing legislation is to maximise the scope, reach and kind of benefits for Indigenous people, it is appropriate that the ILC makes decisions to acquire land itself where Indigenous organisations do not have the immediate capacity to manage it or deliver benefits. For this same purpose, it is also appropriate for the ILC to acquire land where there is no yet identifiable Indigenous organisation.

In this circumstance, as well as in situations where the ILC initiates acquisitions, the purpose is to build the capacity of Indigenous organisations to eventually own and manage it. The capacity-building process that the ILC may engage in with the Indigenous organisation creates the potential for benefits that would not have otherwise been achieved. This is consistent with the legislated purpose and functions of the ILC.

### *Costs and Benefits in Business Cases*

The systemised business case framework is the common tool within which the ILC decides to purchase land for Indigenous organisations that may or may not have the immediate capacity to manage it and deliver benefits. The business case framework includes an assessment of the costs and benefits associated with purchasing land that can or may not be able to be immediately granted.

With respect to the costs and benefits included in the business cases considered by the Board, the review identified that the ILC analysis is rigorous and, where appropriate, relies on independent expert opinion, particularly in relation to asset valuation, market

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assessments and financial risk. Across a mix of projects considered by the Board, some of the cost and benefit issues assessed in accompanying business cases included:

- Detailed break down of costs associated with acquisition and development of a site including an independent report on development costs.
- Analysis of the rate of return on an investment for the operation of a business including independent market demand analysis and two independent financial risk assessments.
- Analysis of direct and indirect employment creation for Indigenous people arising from specific investment.
- Analysis of audited financial statements to determine the financial health and governance of organisations
- Analysis of benefits to Indigenous communities arising from the generation of higher direct and indirect employment.
- Analysis of improvements to Indigenous community integration, development and safety flowing from specific investment.
- Analysis of the direct and indirect education, training and skill transfer opportunities arising from specific investment and associated employment generation.
- Analysis of flow on benefits to Indigenous communities associated with investments in social services that strengthen communities.
- Detailed risk assessment including acquisition, and project establishment and management, viability and sustainability of benefits and regulatory risk.
- Strategies to collaborate and share risks and rewards with other government agencies.

**Finding 3.10 - The land acquisition program is structured consistently with the ILC's legislated purpose**

The land acquisition program provides a range of opportunities for Indigenous organisations to seek assistance from the ILC to deliver benefits that the ILC has legislated responsibility to achieve.

Applying rigorous criteria to land acquisition to ensure the delivery of benefits is consistent with the legislated purpose of the ILC and its financial management obligations as an Australian Government authority.

The purchase of land for Indigenous organisations that do not have the immediate capacity to manage it or deliver benefits is consistent with the ILC's legislated purpose because

building the capacity of these organisations over time delivers the benefits the ILC is obliged to achieve. Building the capacity of Indigenous organisations also maximises the overall scope and reach of the benefits that the ILC must provide.

The ILC's assistance in establishing student hostels is not specifically referred to in the Act, however its assistance is not inconsistent with the Act. In fact, such assistance can be viewed as a fundamental practical instrument that is partly necessary for the ILC to achieve its legislated purpose to deliver socio-economic benefits for Indigenous people.

The divestment decision-making process is underpinned by a rigorous template that enforces systematic consideration of all appropriate costs, benefits and risks associated with capacity to achieve benefits.

### 3.2.3 Land Management Program

#### Structure

The ILC's land management program is designed to assist Indigenous landowners build capacity to sustainably manage and viably use their land. The program is delivered in three main ways<sup>40</sup>:

- an annual call for applications from Indigenous organisations;
- strategic projects covering several properties in or between regions that the ILC develops in collaboration with other government agencies or organisations. Training and employment outcomes are generally the focus of these projects; and
- applications at any time from Indigenous organisations for assistance with urgent health and safety work on their land to maintain its usability or viability.

Under the annual call for applications, the ILC offers two streams of funding and assistance. These are<sup>41</sup>:

- property-based projects aimed at developing Indigenous land-based businesses, protecting culture and environmental heritage, and improving land management; and

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<sup>40</sup> ILC, Land Management Handbook 2010

<sup>41</sup> Ibid



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- training and planning projects that relate to the management and use of Indigenous-held land, lead to the direct employment of Indigenous people and/or facilitate better land management practices.

To achieve these outcomes, the ILC contracts with landowners to provide land management expertise via funding to assist the landowner or by purchasing/contracting expertise on behalf of the landowner. In each case, the contract between the ILC and a landowner includes an agreement that sets out an implementation and reporting regime to ensure that benefits are being delivered consistent with the legislated purpose of the ILC<sup>42</sup>. In addition to responding to applications for land management assistance, the ILC initiates and operates its own businesses to provide the education, training and employment that Indigenous people require to viably run their own businesses<sup>43</sup>. These businesses are mostly in the pastoral, agricultural and tourism sectors.

At 30 June 2010, the ILC was managing 159 land management projects.<sup>44</sup>

### **Guidelines for Applicants**

Organisations that make applications under the program can rely on the ILC's handbooks on land management, and training and planning to guide them through the program criteria that their submissions need to satisfy. The ILC also assists applicants in the leadup to their submissions to ensure that they understand the criteria on which decisions are made.

The handbooks are regularly reviewed.

As discussed elsewhere in this report, the program criteria reflects the legislated purpose and functions of the ILC as well as its responsibility as an Australian Government authority to ensure that its spending is effective and efficient.

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<sup>42</sup> ILC Annual Report 2008-09; p44

<sup>43</sup> Ibid

<sup>44</sup> Ibid

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**Decision-making**

The review examined ILC Board papers from 2007-2009 to identify and assess the business cases for land management project decisions. The review noted that all land management business cases addressed the following issues:

- Project proposal
- Benefits according to ILC benefits framework
- Project costs and viability
- Sustainability of asset and benefits
- Project implementation and monitoring
- Project funding
- Risk assessment
- Quality control checklist and recommendations

In 2009, these issues were framed in a template for submissions to Management and the Board concerning land management decisions.

Under the ILC’s Board and Audit Committee-approved internal administrative policy framework, land management decisions above \$300,000 need to be considered by the Board while those below this threshold can be made by the ILC’s General Manager<sup>45</sup>. This is sensibly designed to support speedy and efficient decision making by the ILC in relation to smaller, less complex land management activities.

The rate of land management decisions applications that have been approved over the last two years provides an indication of the strict assessment undertaken by the ILC to ensure that land management projects can deliver outcomes and benefits consistent with the legislated purpose of the ILC. The table below illustrates that the rate of approvals made by the ILC has remained consistent over the last two years even though the number of applications varied significantly. This reflects the strength of the assessment process.

**Table: Land management decisions 2008-2009**

Year	Applications Received	Applications Approved	Rate of Approval (%)	Approval by Board - application for over \$300 000	Approval by General Manager

<sup>45</sup> Consultations with ILC

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At 30 June 2008	47	18	38%	2	16
At 30 June 2009	28	11	39%	1	10

Applications undergo a two-stage assessment process before being submitted for approval by the Board or General Manager. The assessment process applies strict criteria which applications must satisfy before being considered further. In general terms, applications are often rejected because they<sup>46</sup>:

- are inconsistent with the legislated purpose of the ILC and current NILS;
- do not meet the program criteria specified in the land management handbooks; and/or
- do not provide sufficient information.

The fall in applications between 2008 and 2009 could be the result of a range of factors including reduced interest from Indigenous organisations, heightened awareness of the need for applications to satisfy high thresholds and/or fewer land management issues that Indigenous organisations need assistance with.

**Finding 3.11 - The ILC's land management program is structured consistently with its legislated purpose**

The land management program provides a range of opportunities for Indigenous organisations to seek assistance from the ILC to manage land and deliver benefits.

While the criteria that applications must satisfy are rigorous, the ILC's rate of approvals has been consistent over the last two years. Applying rigorous criteria to land management applications to ensure the delivery of benefits is consistent with the legislated purpose of the ILC and its financial management obligations as an Australian Government authority.

The operation of businesses by the ILC is consistent with its legislated purpose where those businesses deliver legislated benefits or maximise the scope, reach and opportunities for those benefits to be delivered by other organisations.

<sup>46</sup> Consultant's review of ILC Board Papers

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While the priority placed on training and employment under its program is not specifically referred to in the Act, it is consistent with the Act. Access to training and employment is a fundamental practical instrument that is necessary for the ILC to achieve its legislated purpose to deliver socio-economic benefits for Indigenous people.

The decision-making process is underpinned by systematic consideration of all appropriate costs, benefits and risks associated with land management projects.

## 4. ASSESSMENT OF ACHIEVED BENEFITS

### Terms of Reference Being Examined

3. Examine the benefits being achieved by the ILC and consider whether they are consistent with the ATSI Act.

### 4.1 Overarching Benefit

The overarching benefit the ILC strives to achieve is the long-term improvement in the wellbeing of Indigenous people. This is clearly stated in the ILC's current NILS.

Wellbeing is widely regarded as a "multi-dimensional concept that incorporates notions of individual freedoms, opportunities and capabilities" but goes beyond the attainment of material living standards<sup>47</sup>. The wellbeing of one generation can be defined by the "stock of resources that is inherited from previous generations and the choices that generation makes"<sup>48</sup>. In practical terms, the notion of "stock" means the "quantity and quality of all the tangible and intangible economic, social, human and environmental resources that are available to a generation"<sup>49</sup>.

For the last 10 years, the Australian Treasury has applied a wellbeing framework to inform its development of public policy because the ultimate aim of economic policy is to improve wellbeing<sup>50</sup>. This framework has the following five elements:

- level of freedom and opportunity that people enjoy;
- aggregate level of consumption possibilities;
- distribution of consumption possibilities;
- level of risk people are required to bear; and
- level of complexity people are required to deal with.

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<sup>47</sup> Australian Treasury, 2010 Inter-generational Report, Chapter 6

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> McDonald T, Australian Treasury, "Measures of Social Progress and Wellbeing". Paper presented at the Conference on Shaping Australia's Resilience, Australian National University, Canberra, 18-19 February 2010

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Of these dimensions, Treasury considers that freedom and opportunity binds all the other elements of the framework together. This is because it is through the provision of opportunities that society builds the capabilities of individuals to function in society and choose a life they can value<sup>51</sup>.

The importance of building opportunities for people and the capabilities of individuals to harness opportunities means that human and social capital are key parts of the “stock” of resources passed onto future generations.

Treasury considers that human capital represents the skills, knowledge and health that individuals have and is a consequence of the education, employment and health services provided by society and opportunities for people to access those services. As a result, “human capital within and between generations is increased through investments in education and health”<sup>52</sup>.

The framework used by Treasury is reflected in the work undertaken by the Australian Bureau of Statistics (ABS) to measure how and whether Australia is making progress in achieving national wellbeing. Since 2002, the ABS has produced the *Measure of Australia’s Progress Report*, with the latest report released in 2009<sup>53</sup>.

The measurement framework used by the ABS is based on the following assumptions<sup>54</sup>:

- wellbeing is defined broadly as being synonymous with life getting better;
- wellbeing is multidimensional and measures are needed for each dimension;
- the three broad dimensions of progress towards wellbeing are social, economic and environmental progress;
- the balance and rate of progress towards wellbeing depends on the relative importance each person attributes to the three dimensions of progress; and
- Indigenous people may have value systems that place different emphasis on the importance of these dimensions.

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<sup>51</sup> Ibid

<sup>52</sup> Australian Treasury, 2010 Inter-generational Report, Chapter 6

<sup>53</sup> ABS, Measures of Progress Report 2009, CatNo.1383.0.55.001

<sup>54</sup> Ibid

**Finding 4.1 - Overarching benefit is appropriate**

The ILC's selection of Indigenous wellbeing as the overarching benefit it seeks to achieve is consistent with the view of the Australian Treasury that national wellbeing is the ultimate benefit that all government policy aims to secure.

The Treasury and Australian Bureau of Statistics (ABS) consider that the achievement of wellbeing depends on social, economic and environmental progress. Accordingly, the ILC's selection of wellbeing as its key target benefit is consistent with its legislated purpose to deliver economic, social, environmental and cultural benefits for Indigenous people.

## 4.2 Measuring Benefits

Towards achieving the overall benefit of improving Indigenous wellbeing, the current NILS focuses the ILC on opportunities which can<sup>55</sup>:

- create training and sustainable employment for Indigenous people;
- increase the capacity of Indigenous people to sustainably manage their land;
- engage Indigenous people in viable land-based enterprises including tourism and agriculture;
- support the education of Indigenous youth, through assisting in the establishment of student hostels; and
- collaborate with other agencies to produce effective outcomes.

As discussed elsewhere in this report, these indicators are consistent with the legislated purpose of the ILC to deliver economic, social, environmental and cultural benefits for Indigenous people.

These five key indicators are reflected in the ILC's portfolio budget statements against which it must report each year. They are consistent with, but represent a narrower set of indicators than, the ILC's 13 indicators described in its benefits framework at Figure 1.

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<sup>55</sup> ILC, Annual Report 2008-09; p12

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This is because the government's reporting guidelines in its portfolio budget statement process is focussed on tangible economic outcomes associated with expenditure. In addition, the bulk of land acquisition and management applications received by the ILC are for the delivery of economic benefits rather than cultural or environmental outcomes, and the ILC's own businesses are focused on social and economic benefits<sup>56</sup>. However, the ILC is able to strike an appropriate balance between supporting socio-economic and cultural and environmental heritage projects.

As discussed elsewhere in this report, the ILC's focus on economic benefits, including employment, education and training, and building business capability amongst Indigenous organisations is consistent with its legislated purpose.

With respect to wellbeing, the Australian Treasury agrees that access to education and employment are critical and paramount in efforts to build human capital and the capabilities of individuals to maximise opportunities as an end itself and for inter-generational benefit<sup>57</sup>.

In relation to assessing the benefits achieved by the ILC, the review has focussed on the five indicators discussed above because they inform reporting against portfolio budget statements. For completeness, the review has examined:

- how well these indicators compare to measures used by the Australian Treasury and ABS to assess progress on wellbeing; and
- how effectively the ILC meets the benefit targets that it sets itself.

### **4.2.1 Measures of Wellbeing Used by Australian Government and ILC**

As wellbeing is multidimensional, the Australian Treasury and ABS recognise that it cannot be measured through traditional economic means like valuing contributions to Gross Domestic Product (GDP). Instead, they consider that it is necessary to use a broad range of qualitative indicators that are effectively proxies for wellbeing<sup>58</sup>.

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<sup>56</sup> Consultations with ILC

<sup>57</sup> Australian Treasury, 2010 Inter-generational Report, Chapter 6

<sup>58</sup> McDonald T, Australian Treasury, "Measures of Social Progress and Wellbeing". Paper presented at the Conference on Shaping Australia's Resilience, Australian National University, Canberra, 18-19 February 2010 and ABS, Measures of Progress Report 2009, CatNo.1383.0.55.001



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According to Treasury, these indicators must be comprehensive, consider the interactions and tradeoffs between and within dimensions of progress and be able to support a subjective and objective assessment<sup>59</sup>. Because of the qualitative nature of these indicators, an assessment of wellbeing must be a point-in-time assessment, as opposed to a trend assessment<sup>60</sup>.

Both the Treasury and ABS recognise that many of the indicators required to assess progress towards wellbeing have not been developed and are very difficult to develop to a level where they can be used in an assessment process. However, work to achieve this is continuing<sup>61</sup>.

The table below illustrates the indicators that the ABS includes in its *Measures of Australia's Progress Report* compared to the key indicators used by the ILC.

It demonstrates that, where the ABS indicators are relevant to the legislated purpose of the ILC, the ILC's indicators are generally consistent with those used by the ABS. The ILC indicators therefore support a qualitative assessment at a point in time of progress towards the wellbeing of Indigenous people. Accordingly, the outputs of the ILC properly form part of whole-of-government intelligence gathering, reporting and analysis of the wellbeing of Indigenous people.

The ILC is able to effectively comply with the ABS indicators of progress towards national wellbeing because of its:

- program structure;
- focus on practical education, training and employment outcomes;
- strict benefit criteria for investment and funding;
- ability and desire to build capacity within Indigenous organisations and communities;
- ongoing monitoring of benefit delivery post land grants; and
- collaboration with other government agencies

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<sup>59</sup> Australian Treasury, 2010 Inter-generational Report, Chapter 6

<sup>60</sup> Ibid

<sup>61</sup> McDonald T, Australian Treasury, "Measures of Social Progress and Wellbeing". Paper presented at the Conference on Shaping Australia's Resilience, Australian National University, Canberra, 18-19 February 2010 and ABS, Measures of Progress Report 2009, CatNo.1383.0.55.001

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Accordingly, the ILC should properly be viewed as a key vehicle for improving the multi-dimensional wellbeing of Indigenous people, rather than as a land grant agency only.

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**Table: ABS and ILC Indicators of Progress Towards Wellbeing**

ABS Dimension (1)	ABS Indicators (2)	ILC Indicators (3)	Consistency of ABS and ILC Indicators
Social	Individual health and life expectancy improves	Not applicable given the legislated purpose of the ILC	N/A
	More people gain higher standards of education and participate in training	<ul style="list-style-type: none"> <li>▪ Number of Indigenous people trained as a result of ILC programs</li> <li>▪ Number of training projects supported</li> <li>▪ Number of residential, industry-based training facilities established and operated on ILC businesses</li> </ul>	The ILC's strong focus on education and training supports the view of the ABS wellbeing measurement framework and Treasury that building human capital through education and training is a critical factor in achieving inter-generational progress, particularly for disadvantaged groups like Indigenous people.
	More people are employed and find work/life balance satisfying	<ul style="list-style-type: none"> <li>▪ Number of Indigenous people employed as a result of ILC programs</li> </ul>	The ILC's strong focus on employment outcomes supports the view of the ABS wellbeing measurement framework and Treasury that building human capital through employment is a critical factor in achieving inter-generational progress, particularly for disadvantaged groups like Indigenous people.
	Better family, community and social cohesion and less dysfunction	<ul style="list-style-type: none"> <li>▪ Number of properties acquired by the ILC</li> <li>▪ Number of properties granted to Indigenous organisations because they are capable of achieving benefits consistent with the ILC's legislated purpose</li> </ul>	The land acquisition program structure and strict cost/benefit criteria for acquisitions and grants that the ILC applies are specifically designed to promote actual and sustainable economic development, social and community strengthening and the preservation of Indigenous cultural and environmental heritage. This builds the capability and opportunities for Indigenous people and communities to choose lives that they can value and bequeath wellbeing to future generations. Improved family, community and social cohesion can be regarded as a natural result of this approach.
	Less crime	Not applicable given the legislated purpose of the ILC	N/A
	Improved trust in and practice	<ul style="list-style-type: none"> <li>▪ Number of properties granted to</li> </ul>	The land acquisition program structure and strict cost/benefit criteria for acquisitions

EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

ABS Dimension (1)	ABS Indicators (2)	ILC Indicators (3)	Consistency of ABS and ILC Indicators
Economic	<p>of government including increased Indigenous participation in governance and democracy</p> <p>Increases in net national income</p>	<p>Indigenous organisations because they are capable of achieving benefits consistent with the ILC's legislated purpose</p> <ul style="list-style-type: none"> <li>▪ Number of viable and sustainable agricultural, pastoral and tourism businesses operated</li> <li>▪ Number of viable and sustainable agricultural, pastoral and tourism businesses operated</li> <li>▪ Number of properties granted to indigenous organisations because they are capable of achieving benefits consistent with the ILC's</li> </ul>	<p>and grants that the ILC applies are specifically designed to promote the capacity of Indigenous organisations to solely manage and operate sustainable businesses in the normal commercial and market environment or deliver the other non-economic benefits that form part of the ILC's legislated purpose. Grants of land are only made to organisations who can demonstrate the capacity to sustainably deliver the benefits that the ILC is legislatively required to deliver and the ILC monitors the delivery of these benefits on an ongoing basis even after grants have been made.</p> <p>The need for Indigenous organisations to demonstrate the governance arrangements and administrative discipline to qualify for land acquisition assistance and land grants can promote the participation of Indigenous people in governance, democracy and related management practices. Dealing with the ILC in a transparent way and needing to apply norms of governance can also build understanding of and trust in government.</p> <p>Where ILC operated-businesses build the skill and education levels of Indigenous people, it can also promote Indigenous participation in governance and democracy.</p> <p>The ILC promotes direct and indirect employment for Indigenous people and communities through its land acquisition and management programs, business operations and education and training programs. Over 80% of ILC projects are in regional or remote Australia where the socio-economic disadvantage of Indigenous people is generally particularly acute and there is low number of income generating and employment activities.</p>

EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

ABS Dimension (1)	ABS Indicators (2)	ILC Indicators (3)	Consistency of ABS and ILC Indicators
	<p>legislated purpose</p> <ul style="list-style-type: none"> <li>▪ Number of income-generating properties supported through the land management program</li> <li>▪ Number of people employed as a result of ILC programs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Indigenous people employed as a result of ILC programs</li> <li>▪ Number of Indigenous people trained as a result of ILC programs</li> </ul>	<p>Where ILC programs create new employment opportunities or support the viability of existing employment, they are contributing to higher levels of gross national income, especially because in many cases the alternatives for indigenous communities may be welfare dependency. Net national income is income after taking into account the cost of maintaining the fixed capital (depreciation of machinery, buildings and other capital used in the production process) required to generate future income.</p>
<p>Less people experience economic hardship</p>			<p>The ILC land acquisition and management programs, projects that the ILC initiates and businesses that the ILC operates are heavily focussed on creating employment outcomes for Indigenous people and providing access to education and training that increase the capacity of Indigenous people to secure employment opportunities.</p> <p>Accordingly, the ILC is creating opportunities for Indigenous people to gain higher incomes and reduce economic hardship. According to the ABS, household income is a major source of economic resources for most households and therefore a key determinant of economic wellbeing.</p> <p>By providing Indigenous people with the opportunity to be trained and lift their household income, the ILC is assisting to address some of the dimensions of economic hardship such as lack of work participation, poor levels of education and social exclusion.</p>
<p>Expansion of net national wealth</p>		<ul style="list-style-type: none"> <li>▪ Number of properties granted to Indigenous organisations because they are capable of achieving benefits consistent with the ILC's</li> </ul>	<p>Net national wealth is generally a measure of the amount by which Australia's assets exceed its liabilities and the increases in income per person. It does not include everything that might be valuable such as skills and knowledge vested in human capital, natural assets not used for economic production or community networks and</p>

EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

ABS Dimension (1)	ABS Indicators (2)	ILC Indicators (3)	Consistency of ABS and ILC Indicators
		<p>legislated purpose</p> <ul style="list-style-type: none"> <li>▪ Volume of Indigenous held land returned to production</li> </ul>	<p>trust necessary for social capital.</p> <p>In this context, the ILC makes a range of contributions. Where its land acquisition and management programs and project initiatives enable dormant properties to become income generating it is adding to the nation's total volume of production assets. Equally, where its education and training and other projects provide Indigenous people with the capacity to earn new or higher income, it is contributing to increases in national income per person as well as human capital.</p> <p>At the same time, where its programs and projects are fulfilling its legislated purpose to support non-economic outcomes for Indigenous people, such as social, cultural and environmental heritage benefits, it is also adding to national net wealth represented through the natural environment and social capital.</p>
Access to decent affordable housing	Increases in productivity	<p>Not applicable given the legislated purpose of the ILC</p> <ul style="list-style-type: none"> <li>▪ Number of properties granted to Indigenous organisations because they are capable of achieving benefits consistent with the ILC's legislated purpose</li> <li>▪ Number of viable and sustainable agricultural, pastoral and tourism businesses operated</li> </ul>	<p>N/A</p> <p>Productivity growth occurs when the nation produces more goods and services from a fixed set of inputs including labour, capital, land, energy and other resources.</p> <p>ILC programs and projects will contribute to productivity growth when they result in higher output from previously non-economic or underperforming economic land and/or where they provide Indigenous organisations with the capacity to lift the volume of goods and services they produce from the land they manage.</p>
Security of biodiversity and	and	<ul style="list-style-type: none"> <li>▪ Number of properties acquired by</li> </ul>	<p>The ILC land acquisition and management program and project initiatives that are</p>

EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

ABS Dimension (1)	ABS Indicators (2)	ILC Indicators (3)	Consistency of ABS and ILC Indicators
Environmental	natural vegetation and less land clearing	ILC	aimed at preserving land-based cultural and environmental heritage of Indigenous people contributes to the ABS indicator where these projects also assist to secure biodiversity and natural vegetation and reduce land clearing.
	Less land degradation and improved water quality	<ul style="list-style-type: none"> <li>▪ Improved environmental outcomes for indigenous held and managed land.</li> </ul>	The ILC's programs and projects would need to comply with the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and relevant State/Territory legislation. The provisions of this Act are aimed at ensuring there is an appropriate balance between the development of land for economic purposes and the preservation of land for environment and biodiversity protection reasons.
	Improved air quality	<ul style="list-style-type: none"> <li>▪ Improved environmental outcomes for indigenous held and managed land.</li> </ul>	One of the ILC's objectives is to improve the environmental quality of land held and managed by indigenous people so that land can support sustainable economic activity and/or cultural and environmental outcomes.
	Healthier oceans and estuaries	<ul style="list-style-type: none"> <li>▪ Improved environmental outcomes for indigenous held and managed land.</li> </ul>	As above

(1) The ABS dimension represents the three broad categories that the ABS considers form the basis of an assessment of national wellbeing. These categories are consistent with the legislated purpose of the ILC to deliver economic, social, environmental and cultural benefits for Indigenous people.

- (2) The ABS indicators are an amalgam of the issues that the ABS considers fall within each of its dimensions and the headline indicators that the ABS believes can and ideally should be used to measure progress on these issues. In many cases, the ABS acknowledges that ideal indicators to do not exist because requisite categories of data have not been framed or are not collected.
- (3) The ILC indicators represent an amalgam of the broad key performance indicators and targets used by the ILC in 2008-09 and reported in its Annual Report of that year. The consistency of the ILC indicators with those used by the ABS could be further validated by the degree and level to which individual properties and businesses in the ILC's economic, social and environmental heritage programs for land acquisition and management match the outcomes sought by the ABS indicators. However, for the purposes of this analysis it is not necessary to discuss issues of consistency to this degree.

**Finding 4.2 – Consistency of ILC benefits measurement with the approach adopted by the Australian Bureau of Statistics and Australian Treasury**

The ILC's key indicators against which it reports in its portfolio budget statements are consistent with its legislated purpose and the indicators used by the ABS to measure progress towards national wellbeing in its *Measures of Australia's Progress* framework. Accordingly, the ILC indicators support a point-in-time assessment of the wellbeing of Indigenous people and should form part of whole-government research and analysis on this subject.

Over 80% of ILC projects are in regional or remote Australia where the socio-economic disadvantage of Indigenous people is generally acute and there are few income-generating activities and employment opportunities. In creating education, training and employment opportunities through its land programs and collaborative projects, the ILC is acting consistently with the Australian Treasury view that these outcomes are essential to build human capital and intergenerational wellbeing.

The structure, objectives, outcomes and priorities of the ILC, as well as its approach to measuring benefits, mean that it should properly be viewed as a key contributor to the multi-dimensional wellbeing of Indigenous people, rather than as land grant agency only.



#### 4.2.2 How Well the ILC Meets its Benefit Targets

In 2008-09, the ILC exceeded most of the targets attached to the five key performance indicators against which it is required to report in the portfolio budget statements. The table below illustrates the performance of the ILC against its 2008-09 targets.

**Table: ILC performance against KPIs and Targets in 2008-09 Portfolio Budget Statements<sup>62</sup>**

Key Performance Indicators	2008-09 Target	2008-09 Achievement
Acquisition of properties that are viable, sustainable and deliver benefits consistent with the ILC legislated purpose	Acquisition of 6 properties	7 properties acquired
	150 Indigenous people trained	780 Indigenous people trained. This is an aggregate of Indigenous people trained as a result of acquisitions in the last 3 years. This represents an average of 260 people trained annually, which exceeds the 2008-09 target.
	100 Indigenous people employed	551 Indigenous people employed. This is an aggregate of Indigenous people employed as a result of acquisitions in the last 3 years. This represents an average of 183 people employed each year, which exceeds the 2008-09 target.
Properties are granted to Indigenous organisations where they have the capacity to deliver sustainable benefits consistent with the ILC legislated purpose	8 properties granted	10 properties granted
Land management program should enable Indigenous landholders to achieve sustainable benefits consistent with the ILC legislated purpose	6 national/regional collaborative projects implemented	<ul style="list-style-type: none"> <li>▪ 25 national/regional projects implemented</li> <li>▪ 9 projects of this kind were completed</li> <li>▪ 7 projects of this kind were approved for commencement</li> </ul>
	10 training and/or property planning projects funded	7 projects of this kind were funded. This reflects a lower-than-expected number of applications for this kind

<sup>62</sup> ILC, Annual Report 2008-09; p24

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Key Performance Indicators	2008-09 Target	2008-09 Achievement
		of funding.
	9 viable and sustainable agricultural, pastoral and tourism businesses operated	15 businesses of this kind were operated
	4 residential, industry-based training facilities created and operated on ILC businesses	6 of these facilities created and operated
	350 Indigenous people trained	1975 Indigenous people trained. This is an aggregate figure of indigenous people trained through all land management projects with active funding. The average time period over which these projects receive active funding is not clear and therefore it is impossible to assess the average number of people trained each year. Thus, at this stage, it is not possible to assess whether this target has been exceeded.
	250 Indigenous people employed	1170 Indigenous people were employed. Of these, 566 were new jobs. This is an aggregate figure of indigenous people employed through all land management projects with active funding. The average time period over which these projects receive active funding is not clear and therefore it is impossible to assess the average number of people employed each year. Thus, at this stage, it is not possible to assess whether this target has been exceeded.
	300,000ha of indigenous held land returned to production	4,200,000ha of indigenous held land returned to production. This is an aggregate figure derived from all land management projects with active funding. The average time period over which these projects

EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

Key Performance Indicators	2008-09 Target	2008-09 Achievement
		receive active funding is not clear and therefore it is impossible to assess the average volume of land returned to production each year. Thus, at this stage, it is not possible to assess whether this target has been exceeded.
Collaboration with relevant agencies should be a key part of ILC activities	60% of projects involve input of resources from other agencies	59.6% of projects met this target.

**Finding 4.3 – ILC achievements exceed benefit targets**

The ILC’s targets attached to its key performance indicators against which it reports in its portfolio budget statement are consistent with its legislated purpose.

In 2008-09, the ILC achieved outcomes that exceeded most of the targets attached to its key performance indicators.

**Recommendations**

In relation to its annual reporting, the review recommends the ILC should consider reporting against the delivery of the wellbeing framework used in the Measures of Australia’s Progress report produced by the ABS. This will assist to define the role of the ILC in promoting the multidimensional wellbeing of Indigenous people where this is consistent with its legislated purpose.

The review recommends that the ILC should consider structuring its reporting on employment and training outcomes from its land acquisition and management programs to better enable annual comparisons.

## 5. ACCOUNTABILITY AND TRANSPARENCY

### Terms of Reference Being Examined

4. Is the ILC accountable and transparent in its articulation of performance indicators and policies, its financial management, decision making and reporting on the achievement of its objectives?

### 5.1 Reporting to Parliament

The ILC is accountable to the Australian Parliament through the requirement upon it to prepare, regularly review and table in Parliament its National Indigenous Land Strategy (NILS)<sup>63</sup>.

Section 191N(2) of the Act provides that the NILS must cover, but is not limited to, the following matters:

- (a) the acquisition of interests in land for the purpose of making grants of those interests to Aboriginal or Torres Strait Islander corporations;
- (b) land management issues relating to Indigenous-held land;
- (c) environmental issues relating to Indigenous-held land.

Section 191N(6) of the Act requires that the ILC must provide the responsible Minister with a copy of the NILS and any changes to the NILS within two months of the Board agreeing to the NILS and any changes.

Section 191N(7) of the Act provides that, following receipt of the NILS and any changes to it, the responsible Minister must table these documents in each House of the Parliament within 15 sitting days of that House.

The ILC is also required to prepare RILS, which cover the same matters as the NILS<sup>64</sup>. The ILC can prepare these RILS in consultation with other parties at its discretion.

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<sup>63</sup> Sections 191N(1) and (5) of the Act

<sup>64</sup> Section 191P of the Act

The ILC is not required to provide the responsible Minister with copies of the RILS and the Minister is not required to table RILS in the Parliament, although the Minister has the power to request copies of the RILS.

The ILC is also required to produce an annual report which the responsible Minister also tables in Parliament and participate in the Commonwealth Budget process, including annual Portfolio Budget Statements and Performance Indicators.

#### **Finding 5.1 – Reporting to Parliament**

In terms of public accountability, there is no more transparent and scrutinised process than reporting to Parliament. Most government agencies are required to table their annual reports in Parliament (through their responsible Minister) and the ILC is no exception. The ILC has the additional obligation of tabling in the Parliament any revision of the NILS.

This means that the ILC's principal strategy document, its past performance (annual report); and forward program objectives and outcomes, through publishing Portfolio Budget Statements, are subject to Parliamentary review.

The ILC is also subject to the Senate Estimates process where Senate Committees question the spending and related programs of government Ministers and their agencies.

The ILC follows best practice and has an Audit and Risk Management Committee that meets on a regular basis. It also implements both internal and external audits and evaluations.

## **5.2 Financial Management**

The ILC's funding is via a revenue stream from the Aboriginal and Torres Strait Islander Land Account (the Land Account)<sup>65</sup>. The Land Account is deemed as a Special Account under section 20(1) of the *Financial Management and Accountability Act 1997* (FMA Act).

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<sup>65</sup> Section 193X of the Act

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The Land Account is administered by FaHCSIA, under delegation from the Minister for Finance and Deregulation.

Accordingly, the use of the funds from the Land Account must be reported to the responsible Minister as well as the Minister for Finance. The amount received from the Land Account each year must be included in the ILC's Annual Report and is included in the portfolio budget statements in the Government's annual budget.

The ILC Board is ultimately responsible for the financial management of the organisation, but the Board's Finance and Audit Committee oversees financial and investment decisions and a comprehensive three-year internal audit plan.

The ILC's annual reports provide a level of financial detail that is comparable to other Australian Government agencies.

As an Australian Government authority, the ILC is also subject to review by the Australian National Audit Office (ANAO) and the Office of Evaluation and Audit.

### **Finding 5.2 – Financial management is highly scrutinised**

The ILC is subject to a high degree of accountability in relation to its financial management. It follows the normal obligations on government authorities including oversight by a financial and audit committee at Board level.

The ILC's financial performance is also reported to the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Finance on a monthly basis, and published in the ILC annual reports and portfolio budget statements.

The ILC is subject to annual financial audit and can also be subject to review by the independent Commonwealth Auditor-General and the Office of Evaluation and Audit.

### 5.3 Articulation of Policies, Objectives and Indicators

The ILC's policies, objectives and performance indicators are reported for public scrutiny via a range of documents including;

- National Indigenous Land Strategy
- Regional Indigenous Land Strategies
- Corporate Plan
- Agricultural Business Strategic Plan
- Socio-economic handbook for land acquisitions
- Cultural and environmental heritage protection handbook for land acquisitions
- Land management handbook
- Training and planning handbook for land management
- Annual reports
- Portfolio budget statements

These documents and an explanation of the objectives, policies and programs of the ILC are also available via its website.

The documents and website clearly and simply outline issues of importance to the public and ILC's stakeholders including:

- The purpose, vision and role of the ILC
- The actual outcomes and benefits that the ILC is obliged to achieve
- The outcomes and benefits that are priorities for the ILC
- The programs that the ILC manages to achieve its outcomes
- The various kinds of program assistance that are available
- The ways in which organisations can apply for assistance under the ILC's programs
- The program criteria that organisations must satisfy in order to qualify for assistance
- The closing dates for applications for assistance
- Mechanisms for feedback on unsuccessful applications

**Finding 5.3 – Articulation of objectives, policies and outcomes is clear and transparent**

The ILC clearly and simply articulates its policies, objectives and the benefits it seeks and achieves via a full range of corporate documents that are publicly available.

## 5.4 Reporting on Performance

The ILC reports on its performance through its annual reports and portfolio budget statements, which are publicly available for all stakeholders and interested parties. These are the normal reporting instruments for Australian Government authorities and agencies.

Portfolio budget statements generally follow a similar style of reporting each year and this is the case for the statements concerning the ILC examined by the review.

The review examined a series of annual reports by the ILC and noted that reporting on its performance has varied in detail and style, but improved in content, from year to year. The 2008-09 Annual Report provides the most detail about the ILC's achievement of targets against key performance indicators in the portfolio budget statements.

Each annual report also includes a number of case studies highlighting the key achievements and projects of the ILC, which are useful in assessing the ILC's overall performance.

One way that the performance overview concluded that the 2008-09 Annual Reports can be improved is to distinguish between the achievement of annual training and employment targets and the aggregate number of employment and training outcomes over a longer period of time. This is particularly important as the ILC has a strong focus on employment and training outcomes. However, this approach may be misleading where employment and training outcomes in any one year are linked to a project that is funded over a number of years.

As this review identifies, the ILC is a key agency in the whole-of-government effort to improve the multidimensional wellbeing of indigenous people. The review also identifies that the ILC's program and project performance indicators are largely consistent with the indicators of national wellbeing used by the ABS in its *Measures of Australia's Progress Report*. The ABS framework and indicators are relied on by Treasury to inform the development of overall economic policy.



Accordingly, it may be appropriate and useful for the ILC to develop an annual reporting framework that aligns its achievements with the ABS indicators. This may be helpful in whole-of-government analysis on the wellbeing of Indigenous people.

**Finding 5.4 – Performance reporting is rigorously scrutinised**

The ILC currently reports on its performance through its annual reports and portfolio budget statements as expected of an Australian Government authority.

**Recommendations**

**The review recommends that the ILC considers improving some aspects of its reporting to make a clearer distinction between annual and aggregate achievements of employment and training outcomes against its portfolio budget statements.**

**The ILC makes a contribution to the multidimensional wellbeing of Indigenous people. Accordingly, the review recommends that the ILC considers developing a new and additional reporting framework that enables the benefits it provides to be included in the national wellbeing indicators in the ABS *Measures of Australia's Progress Report*.**

## **5.5 Decision Making**

The Board of the ILC makes all decisions in relation to land acquisitions. Until 2007, the Board delegated decisions concerning the granting of land to the General Manager, unless there were aspects of particular grants that the Board wished to consider. All grants are now subject to Board approval.

Land management decisions that require total funding of more than \$300,000 are considered by the Board and those below this threshold are normally made by the General Manager.

## EXTERNAL REVIEW OF THE ILC POLICIES AND PROGRAMS

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As discussed elsewhere in this report, the land acquisitions and management decision making process is supported by a rigorous business case process that includes systematic consideration of costs and benefits.

The ILC publicly promotes its systemised complaints handling mechanisms. Complaints are subject to internal review by a delegate that is separate from the decision-making process. The delegate is a member of the senior executive.

The review notes that the ILC has received only two complaints in last four years, which is a very small number compared to the number of applications it has received and determined in that time. The ILC emphasises proactive communication with applicants and stakeholders and this plays a strong role in minimising the reasons for complaints.

Decisions by the ILC are subject to Freedom of Information laws.

### **Finding 5.5 – Decision-making is robust and transparent**

The ILC's decision making process is robust and transparent and subject to the same Freedom of Information laws and Administrative Appeals that apply to other Australian Government statutory authorities and agencies.



