

## INDIGENOUS LAND CORPORATION BOARD ENDORSED POLICY ON SUPPORT FOR THE RESOLUTION OF NATIVE TITLE CLAIMS

### 1. Introduction

1.1. Under the *Aboriginal and Torres Strait Islander Act 2005* (the Act), the purpose of the ILC is to assist Aboriginal persons and Torres Strait Islanders to acquire land and manage Indigenous-held land so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

1.2. The ILC receives annual funding of a minimum of \$45 million (indexed) from the Aboriginal and Torres Strait Islander Land Account to perform its land acquisition and land management functions as permitted under the Act.

1.3. The ILC, by exercising its functions under section 191C of the Act, is not precluded from providing assistance in the settlement of native title claims.

### 2. The ILC approach to native title settlements

2.1. The ILC supports the Australian Government's approach to promoting flexible and sustainable negotiated settlements instead of litigation where appropriate. It acknowledges that broader land settlements of native title can assist to close the gap in Indigenous disadvantage by assisting in the achievement of social, cultural, environmental and economic benefits.

2.2. The ILC is committed to contributing to the constructive and flexible settlement of native title claims by contributing to social, cultural, environmental and economic benefits for Indigenous Australians consistent with its own statutory responsibilities. The ILC will consider providing assistance where a proposed native title settlement will facilitate a full and final resolution of claims and improve the quality of native title outcomes for Indigenous parties.

2.3. The ILC will work in good faith with Governments, Native Title Representative Bodies (NTRBs) and properly authorised Native Title Groups<sup>1</sup> (NTGs) to assist in building a Native Title Group's capacity to own and/or manage land and achieve sustainable benefits for Indigenous Australians.

<sup>1</sup> For the purpose of ascertaining whether an NTG is properly authorised in order to trigger ILC involvement in a settlement, the ILC may have regard to a range of relevant factors including whether the NTG's claim has been registered under the Native Title Act, the views of the relevant Native Title Representative Body, the views of the State or Territory government party, and whether the NTG satisfies any threshold requirements of any State or Territory based regime. Page 2

2.4. The ILC's role is not to resolve native title claims or to assist in conflict resolution, mediation or negotiation. The ILC will give preference to working with those States or Territories and NTRBs that have an effective, fair and realistic State or Territory or regional wide framework in place for the settlement of native title claims. Such a framework should provide a more streamlined approach to settling native title claims in their States, Territories and regions by setting out what can be included in a settlement package, how negotiations can be conducted and the conditions the State/Territory would require to be met by groups to enter into negotiations about a package. That framework might be based in legislation or government policy, but it should be applied consistently. An example of a constructive legislative framework is the *Traditional Owner Settlement Act 2010 (Vic)*.

2.5. ILC support for land acquisition(s) and Indigenous land management will need to be consistent with its national and regional Indigenous land strategies and subject always to the Act.

2.6. Applications for land acquisition(s) and Indigenous land management assistance must meet ILC program criteria. These are set out in the ILC land acquisition and land management program handbooks and are available on the ILC website.

2.7. The ILC is an independent Commonwealth statutory body. Any ILC assistance sought by government parties or properly authorised NTG to a native title settlement must be negotiated directly with the ILC and separately from other contributions made by the Australian Government.

2.8. The ILC cannot be a source of substitution funding, replacing government contributions consistent with their legal role as parties to native title claims nor in delivering services that are the primary responsibility of other agencies. The ILC remains committed to cooperating with all parties in the finalisation of an overall settlement package.

2.9. Nothing in this policy limits the capacity of properly authorised NTGs to access the ILC's core land acquisition and land management programs outside of the native title context.

### **3. Role of the Indigenous Land Corporation**

3.1. The ILC's role is to assist Indigenous people to acquire land and manage Indigenous-held land, so as to provide economic, environmental, social and cultural benefits.

3.2. In line with the above, there may be the opportunity for the ILC to contribute to native title settlements through:

***Land acquisition*** – if the parties identify a need to acquire freehold land as part of the settlement, the ILC may assist either through acquiring and granting the land or by granting money to Indigenous corporations to assist in the acquisition of interests in land.

Under the ILC's land acquisition program, the ILC's usual practice is to acquire land, then lease the property to the applicant group for 3 years to

assist the group to build governance skills and other capacity and demonstrate they can manage the land prior to granting.

In relation to assistance for NTGs, this practice may be seen as important to ensure the group has time to develop sound property management plans, establish good land management practices and derive sustainable benefits from the land. There may be other instances where a more flexible approach is required to enable granting of the land soon after it is acquired by the ILC.

The ILC can assist with the costs of the property, settlement costs associated with the acquisition, and immediate costs needed to bring the property into a suitable condition (examples may include essential property maintenance and repairs, limited capital development and purchase of land management-related plant and equipment).

**Land management** – the ILC can provide assistance for the managed-use, care or improvement of Indigenous-held land. Funding for land management activities includes development of property infrastructure or conducting land management activities (examples may include construction of fences or land management related infrastructure, weed or pest eradications, purchase of land management-related equipment).

**Capacity building** – assisting NTGs to identify the capacities they will require to manage and derive benefits from their land. This is generally undertaken through the engagement of consultants to work with groups to build governance skills and property management plans. These plans will set out landowning responsibilities and costs and will include key activities and a budget to guide the future management and care of the property. It will also identify the skills required to manage the property and identify the governance and other training needed to achieve benefits from pastoral, tourism and natural resource management activities on Indigenous-held land.

3.3. The ILC does not provide ongoing (recurrent) program funding for Indigenous groups. Rather it seeks projects to be viable and sustainable, including from income derived from the property or through accessing ongoing program funding from responsible Commonwealth and State / Territory agencies or other sources.

#### **4. Application and trigger for ILC involvement**

4.1. The ILC's involvement in a native title settlement is triggered when the Government and NTRB / NTG parties jointly provide the ILC with a formal written request, which includes:

an assessment by the Government parties and the relevant Native Title Representative Body (NTRB) that the NTG is properly authorised by the people who can legally settle a current or future claim;

confirmation that the Government parties and NTG have agreed to enter negotiations with a view to reaching agreement and a realistic expected timeframe for completion of those negotiations; and identification of the particular type(s) of ILC assistance sought to support the settlement.

4.2. The ILC does not generally become a party to Federal Court native title claims.

## **5. Process for ILC assistance**

5.1. The ILC aims to consider requests to provide assistance to support a settlement as soon as reasonably possible upon receipt of a written request from the Government and NTRB / properly authorised NTG parties.

5.2. Upon receipt of a written request, the ILC will contact the Government parties and the relevant NTRB in the first instance to discuss the request.

5.3. The ILC will work in collaboration with the Government and NTRB / NTG parties involved to:

identify the type, form and timing of assistance that can be provided in any particular settlement;

ascertain how settlement negotiations have advanced and the prospects for a settlement; and

determine whether ILC assistance is relevant to the settlement of the native title claim(s).

determine the information and evidence needed to make an assessment of the request and how this information and evidence can be provided.

5.4. The ILC will work directly with the NTG/NTRB to evaluate the proposal for assistance to ensure it aligns with the National Indigenous Land Strategy, the relevant Regional Indigenous Land Strategy and meets ILC program criteria.

5.5. The ILC will work collaboratively with the Government parties and other agencies including, where appropriate, advising NTGs how any identified deficiencies in meeting ILC criteria might be overcome.

5.6. In cases where assistance being sought is the primary responsibility of another government agency, the ILC will work collaboratively with Government parties and the NTRB/NTG to seek a whole-of-government approach towards an effective and sustainable settlement.

5.7. During the provision of assistance (and until land is granted, in the case of land acquisition), the ILC proposes to meet regularly with the Government parties and the NTG to discuss the assistance being provided.

5.8. Where appropriate, the ILC will consult with other relevant organisations and the NTRB involved in the settlement negotiation, and the National Native Title Tribunal.

## **6. Factors to be considered by the ILC in determining assistance**

6.1. In assessing whether to provide assistance to a NTG, the ILC will take the following factors into account:

that the State or Territory Government and NTRBs have a fair, equitable and realistic framework in place for the settlement of native title claims;

the ILC will not act as substitute funder for either government commitments or programs;

that the NTG has or will have the capacity to own and/or manage land and achieve benefits that are sustainable (including with assistance from the ILC and that

Government parties and others have committed the necessary resources to achieve that outcome)

that the NTG will become an ‘Aboriginal or Torres Strait Islander corporation’, as defined in section 4 of the *Aboriginal and Torres Strait Islander Act 2005 (ATSI Act)*, upon settlement;

that any land to be subject to ILC land management assistance will be ‘Indigenous-held land’, as defined in section 4B of the ATSI Act, upon settlement;

the nature of the proposed settlement package – including other responsibilities of the NTG and any offer of support proposed by the Government parties to assist the NTG; and

any other commitments made or support and assistance offered by Government parties and other stakeholders.

6.2. The ILC encourages parties to think strategically to maximise potential Indigenous benefits and to consider regional approaches to native title settlements, including beneficial arrangements that might arise from collaboration with other Indigenous groups.

6.3. The ILC will require full and final resolution of the native title claim(s) prior to any land being transferred or Indigenous land management assistance being provided to a native title claimant group in respect to a native title settlement.

6.4. In more complex settlements, if the NTG requires input that involves the in-house land acquisition or land management expertise of the ILC, (consistent with the ILC’s statutory brief) the ILC may provide such expertise to ensure the NTG is in a position to make informed decisions.

6.5. Any assistance provided by the ILC must also be possible within its budgetary capacity at that time.

6.6. In circumstances where there are more than one proposal for native title settlements, and together those proposals exceed the funds available, the ILC will first proceed with the settlement that secures the greater quantum of Indigenous benefits.

## **7. Reporting**

7.1. In its annual report, the ILC will provide comment on the assistance provided in the settlement of native title claims including :

the number and breakdown by jurisdiction of requests made in the period by type of assistance provided;

the current status of requests for assistance (including received, approved, not approved and completed) in total and by jurisdiction;

its national investment, and breakdown by jurisdiction (figures and percentage amounts), in providing assistance with native title settlements; and

the assessment of assistance provided in the settlement of native title claims against the ILC’s key performance indicators (For example, the number of enterprises created and/or assisted, number of people employed, number of participants in training

programs, number of training courses delivered, hectares of land acquired, hectares of land under management/business projects and gross turnover).

## **8. Advice to Government Parties and NTGs**

8.1. If the ILC decides not to provide assistance to a proposed settlement, the ILC will provide written reasons to the Government parties, NTRB and NTG.

8.2. In assessing a request for assistance, the ILC may provide Government parties and the NTG with written advice on adjustments to any settlement package that could be made to satisfy ILC criteria and allow a reasonable opportunity for Government parties, the NTRB and the NTG to implement such adjustments.

## **9. Policy Review**

9.1. This policy will be reviewed regularly to ensure its ongoing relevance to native title settlements.

### **Further information**

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