



# **Refreshing our National Indigenous Land and Sea Strategy (NILSS): *have your say***

**DISCUSSION PAPER**

December 2020



**Australian Government**

**Indigenous Land and Sea Corporation**



**The ILSC GROUP**

**PEOPLE. COUNTRY. OPPORTUNITY.**

The ILSC is undertaking a ‘refresh’ of its National Indigenous Land and Sea Strategy 2019-22 (NILSS) and its four associated Regional Indigenous Land and Sea Strategies 2019-22 which present the ILSC’s priority focus areas and program delivery mechanisms at both national and regional levels.

This Discussion Paper lays out the key issues on which we want your input along with guiding questions. In parts of this Discussion Paper, external documents are referenced – these documents are used to provide context for the conversation.

## How to navigate this document

The ILSC Board invites you to consider:

- the entire Discussion Paper and all of the guiding questions, or
- only those sections and guiding questions that interest you – to jump directly to the areas that interest you click on the hyperlinked questions within the Discussion Paper Snapshot (page 2-3).

## How to respond

Consultation on this Discussion Paper is open for a six week period. You can:

- Email your comments to [NILSSConsultation@ilsc.gov.au](mailto:NILSSConsultation@ilsc.gov.au)
- Call Rebecca Hayden or Tom Stead (ILSC Policy) **(08) 8100 7100** or **1800 818 490** to relay your comments
- Contact us by email or phone (above) to request an online briefing

**Consultation closes on 29<sup>th</sup> January 2021.**

## Where to get more information

Throughout this document we directly link to various resources that supported this discussion paper. Additional detail on the ILSC – including the NILSS and RILSS – and our functions and activities can be found at [www.ilsc.gov.au](http://www.ilsc.gov.au). Updates on the consultation process, including key dates, will also be published on ILSC social media accounts.

## What we will do with your feedback

The shared thoughts, experiences and knowledge received during consultation will be used to help develop a refreshed NILSS and RILSS which will in turn guide the ILSC operations. Once completed, these documents will be published online at the ILSC website: [www.ilsc.gov.au](http://www.ilsc.gov.au)

## Discussion Paper snapshot – three major focus areas

This Discussion Paper identifies three major focus areas with associated guiding questions where we are particularly seeking stakeholder feedback:

- **OUR WATER-BASED INTERESTS**
- **OUR CLIMATE AND CARBON RESPONSE**
- **OUR BROADER STRATEGIC DIRECTION**



## Our water-based interests

The ILSC has a 25-year history assisting Indigenous people access and manage rights to land in Australia. The significant focus on water in this Discussion Paper reflects our recent expanded remit to assist Indigenous people to access rights and interests in fresh and salt water country, as well as the complexities around the regulation and management of fresh water systems in Australia, both above and below ground. We are keen to hear from our stakeholders on the challenges and opportunities and draw from your experience.

### Closing the Gap targets and water (Pages 8 to 9)

1. How can the ILSC enable and complement the target, ensuring that Indigenous people's legal rights or interests in the sea provide tangible benefits?
2. The ILSC can purchase or assist in the management of any existing right or interests over sea country; what do you think should be the ILSC's priorities?
3. What sort of contribution to the Closing the Gap water targets should the ILSC make?
4. What should be the scale and scope of ILSC support for the targets? Should the ILSC strategy be a national one, or should state/territory or regional level strategies be put in place?

### Inland (or fresh) water (Pages 10 to 11)

5. How can the ILSC add value to the National Water Initiative's existing requirements for Indigenous involvement in water regulation?
6. How can the ILSC help to deal with the barriers for Indigenous people who want to participate in water markets?
7. Where Native Title or alternative rights for Indigenous people over water country are not recognised, how can the ILSC help?
8. How can the ILSC potentially assist Indigenous corporations to participate in the development of the National Water Grid?
9. The ILSC can purchase or assist in the management of any existing right or interests over inland waters; what do you think are the difficulties for Indigenous people benefiting from water rights and interests and what should be the ILSC's priorities?

## **Cultural flows (Pages 14 to 15)**

10. What is your understanding of what constitutes 'cultural flows', and is it the best pathway for providing Indigenous access to water?
11. What are the barriers to gaining Indigenous access to water?
12. Do you think there is common understanding of cultural flows, and what they should be used for by Indigenous people?
13. How can the ILSC help to foster greater understanding of cultural flows, and to gain water entitlements for Indigenous people?

## **Our climate and carbon response**

With Australia increasingly experiencing extreme weather events, adaptation and planning for climate change is essential. There is also growing opportunity as carbon farming and renewable energy projects extend across the Australian land and seascape. The ILSC would like to develop our approach to supporting Indigenous engagement with these issues and opportunities.

## **Climate and Carbon Response (Pages 16 to 19)**

14. How can the ILSC help Indigenous people to adapt their land and water interests to be resilient to the effects of climate change?
15. How can the ILSC help Indigenous people to engage with land and water development planning and policy to ensure their knowledge, aspirations and opportunities for their communities are given due consideration in planning processes?
16. How can the ILSC help Indigenous people to engage with opportunities in the carbon sector outside the savanna landscape?
17. How can the ILSC help Indigenous people to engage with and benefit from renewable energy developments?

## **Our strategic direction**

Finally, your views on the strategic direction of the ILSC are being sought, in the context of the way the ILSC Group currently operates, and how we can best fulfil our legislated purpose, the compensatory function we were originally intended to perform, and what is allowed to us under our legislation.

## **Pathways of change (Pages 20 to 21)**

18. How can the ILSC help Indigenous people to maintain and grow the value and productivity of country?
19. How can the ILSC help more Indigenous people to own and manage country sustainably?
20. How can the ILSC help Indigenous people to strengthen culture through reconnection to country?
21. How can the ILSC help Indigenous people to influence policy and opportunity for country?

## **Future strategy (Pages 25 to 26)**

22. Does the ILSC's funding program Our Country Our Future support Indigenous people through the pathways of change?
23. Should the ILSC prioritise equally its acquisition and management mandate, with a role in supporting business operations on Indigenous held land?
24. Does the ILSC better support Indigenous people through these pathways of change by providing investment for groups to operate businesses on their land; or by operating businesses for groups; or by supporting Indigenous groups to secure commercial operating or capability partners that can provide immediate economic benefits?
25. Is there value in the ILSC playing an operating role on Indigenous land? Is this role best served as a sole operator or as an operating partner? Where the ILSC, through its subsidiaries, operates businesses should it be time limited? And if so for what purpose?
26. If groups do not aspire to be operators themselves, would they prefer the ILSC operate businesses and generate Indigenous Benefits; or would they prefer to generate commercial income from proven operators and reinvest in deriving their own Indigenous Benefits?
27. Do you agree that the ILSC's limited funding cannot fully meet the needs of the Indigenous Estate and should leverage greater levels of investment from private, impact and philanthropic investors? Do you believe that the ILSC has a role to play in supporting Indigenous asset owners in brokering fair, ethical and equitable commercial partnerships?

## WATER – where to from here?

On 1 February 2019, the Indigenous Land Corporation became the Indigenous Land and Sea Corporation after changes to the Aboriginal and Torres Strait Islander Act 2005 (ATSI Act) extended our purpose to include water – both salt and fresh water – as well as land. The expanded ILSC remit recognises the ongoing connection of Indigenous people to waters (as well as land).

The ILSC's functions in 'water' are similar to its functions in relation to land and include:

- the acquisition of water-related rights and the return of these rights to Indigenous corporations;
- the provision of assistance (grants, loans or loan guarantees) to Indigenous corporations to acquire water-related rights;
- undertaking management activities in relation to 'Indigenous waters' (an expression defined in the Bill) and water, or waters, in which the ILC has water-related rights; and
- the provision of assistance (grants, loans or loan guarantees) to Indigenous corporations to assist in management activities in relation to indigenous waters.

'Water-related rights' relate to both salt and fresh water country and can include:

- any **licence, concession, permit, access entitlement or allocation** in relation to water that may be obtained under water management legislation in the States and Territories.
- the right to take resources from waters –
  - **fishing licences or permits** (whether for a commercial purpose or otherwise)
  - **aquaculture rights**
  - **marine licences or certificates**; and
  - **tourism-related permits.**

The changes do not create any new rights – they allow the ILSC to assist Indigenous corporations in the acquisition and management of water-related rights under existing laws.



## Our work so far

Since the 2019 legislation change, the ILSC has successfully transitioned our major land-based funding program Our Land Our Future to the Our Land Our Country program, reflecting our extended legislative purpose and functions but also the Indigenous connection to 'country' including water, not just land.

Our operations and the structure of our Our Country Our Future program will continue to be reviewed and reformed where required to enhance efficiencies and maximise our ability to generate economic, social, cultural and environmental benefits for Indigenous people through the return and effective management of both land and water.

To date, the ILSC has invested (or approved investment) in six water-based projects valued at \$10.4 million, with a further \$1.1 million worth of projects currently being considered.

The ILSC recognises the unique nature of water rights throughout Australia and the complexity of their specification and management. Water rights can vary between catchments and between states; for example, a New South Wales right in the Murray-Darling Basin could be used in South Australia under certain conditions. The ILSC also recognises the advantages of combining a suite of rights into a common purpose where appropriate, and that this may need coordinating mechanisms. The ILSC will endeavor to identify and promote such mechanisms where appropriate and where they have the support of Indigenous people.

## Looking ahead

### Closing the Gap targets

In July 2020 the Australian Government, state and territory governments and the Australian Local Government Association entered a new **National Agreement on Closing the Gap**. The new agreement builds on a previous agreement and work towards Closing the Gap since 2008, as well as an **engagement process** undertaken by the National Coalition of Aboriginal and Torres Strait Islander Peak Organisations in late 2019.

Going from seven targets to 16, the National Agreement on Closing the Gap now notably includes a target on land and waters:

15. a) By 2030, a 15 per cent increase in Australia's **landmass subject to Aboriginal and Torres Strait Islander people's legal rights or interests**
- b) By 2030, a 15 per cent increase in **areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests in the sea**

Target 15 refers to rights and interests conferred under the Native Title Act 1993, or under alternative state-based legislation. An increase in land and sea country area controlled by Indigenous corporations will likely lead to an increase in potential projects in which the ILSC may partner. The National Agreement on Closing the Gap also includes a commitment to develop a target for ‘inland waters’ within 12 months of the agreement being signed, again providing scope for the ILSC to partner with Indigenous groups holding these rights.

**Baseline data for the targets** is drawn from the National Native Title Tribunal and shows that:

- as at May 2020, 3.9 million square kilometres, or 50.8% of the Australian landmass, is under some form of Indigenous right or interest; and
- as at June 2020, Native Title exists over around 90,000 square kilometres of sea country, or 1.3% of the Australian marine zone.

Note that possession of Native Title (or alternative title) does not equate to exclusive possession and in many cases the rights of Traditional Owners are strictly limited.

## Salt water

The National Agreement on Closing the Gap current targets focus on sea, or marine environments. However, it is worth noting that where previously Native Title had been determined on country that included land down to the low water mark, the 2001 High Court decision on Croker Island (<http://eresources.hcourt.gov.au/showCase/2001/HCA/56>) set the precedent for Native Title over sea. This precedent was affirmed and extended in the 2013 Akiba High Court case in the Torres Strait (<http://eresources.hcourt.gov.au/downloadPdf/2013/HCA/33>).

Recent negotiations between the Northern Territory Government and Traditional Owners regarding control over access to intertidal waters across the NT coastline arising from the High Court decision in the Blue Mud Bay case in 2008 (<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2008/29.html>) shows that achieving greater Indigenous rights over sea country may be achieved through a number of legal and legislative pathways.

Achievements such as Blue Mud Bay provide potential opportunities for the ILSC to partner with Traditional Owners to achieve benefits, through investment in license and permit acquisition, assistance in developing and operationalising sea country management systems, plant and equipment, and investment in the management and protection of Indigenous knowledge/intellectual property. The ILSC has had experience in dealing with some of these issues in regard to land assets, and our early work in partnering with Indigenous corporations to participate in fishing and aquaculture can be built upon in both Native Title and non-Native Title areas.

## Questions: Closing the Gap targets and water

1. How can the ILSC enable and complement the target, ensuring that Indigenous people's legal rights or interests in the sea provide tangible benefits?
2. The ILSC can purchase or assist in the management of any existing rights or interests over sea country; what do you think should be the ILSC's priorities?
3. What sort of contribution to the Closing the Gap water targets should the ILSC make?
4. What should be the scale and scope of ILSC support for the targets? Should the ILSC strategy be a national one, or should state/territory or regional level strategies be put in place?

## Inland (or fresh) waters

The unique nature of fresh water in Australia and the complexity of its use and regulation present challenges for all water users. For Indigenous people these challenges are exacerbated by a lack of participation in water ownership and planning since colonisation. Australia is the driest inhabited continent on Earth. Its fresh water systems include rivers that are comparatively low-flow or that have highly variable flow, and a paucity of lakes, and groundwater systems containing 'ancient water' that are recharged at a very slow rate.

The Bureau of Meteorology in its [Water in Australia 2018-19](#) report (2020) found that much of Australia saw below average rainfall, stream flow and general water availability during 2018-19. This led to a higher proportion of groundwater versus surface water being sourced for consumptive purposes, with 70 per cent of this water being used for agriculture (p 2-5). These conditions also led to a 24 per cent decrease in the volume of water allocations traded on water markets compared to 2017-18, while average prices for these trades tripled in the same period (p 5). (See below for more discussion on water regulation and trading).

With the possible exception of Australia's tropical north, Australia's recent history of land use and tenure has led to the overuse of the water in our systems, as well as significant changes to the natural movement of waters through infrastructure development. Too much has been taken from many of our systems, by inefficient means, and in the process, rivers have been dammed, locked and otherwise had their flows changed significantly through engineering 'solutions'. More recently, systems have become increasingly regulated, in some cases leading to overallocation accompanying general overuse. Throughout the history of colonial Australia to the present, the separation of Indigenous people from their country, including from culturally, socially and economically important water sources, has been a feature.

While moves towards regulation have long been a feature of the Australian water 'landscape', some culturally and economically important fresh water systems have been the recent focus of new regulatory regimes.

These moves come after feasibility studies and water resources assessments were undertaken across northern Australia. The resultant **White Paper on Developing Northern Australia** is a 20-year forward plan for northern Australia which identifies a number of work areas which, with the right focus and funding, can help with the economic development of the north.

One of the commitments in the 'White Paper' was the development of the National Water Infrastructure Development Fund, with a forward commitment of \$2 billion. This funding forms the basis of a '...10 year rolling program of priority water infrastructure projects...' which the **National Water Grid** envisions as a '...series of region-specific water storage and distribution networks that will help grow our agricultural output, increase water security and build resilience.' The National Water Grid and the funding attached to it represents potential opportunities for Indigenous groups to both help plan appropriate development, and to reap the rewards of development through employment outcomes and access to water.

## The National Water Initiative and Indigenous Australians

Building on the 1994 Council of Australian Government's Water Reform Framework, the **National Water Initiative** (NWI) is a '...shared commitment by governments to increase the efficiency of Australia's water use, leading to greater certainty for investment and productivity, for rural and urban communities and for the environment.'

Under the NWI, governments have made commitments to:

- prepare comprehensive water plans
- achieve sustainable water use in over-allocated or stressed water systems
- introduce registers of water rights and standards for water accounting
- expand trade in water rights
- improve pricing for water storage and delivery
- better manage urban water demands.

The NWI is assessed every three years and is currently being reviewed by the **Productivity Commission**. As is clear from the commitments in the **NWI Intergovernmental Agreement**, essentially all water regulation across Australia is subject to the NWI, which is being ‘refreshed’ in a wider process. This refresh will likely have implications for the ILSC and our work in water.

Included in the NWI Intergovernmental Agreement (p 4-5) is the following:

25. The Parties agree that, once initiated, their water access entitlements and planning frameworks will:
  - ix) recognise indigenous needs in relation to water access and management;

It also includes (p 9):

52. The Parties will provide for indigenous access to water resources, in accordance with relevant Commonwealth, State and Territory legislation, through planning processes that ensure:
  - i) inclusion of indigenous representation in water planning wherever possible; and
  - ii) water plans will incorporate indigenous social, spiritual and customary objectives and strategies for achieving these objectives wherever they can be developed.
53. Water planning processes will take account of the possible existence of native title rights to water in the catchment or aquifer area. The Parties note that plans may need to allocate water to native title holders following the recognition of native title rights in water under the Commonwealth Native Title Act 1993.
54. Water allocated to native title holders for traditional cultural purposes will be accounted for.

Despite the good intentions expounded in the NWI Intergovernmental Agreement, the **second biennial assessment of the NWI** undertaken by the then National Water Commission in 2009 found that (p 27):

[Finding 1.6] It is rare for Indigenous water requirements to be explicitly included in water plans, and most jurisdictions are not yet engaging Indigenous people effectively in water planning processes.



It went on to recommend that:

[Recommendation 1.4]...all jurisdictions develop and publish processes for effective engagement of Indigenous people in water planning. Parties should ensure that all new water plans (including statutory reviews of existing water plans) provide for Indigenous access to water resources by at least incorporating Indigenous social, spiritual and customary objectives and strategies for achieving those objectives. Jurisdictional processes should also make clear how Indigenous groups can pursue their legitimate economic objectives.

Based on the findings of the 2009 biennial assessment of the NWI, the module **Engaging Indigenous peoples in water planning and management** was attached to the **National Water Initiative Policy Guidelines for Water Planning and Management** in 2017. However, questions remain over how effectively Indigenous people are engaged in water planning and how well their cultural, social and economic water needs are met. The Productivity Commission’s **National Water Reform Inquiry Report** (2018) – primarily a review of the NWI – found that progress towards these stated outcomes was patchy across the jurisdictions and that further work needed to be done – a point reiterated in its **National Water Reform Issues Paper** (2020, p 19), published three years after the publication of the NWI’s Indigenous engagement module.

The Productivity Commission also recognises that there has been progress towards including Indigenous people in water planning processes, and in providing water for cultural purposes, and that there are historical barriers to Indigenous people attaining water entitlements for economic use. This is perhaps because the NWI does not explicitly address the issue, and despite the inclusion of economic use under some definitions of ‘cultural’ water – see **National Water Reform Issues Paper** (2020, p 19). This can lead to an overemphasis on the twin use of water for both ‘cultural’ and ‘environmental’ flow, with social and economic uses by Indigenous people overlooked.

## Questions: Inland (or fresh) water

5. How can the ILSC add value to the National Water Initiative's existing requirements for Indigenous involvement in water regulation?
6. How can the ILSC help to deal with the barriers for Indigenous people who want to participate in water markets?
7. Where Native Title or alternative rights for Indigenous people over water country are not recognised, how can the ILSC help?
8. How can the ILSC potentially assist Indigenous corporations to participate in the development of the National Water Grid?
9. The ILSC can purchase or assist in the management of any existing right or interests over inland waters; what do you think are the difficulties for Indigenous people benefiting from water rights and interests and what should be the ILSC's priorities?

## The Echuca Declaration and cultural flows

Created in 2007 by Murray Lower Darling Rivers Indigenous Nations (MLDRIN), the **Echuca Declaration** is a statement about the rights and aspirations of Indigenous people in respect of water, and in the context of the Murray-Darling Basin. Endorsed by representatives of 31 Indigenous nations at a joint meeting of MLDRIN and Northern Basin Aboriginal Nations (NBAN) in 2010, it defines 'cultural flows' as:

...water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations. These are our inherent rights.

Cultural flows and the push for them to be recognised and provided for in water planning were given a boost with the creation of the **National Cultural Flows Research Project**.

Comprising a total of eight components, the project drew on cultural knowledge and scientific methodologies to '...secure a future where First Nations' water allocations are embedded within Australia's water planning and management regimes...' to deliver benefits to Indigenous communities, initially in the Murray-Darling Basin but across Australia.

One of the key outputs from the cultural flows research was the development of **Cultural Flows: A Guide for Water Managers** (2017). The guide was developed collaboratively between NBAN, MLDRIN and North Australian Indigenous Land and Sea Management Alliance, to assist Indigenous nations to assess watering needs and to include the flows required into water planning and management regimes. Importantly, the guide was not designed to replace policies relating to cultural flows, but to provide ‘...for a community-led process to determine how to decide what to do with a cultural flow...’ As noted above, the definition of cultural water and cultural flows, and their inclusion in a consistent manner in jurisdictional regulation, remains an issue for Indigenous people and communities.

### **Questions: Cultural flows**

10. What is your understanding of what constitutes ‘cultural flows’, and is it the best pathway for providing Indigenous access to water?
11. What are the barriers to gaining Indigenous access to water?
12. Do you think there is common understanding of cultural flows, and what they should be used for by Indigenous people?
13. How can the ILSC help to foster greater understanding of cultural flows, and to gain water entitlements for Indigenous people?

## LAND - where to from here?

Land acquisition and land management form the bulk of the ILSC's funding outputs through our principal funding program, **Our Country Our Future**, and we strive to be adaptive to emerging trends and the changing needs and aspirations of Indigenous Australians.

## Adapting to Climate Change

Extreme weather events are occurring with increasing regularity across Australia. The bushfire crisis in the eastern states over the 2019-20 summer followed unprecedented bushfire conditions in the Top End; severe flooding in Queensland has become a regular phenomenon, devastating many agricultural areas; and most other areas of the country are experiencing hotter and longer summer heatwaves. The extreme bushfire season of 2019-20 led to the initiation of **The Royal Commission into National Natural Disaster Arrangements** in February 2020 which looked at national preparedness for natural disasters. Of the **preliminary observations** released in August 2020, 24 point to the need for coordinated responses to the increasing risk of natural disasters. A selection of these observations is reproduced below:

### 2019-20 bushfires

7. The bushfires started in Australia's hottest and driest year on record. Much of the country that later burned had been in drought since January 2018. The Forest Fire Danger Index in 2019 was the highest since national records began. The first of the season's deadly bushfires started in July. Over the following months, fire burned through millions of hectares of land, variously reported as between 24 and 40 million hectares, threatening and displacing hundreds of communities. While there have been large fire seasons in the past, the 2019-2020 season set a new benchmark for an extreme fire season in Australia's temperate forests. Many communities also suffered hailstorms or flooding.

### Natural disaster risk

12. Australia has a long history of natural disasters. The causes of natural disasters have been shown to be many and complex. Australia's weather and climate agencies have told us that changes to the climate are projected to increase the frequency and intensity of natural disasters in Australia. Further warming over the next 20 years appears to be inevitable. Sea-levels are projected to continue to rise. Tropical cyclones are projected to decrease in number, but increase in intensity. Floods and bushfires are expected to become more frequent and more intense.

13. Additionally, as the 2019-2020 bushfire season demonstrated, bushfire behaviour has become more extreme and less predictable. Catastrophic fire conditions may become more common, rendering traditional bushfire prediction models and firefighting techniques less effective.

## A shared responsibility

17. All Australians, and particularly those in high-risk areas, must take steps to prepare themselves and their families for natural disasters. It is for this reason that preparation for, response to, and recovery from, natural disasters has been called a 'shared responsibility'— shared between individuals, private enterprise, not-for-profit organisations, and all levels of government.

## Indigenous land and fire management

93. There are varying degrees of community understanding of Indigenous land management practices and how they differ from emergency management-driven hazard reduction activities.
94. We have observed the interconnected nature and cultural and environmental significance of Indigenous land management practices in Australia, including traditional fire management.
95. We have heard evidence that Indigenous land and fire management is supported and practised differently across the varied landscapes of Australia. Indigenous groups and communities have different objectives and levels of knowledge, experience, resources and opportunities to undertake Indigenous land and fire management. We have also heard how Indigenous land and fire management incorporates technology, such as satellite data and helicopters.
96. Indigenous land and fire management in northern Australia is practised on a broader scale than in southern Australia. We have heard that these practices can reduce bushfire risk in the north; more research is required as to their role in bushfire risk mitigation in the south. Some jurisdictions are working with Traditional Owners to explore the relationship between Indigenous land and fire management and natural disaster resilience and its integration into a whole-of-community approach. There is a place for Indigenous land and fire management practices to be integrated into the planning and execution of public land management activities across Australia



These observations highlight the potential for the ILSC to collaborate with Indigenous managers of country and other relevant entities in supporting the resilience of country at risk from natural disasters. Observation 96 can be read as an invitation for increased Indigenous participation, knowledge, and leadership in managing the environment more generally.

The final **report** of the Royal Commission built on these preliminary observations by recommending that Indigenous landscape management knowledge be utilised by all levels of government in Australia to help build resilience to natural disasters and to better manage public land:

**Recommendation 18.1 Indigenous land and fire management and natural disaster resilience**

Australian, state, territory and local governments should engage further with Traditional Owners to explore the relationship between Indigenous land and fire management and natural disaster resilience.

**Recommendation 18.2 Indigenous land and fire management and public land management**

Australian, state, territory and local governments should explore further opportunities to leverage Indigenous land and fire management insights, in the development, planning and execution of public land management activities.

## Energy Transition and Carbon Farming

Responses to climate change are also affecting Indigenous interests in land and waters and providing development opportunities. Increasingly, Native Title holders are being asked to consent to carbon farming and renewable energy projects on their traditional lands and witnessing a change in land use associated with the resulting projects.

The Australian Government recently released the **Technology Investment Roadmap Low Emissions Technology Statement** (LETS). The LETS was produced to provide direction for the energy sector in project development priorities of the Australian Government. The LETS provides guidance that the gas sector can be a transition fuel, implying significant growth in that sector with associated exploration, extraction, pipelines and processing likely to occur in the next few years. The LETS also details plans for hydrogen production facility developments and an ongoing role for new solar and wind projects. Many of these project developments are likely to overlap with Indigenous interests in land and water.

Willing Indigenous landowners could be partners in project development, and other landowners could potentially deliver environmental or carbon offset and remediation projects on their lands funded through the development approvals process.

The ILSC has engaged strongly to date in assisting Indigenous landholders of northern Australia to establish savanna fire management carbon projects to support people to manage country and earn carbon credits for sale.

**Indigenous-operated carbon farming projects** are mainly concentrated in the northern savanna landscape, where there are over 30 spread across the Kimberley, Top End and Cape York covering 17.9 million hectares and generating around \$90 million in carbon credits since 2012.

The ILSC has facilitated the development of the sector through funding research, project establishment and operational support for individual projects. Indigenous projects have consistently attracted market premiums in recognition that they support indigenous land management aspirations and broader community and cultural benefits for Indigenous people. It is highly likely that this would also apply to indigenous project delivery in other landscapes.

The carbon farming sector has also grown strongly through the emergence of tree regeneration (human induced regeneration on pastoral leases, and tree planting in agricultural lands), soil carbon and cattle herd emissions reduction projects. To date indigenous land and sea managers have had little direct ownership and engagement with these developments. For example, most engagement has occurred through Native Title holders being asked to consent to new project registrations. As these projects continue to spread across the landscape, the ILSC intends to better understand how to engage with opportunities in these areas outside the northern savannas.

## Questions: Climate and Carbon Response

14. How can the ILSC help Indigenous people to adapt their land and water interests to be resilient to the effects of climate change?
15. How can the ILSC help Indigenous people to engage with land and water development planning and policy to ensure their knowledge, aspirations and opportunities for their communities are given due consideration in planning processes?
16. How can the ILSC help Indigenous people to engage with opportunities in the carbon sector outside the savanna landscape?
17. How can the ILSC help Indigenous people to engage with and benefit from renewable energy developments?

## STRATEGY - where to from here?

The ILSC is always looking at how we can maximise the environmental, economic, social and cultural benefits for Indigenous Australians generated through our investments. This means looking at how we operate, who we partner with and how we support Indigenous corporations to achieve these benefits.

### Pathways of change

As part of our commitment to continual improvement, we have identified a series of medium to long-term outcomes – four key pathways of change – that Indigenous Australians are expected to accrue as a result of involvement in our activities:

#### 1. Indigenous people are maintaining and growing the value and productivity of country

Through our legislative mandate the ILSC is provide opportunities for Indigenous people to re-engage with country through land and water ownership and to become more active economic participants in industries of their choice across Australia.

#### 2. Indigenous people are owning and managing country sustainably

The ILSC collaborates with Indigenous Australians to build capability to own and sustainably manage country and/or enterprises which care for, use and improve land and water. By providing funding, advice and capability support, we deliver tailored solutions to overcome barriers to success.

#### 3. Indigenous people are strengthening culture through reconnection to country

Opportunities that leverage the unique knowledge, abilities and characteristics of Indigenous Australians and strengthen, preserve and raise the profile of Indigenous culture and language are a strong investment focus for the ILSC. Industries such as agribusiness, environmental services and tourism draw on Indigenous knowledge, intellect and practices as well as offering significant economic potential.

## 4. Indigenous people are influencing policy and opportunity for country

It is vital Indigenous people have a say on Australia’s land and water, and environmental and economic policies; that they are able to drive and develop industry and markets; influence investment practices; and be at the forefront of research and development. We work to improve Indigenous representation as thought leaders, influencers and decision makers by helping facilitate, advocate and negotiate for Indigenous representation and Indigenous perspectives on policy and industry agendas.

### Questions: Pathways of change

- 18. How can the ILSC help Indigenous people to maintain and grow the value and productivity of country?
- 19. How can the ILSC help more Indigenous people to own and manage country sustainably?
- 20. How can the ILSC help Indigenous people to strengthen culture through reconnection to country?
- 21. How can the ILSC help Indigenous people to influence policy and opportunity for country?

## What we do and how

Under the **Aboriginal and Torres Strait Islander Act 2005 (ATSIA Act)**, the ILSC’s purpose is to help acquire and manage interests in country to deliver environmental, social, economic and cultural benefits to Indigenous Australians. We are always looking to improve the way we deliver on our purpose.

### History

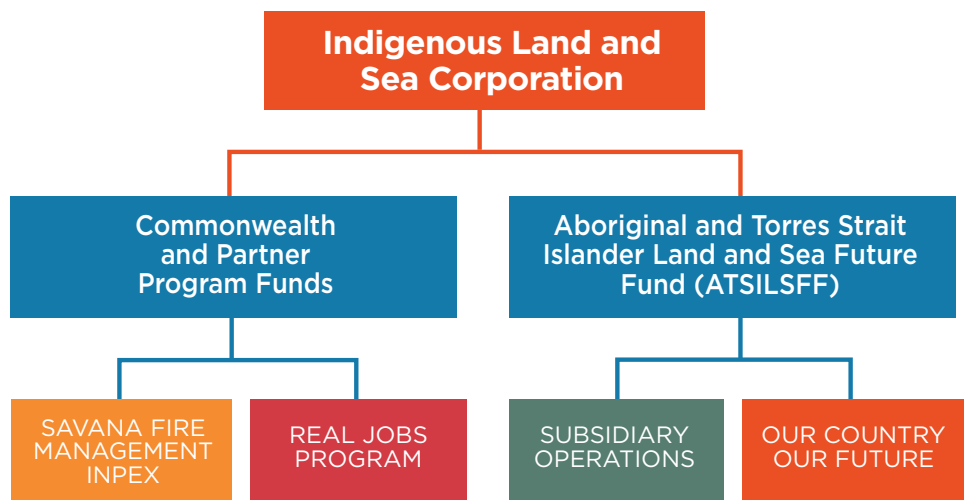
The ILSC (then ILC) was established in 1995 as part of the Australian Government response to the High Court Mabo Decision (1992) which first recognised the legal rights of Indigenous people to country. The ILSC was created to provide for the contemporary and future land needs of Indigenous Australians who could not, or were unlikely to, benefit from the Native Title Act 1993. The ILSC Board and staff are keenly aware of the organisation’s role in redressing dispossession and take our original and ongoing purpose very seriously when setting our strategy and undertaking our work.

## Our program structure

The ILSC’s program structure consists of two main streams based on funding source. The Aboriginal and Torres Strait Islander Land and Sea Future Fund provides for:

- our principle funding program – Our Country Our Future – delivered from our three Divisional offices: Western (Perth), Central (Adelaide) and Eastern (Brisbane) where we develop and deliver new land and water acquisition and management projects with Indigenous groups
- our subsidiaries which are specifically structured and geared to generate outcomes through operating commercially in industry sectors in which Indigenous people hold a competitive advantage:
  - **Voyages Indigenous Tourism Australia** – own and manage Ayers Rock Resort (NT) on behalf of the ILSC; manage the ILSC-developed tourism enterprises Mossman Gorge Centre (far north Qld) and, up until 30 June 2020, Home Valley Station (east Kimberley, WA)
  - **National Centre of Indigenous Excellence** – an ILSC-developed social enterprise based in Redfern, Sydney
  - **Primary Partners** (formerly Australian Indigenous Agribusiness) – employs labour on ILSC-operated agribusinesses, and oversees nine agribusinesses operations (at 30 June 2020), mainly in the northern Australian beef industry

Australian Government and partner funds provide for our Real Jobs Program and Savanna Fire Management program where our specific skills, scope and scale make us a partner of choice. The ILSC Core and its subsidiaries are collectively referred to as the ‘ILSC Group’.





## Funding

The ILSC receives \$45 million (in 2010 values) annually through the Aboriginal and Torres Strait Islander Land and Sea Future Fund. This legislated funding provides certainty both to the organisation and for our clients (and potential clients) that funding is available for projects that will deliver on our legislated purposes and meet our program criteria.

## Our strategic framework

The 'what we do' is driven and guided by our strategic framework. This framework includes what we are legislated to do, our legislated functions and powers, what we must do under legislation, and the direction set by our Board for how we do it. Our strategic framework is shown below and is driven by our vision, that: Aboriginal and Torres Strait Islander people enjoy the opportunities and benefits that the return of country and its management brings.

### What the ILSC Group does

- We acquire and divest land and water-related rights to Indigenous people.
- We support Indigenous people to preserve and protect culture through reconnection with country.
- We build the capacity and capability of Indigenous people to sustainably manage and protect country.
- We partner with Indigenous people to drive and influence opportunities for their country.

### Legislated Purposes

#### Aboriginal and Torres Strait Islander Act

- (a) to assist Aboriginal persons and Torres Strait Islanders to acquire land and water related rights; and
- (b) to assist Aboriginal persons and Torres Strait Islanders to manage Indigenous-held land and Indigenous waters; so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

### Legislated Performance Standards

#### PGPA Act

- Guides the ILSC's governance, accountability, planning and reporting.

## ILSC Vision

- Aboriginal and Torres Strait Islander people enjoy the opportunities and benefits that the return of country, and its management brings.

## Enabled by

- Social and human capital: staff, stakeholders, partnerships, relationships, knowledge, expertise.
- ATSILSFF: independent, sustainable, compensatory funding stream.

## ILSC Long-Term Outcomes (What the ILSC is hoping to achieve)

### Indigenous people are:

- Maintaining and/or growing the value and/or productivity of country.
- Sustainably owning and managing country.
- Driving and influencing policy and opportunity for country.
- Strengthening culture through reconnection to country.

## Statutory Strategic Plans

### NILSS and RILSS (ATSI Act)

- Sets out the ILSC's strategies for achieving its Purposes across a three-five year timeframe.

### Corporate Plan (PGPA Act)

- Sets out the ILSC's strategies for achieving its Purposes and how success will be measured annually.

## PBS Strategic Direction Statement (for each financial year)

- Assist Aboriginal and Torres Strait Islander people to realise economic, social, cultural and environmental benefits that the ownership and management of land and fresh water and salt water rights can bring.

### For 2019-20, prioritising operationalisation of expanded remit:

- Consulting on NILSS/RILSS.
- Refresh and realign Our Land Our Future Program.
- Realignment of Performance Framework.

## ILSC Strategic Pillars

- Increasing our return against the ILSC's Purposes.
- Increasing our investment in the ILSC's Purposes.
- Focusing on our clients and sector relationships.
- Continuous improvement and alignment.

# Future strategy options

Through Our Country Our Future, the ILSC assists Indigenous corporations to acquire and manage interests in land and water. This remains the core work of the ILSC as originally envisioned and as legislated.

However the powers provided to the ILSC under the **ATSI Act** are broad and the ILSC is permitted to undertake a wide range of activities. Provided our focus remains on land and waters and on delivering environmental, social, economic and cultural benefits, we can invest money, provide loans, guarantee loans, create subsidiaries and grant money, land and water interests.

The ILSC identifies three strategic approaches consistent with its legislative powers and guaranteed annual funding:

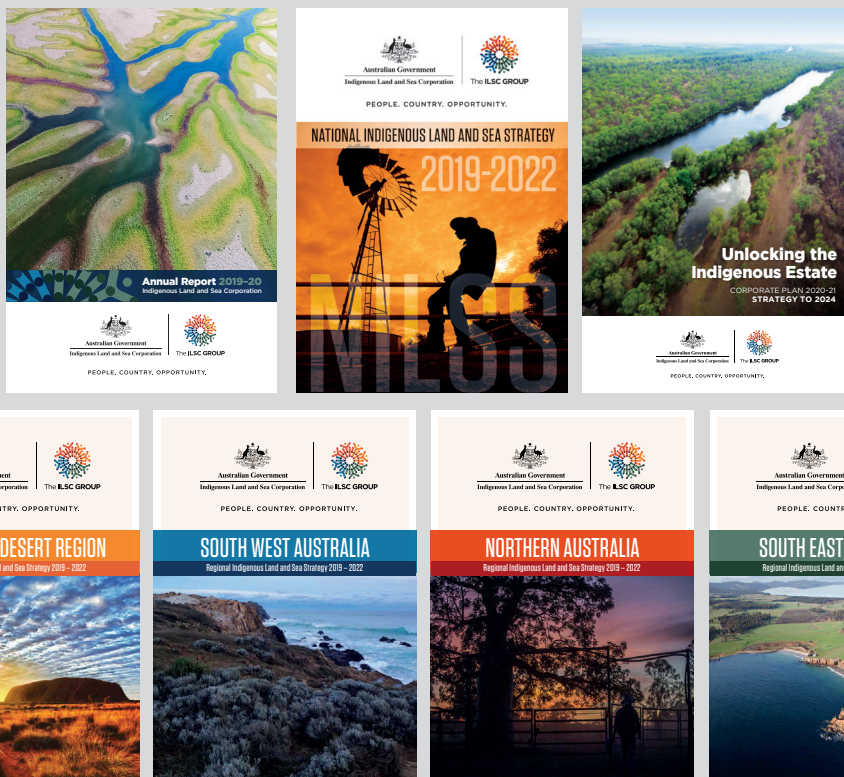
- Focus on delivering land and water assets to Indigenous corporations and the means for managing them – may be seen as the core, and therefore most important, purpose of the ILSC
- Invest in subsidiaries, land, water and financial assets – may be seen as a means to generate returns to ensure more outcomes can be delivered to Indigenous people in the future
- Brokering other investors, proven operators and capability partners – as a means to secure commercial operations on Indigenous held land
- Supporting Indigenous organisations to be sole operators on their lands
- A combination of these approaches.

These issues are separate from, and sit above, the detail of how the Our Country Our Future program works, or whether particular projects get funded over others. Our future strategy may drive how much funding is provided directly to Indigenous corporations (through acquisition and management funding) and how much is provided indirectly, or at a time in the future (through subsidiary operations or long term investments). It is also a question of whether the management of the Aboriginal and Torres Strait Islander Land and Sea Future Fund and our ongoing earnings are sufficient to ensure the future and potential growth of the work of the ILSC, versus the ILSC investing some of these earnings on its own account, to fund future growth in its work in assisting Indigenous corporations.

## Questions: Future strategy

22. Does the ILSC's funding program Our Country Our Future support Indigenous people through the pathways of change?
23. Should the ILSC prioritise equally its acquisition and management mandate, with a role in supporting business operations on Indigenous held land?
24. Does the ILSC better support Indigenous people through these pathways of change by providing investment for groups to operate businesses on their land; or by operating businesses for groups; or by supporting Indigenous groups to secure commercial operating or capability partners that can provide immediate economic benefits?
25. Is there value in the ILSC playing an operating role on Indigenous land? Is this role best served as a sole operator or as an operating partner? Where the ILSC, through its subsidiaries, operates businesses should it be time limited? And if so for what purpose?
26. If groups do not aspire to be operators themselves, would they prefer the ILSC operate businesses and generate Indigenous Benefits; or would they prefer to generate commercial income from proven operators and reinvest in deriving their own Indigenous Benefits?
27. Do you agree that the ILSC's limited funding cannot fully meet the needs of the Indigenous Estate and should leverage greater levels of investment from private, impact and philanthropic investors? Do you believe that the ILSC has a role to play in supporting Indigenous asset owners in brokering fair, ethical and equitable commercial partnerships?

**For more information please review these other ILSC Publications:**



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



[www.ilsc.gov.au](http://www.ilsc.gov.au)  
FREECALL 1800 818 490

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