The Auditor-General
Audit Report No.15 2013–14
Performance Audit

The Indigenous Land Corporation's Administration of the Land Acquisition Program

Indigenous Land Corporation

Australian National Audit Office

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Australian National
Audit Office

Canberra ACT
19 December 2013

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Indigenous Land Corporation in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament. The report is titled *The Indigenous Land Corporation's Administration of the Land Acquisition Program*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—http://www.anao.gov.au.

Yours sincerely

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Contents

Tables

Figures

Abbreviations

ANAO	Australian National Audit Office
ATSI Act	*Aboriginal and Torres Strait Islander Act 2005*
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
ILC	Indigenous Land Corporation
Land Account	Aboriginal and Torres Strait Islander Land Account
LAP	Land Acquisition Program
LAMIRS	Land Acquisition and Management Information and Reporting System
LMP	Land Management Program
NILS	National Indigenous Land Strategy
PBS	Portfolio Budget Statement
RILS	Regional Indigenous Land Strategy
THB	Title-holding body

Glossary

Indigenous organisation	An Aboriginal or Torres Strait Islander corporation is defined in the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) as: (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or (b) a body corporate where all the members of the body corporate are Aboriginal persons or Torres Strait Islanders, or both; or a controlling interest in the body corporate is held by Aboriginal persons or Torres Strait Islanders, or both.
Land Acquisition Program (LAP)	The application-based program through which the ILC acquires land to benefit Indigenous Australians. The LAP is delivered by the ILC under two streams: socio-economic development; and cultural and environmental values.
National Indigenous Land Strategy (NILS)	The high-level strategy required to be produced by the ILC under the ATSI Act setting out the ILC's five-year strategic direction, key priorities and how the ILC's programs will be implemented to meet the ILC's legislated functions to achieve social economic, cultural and environmental Indigenous benefits. The ILC typically releases a new NILS every five years, with the current one covering 2013–17.
Regional Indigenous Land Strategy (RILS)	The regional-level strategic documents required to be produced by the ILC under the ATSI Act addressing regional land priorities. The RILS are aligned with state and territory boundaries, with New South Wales and the Australian Capital Territory covered by one RILS.

Strategic projects	Projects that are initiated by the ILC to achieve significant Indigenous benefits, including employment and training. Strategic projects typically involve collaboration with other Australian Government or State/Territory agencies or the private sector. Strategic projects are generally complex and long-term projects but do not always involve land acquisitions.
Title-holding body	The entity holding title to land acquired by the ILC. The ILC holds the title to property acquired under the LAP until such time as it divests (grants) title to an Indigenous organisation.

Summary and Recommendations

Summary

Introduction

1. Improving Indigenous people's access to land has been an element of successive Australian Governments' approaches to reducing Indigenous disadvantage. The Indigenous Land Corporation (ILC), an independent Australian Government statutory authority[1], was established on 1 June 1995 under the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) to acquire land that would not be otherwise available to Indigenous people—where Native Title has been extinguished, for example. Following the abolition of ATSIC in 2004, the then Australian Government maintained a focus on land acquisition and re-established the ILC under Part 4A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). More recently, the Council of Australian Governments (COAG) reaffirmed the importance of Indigenous land in efforts to reduce Indigenous disadvantage, noting that 'access to land and Native Title assets, rights and interests can be leveraged to secure real and practical benefits for Indigenous people' extending beyond economic opportunities, to also enable environmental, social and cultural outcomes.[2]

2. The ILC's statutory purpose is to assist Indigenous Australians 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'.[3] To support this purpose, the ILC administers two programs: the Land Acquisition Program (LAP) and the Land Management Program (LMP) through which Indigenous organisations apply for assistance.[4] The ILC receives annual funding from a special account, the Aboriginal and Torres

1 As a statutory authority, the ILC is also subject to provisions of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The *Public Governance, Performance and Accountability Act 2013*, whose operative provisions commence 1 July 2014, will replace the CAC Act for these provisions, and other governance, performance and accountability responsibilities. The ILC is governed by a board.

2 Council of Australian Governments (COAG), *National Indigenous Reform Agreement (NIRA) (Closing the Gap)*, February 2011 updated agreement, p. 6.

3 Section 191B, *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). The ATSI Act does not explicitly define the nature of 'benefit'. The ILC describes 'benefits' as 'long-term improvements in Indigenous wellbeing': ILC, *Annual Report 2011–12*, p. 128.

4 The ILC can also initiate acquisitions itself without receiving a formal application.

Strait Islander Land Account (Land Account). The Land Account is a capital fund administered by the Department of the Prime Minister and Cabinet.[5] The fund was created by the Government in 1995 to provide an income stream in perpetuity to the ILC to fund its activities. Capital contributions were made to the fund between 1995–96 and 2003–04. At 30 June 2013, the net assets of the Land Account were $1.968 billion, an increase of $29 million from the previous year.[6] In 2012–13, the ILC received $65.9 million from the Land Account.[7] Approximately 50 per cent of ILC annual program expenditure is directed towards land acquisition.

Land Acquisition Program

3. The LAP is designed to contribute to the outcome of 'enhanced socio-economic development, maintenance of cultural identity and protection of the environment by Indigenous Australians through land acquisition and management'.[8]

4. The ILC administers the LAP by inviting Indigenous organisations to apply for assistance to acquire land[9] under one of two streams. The first stream aims to deliver social or economic benefits to Indigenous people through acquiring land to enable the operation of such activities as health clinics, aged care facilities, supporting education, and delivering training and employment opportunities.[10] The second stream of assistance delivered through the LAP—'cultural and environmental values'—aims to assist Indigenous people to acquire land which has cultural or environmental benefits, including projects to re-establish or maintain Indigenous connection to land, preservation of important cultural sites, or preservation of environments of significance to Indigenous people.

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5 Until September 2013, the Land Account was administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

6 FaHCSIA, *Annual Report 2011–12*. p. 335; *Annual Report 2012–13.* p. 299.

7 FaHCSIA, *Annual Report 2012–13.* p. 298.

8 FaHCSIA portfolio, *Portfolio Budget Statements* (PBS), 2013–14, p. 263.

9 Land includes works and improvements made to land, such as buildings, sheds, cattle yards and other assets fixed or attached to land.

10 Section 191F(1) of the ATSI Act requires the Indigenous Land Corporation (ILC) to act in accordance with sound business principles whenever it performs its functions on a commercial basis.

5. Under both streams, the ILC uses an established framework and criteria to assess applications on the basis of the Indigenous benefits expected to be achieved, as well as assessing the organisation's ability to hold title over the land and deliver benefits over the longer term. Upon approval of the proposed project, the ILC board directs the ILC to purchase the property at market value, after which the ILC becomes the title-holding body and enters into a lease with an Indigenous organisation, typically for a three-year period. Should the organisation demonstrate the expected management capability, title to the land is ultimately passed to the Indigenous organisation and the parties enter into a post-divestment phase to monitor that the project's benefits continue to accrue. Section 191S of the ATSI Act establishes mechanisms protecting land acquired under the LAP from being dealt with or disposed without the ILC's consent. The ILC also has the ability to re-acquire divested properties under some circumstances.

Strategic projects

6. The ILC defines strategic projects as projects that the ILC initiates to achieve significant Indigenous benefits, including employment and training. These projects usually involve collaboration with other Australian Government or State/Territory agencies or the private sector. Strategic projects are generally complex and long-term projects. A strategic project can involve the acquisition of land but this is not always the case and the ILC may facilitate its support through other programs such as the Land Management Program. Strategic acquisition projects are initiated by the ILC rather than through the normal assessment of applications under the LAP. If a strategic project involves the acquisition of land, the ILC expect divestment to occur over a longer period of time compared to acquisitions made through LAP. Strategic projects can include agricultural and tourism operations in regional and remote locations, as well as facilitating Indigenous businesses or Indigenous service delivery from premises in urban centres.

Audit objective, criteria and scope

7. The objective of the audit was to assess the effectiveness of the Indigenous Land Corporation's administration of the Land Acquisition Program.

8. To form a conclusion against the audit objective, the ANAO's high level criteria included assessing the program management and delivery arrangements in place to acquire and divest land through LAP to the benefit of Indigenous Australians; and assessing the ILC's systems for measuring and evaluating the benefits of ILC acquisition and divestment activities against program objectives.

9. The audit scope included the ILC's land acquisition and divestment activities since 2008, although some file reviews, data analysis and site visits covered projects dating to the late-1990s, to understand changes to LAP delivery. The audit focussed primarily on the administration of the application-based LAP. In October 2013 the ILC's purchase of the Ayers Rock Resort (ARR), which was undertaken as a strategic project, began receiving increased media attention due to issues surrounding its financial performance in 2012–13. The ILC board commenced a review in September 2013 to assess the short and medium term operational strategies available to the ILC in relation to ARR to improve its performance. This review was also tasked with informing the ILC board over the adequacy of the due-diligence undertaken in respect of the purchase of ARR. The review is expected to be completed in early 2014. The ANAO has given some additional coverage to the ILC's purchase of the ARR in the light of Parliamentary interest but has not replicated the work being undertaken in the review.

Overall conclusion

10. Increasing Indigenous people's access to land has been recognised by successive Australian Governments as an important mechanism to increase economic participation and to deliver social, cultural and environmental benefits for Indigenous people.[11] The ILC has administered the Land Acquisition Program (LAP) since 1995 and has been active in acquiring land for, and subsequently divesting it to, Indigenous organisations representing Indigenous Australians. Since 2008, 22 properties have been acquired and 43 divested.[12] LAP projects funded between 2008 and 2013, for example, ranged

11 Council of Australian Governments (COAG), *National Indigenous Reform Agreement (NIRA) (Closing the Gap)*, February 2011 updated agreement, p. 6.

12 Several of the 43 properties divested in the period were acquired prior to 2008.

from $280 000 for protection of cultural and environmental values in western Victoria to the $8.6 million purchase of an Indigenous aged care facility in Perth, Western Australia.

11. Acquisition and divestment results are lower than the targets, including revised targets, set by the ILC over the period since 2008. Nonetheless, ILC has managed the LAP program to acquire a diverse range of properties. The timely and successful divestment of properties is recognised by the ILC as a recurring issue. More broadly, the ILC has reported that, since its inception, it has acquired a total of 246 properties, of which 170 have been divested, and made a contribution of over 5.8 million hectares to increasing Australia's Indigenous estate. Since 1996, 12 properties have been disposed of by the ILC because the Indigenous benefits identified were not achieved or unable to be sustained.

12. In the 18 years that it has administered the LAP, the ILC has built up a detailed set of processes and practices to support program implementation in line with key requirements of the ATSI Act. These processes provide clear guidance in terms of decision making responsibilities and the required steps for the acquisition and divestment processes. ILC board proposals examined by the ANAO indicated that the required administrative steps were generally undertaken. In some cases, deeper and broader analysis of risks could be undertaken and provided to the board. Project monitoring and evaluation could also be strengthened in terms of analysing more robustly whether expected benefits have been achieved at a reasonable cost. This would better position the ILC to make more informed decisions about the cost effectiveness of LAP, and strategic projects, going forward.

13. The ILC's evaluation activities for the LAP occur primarily at individual project level and are mostly undertaken just prior to divestment. Project level evaluations assessed by the ANAO were generally limited in their analysis of the achievement of benefits, however, the ILC has periodically undertaken more detailed and larger evaluations of acquisitions which have given greater consideration to assessing the achievement of benefits. An overall evaluation of the performance of properties acquired between 1995 and 2001 was completed in 2002, although a similar program-wide evaluation has not been undertaken since then. The wide variety and scale of projects funded and the different benefits expected from each project do not allow for ready comparison or aggregation of benefits, as these are specific to each project and generally have localised impact however strengthening current project evaluation approaches, at least for the more costly acquisitions, is important. The ILC could also consider undertaking a similar evaluation exercise to that completed in 2002 to obtain a program-wide assessment of the performance of acquisitions, using the findings of the 2002 evaluation as a baseline.

14. The ANAO has made two recommendations to improve the ILC's administration of the LAP. The first is aimed at strengthening the effectiveness of the ILC's current risk management approaches. The second is aimed at the ILC introducing activities into its project appraisal steps to assist in comparative assessments of potential projects and corresponding Indigenous benefits.

Key findings by chapter

Program Management Arrangements (Chapter 2)

15. The ILC has established systems to support management and delivery of the LAP including the development and implementation of a tailored information and management reporting system; and documented processes to guide the program. The ILC requires formal risk plans to be in place for its strategic projects, and regular review of risk occurs for ILC-held businesses. However a similar requirement for a continuous, whole of project-life approach is not consistently applied to all acquisition activities under the LAP. The ILC has embedded risk mitigating strategies into lease agreements, such as progress reporting requirements, but these alone do not identify or allow the ILC to monitor or remedy project-specific risks adequately through all stages of a project's life-cycle. Consequently, the ILC is reactive to issues, rather than enhancing efficiency and delivery of Indigenous benefits through a consistent, forward-looking approach to risk management.

Delivery of Land Acquisition Projects (Chapter 3)

16. The ILC's current program management arrangements generally support the consistent delivery of the LAP. Program delivery rests on a suite of internal guidance material which provides staff with a framework to manage a

LAP project—from application assessment, project and lease management to the eventual divestment of a property. Additionally, for each annual funding round, the ILC publishes external program guidelines which provide applicants with information on both streams of funding, the assessment process, and the criteria to be used. Divestment plans for acquired properties were not completed consistently, and differed in the degrees of detail contained.

17. Processes to support the administration and delivery of the LAP are, for the most part, appropriate for the acquisition of the less complex, commonly purchased properties under the LAP. In relation to strategic projects, the ILC has undertaken a range of investigations and due-diligence activities although these have not necessarily reduced the risks involved in their purchases. For example, ARR, purchased for over $300 million following a decision of the ILC Board in October 2010, suffered an impairment loss in 2012–13 reducing its value to $250 million.[13] While the ARR is owned by an ILC subsidiary and loan repayments are expected to be funded by revenue received through the operation of the resort, the ILC is ultimately responsible for making the loan repayments to the vendor[14] if the subsidiary is unable to meet its debt obligations. The ILC considers that at least $20 million of approximately $35 million available each year to fund the ILC's core legislated functions—land acquisition and land management—would be required to service the interest and principal debt obligations associated with the ARR acquisition.[15]

18. The ILC began work on the ARR acquisition in 2008. In the period leading up to the decision to purchase in October 2010, the then Minister for

13 The impairment loss $62.25 million is based on an assessed carrying amount (non-financial assets) for the resort of $312.25 million, assessed in August 2011: ILC, Annual Report 2012–13, pp. 26, 109, 168, and 199.

14 ARR was purchased through a vendor-finance arrangement.

15 At a Senate Finance and Public Administration Legislation Committee meeting on 22 November 2013, the ILC advised that in the absence of a fundamental turnaround in the tourism market, the ARR acquisition is expected to impact for at least 15 to 20 years on the ILC's ability to fulfill its core statutory functions—land acquisition and land management. The ILC also advised that servicing the interest and principal payments associated with the acquisition of ARR would consume at least $20 million of the approximately $35 million available each year to fund the ILC's core functions. See: Senate of Australia, Finance and Public Administration Legislation Committee estimates, Proof Committee Hansard, 22 November 2013, pp. 26–27.

Finance and Deregulation and the then Minister for Families, Community Services and Indigenous Affairs, and their respective departments, engaged with the ILC with a particular focus on highlighting their concerns about the risks involved in the purchase, although these letters acknowledge the decision to purchase was a matter for the ILC board. On 5 November 2010, following the acquisition of ARR, the ILC Chair wrote to the Minister for Finance and Deregulation confirming the ILC's participation in quarterly project meetings with the then Department of Finance and Deregulation and the then Department of Families, Housing, Community Services and Indigenous Affairs where financial and other performance matters affecting ARR were to be reviewed on a regular basis.

19. In December 2012, subsequent to changes in the membership of the ILC board, further review activities have been initiated. These included a review of board governance arrangements including relationships between the ILC and its subsidiary companies which was completed in January 2013.[16] Furthermore, in September 2013 the board commenced a review to assess the short and medium term operational strategies available to the ILC in relation to ARR to improve its performance. This review was also tasked with informing the ILC board over the adequacy of the due-diligence undertaken in respect of the purchase of ARR. In proposing the acquisition to the board, the ILC supporting papers noted the inherent volatility of the tourism sector and its sensitivity to external influences. The papers identified a range of significant risks including that the purchase price paid over the five-year period would not remain commensurate with ARR's value. This was considered as an extreme risk and likely to occur, however following the completion of various due-diligence activities, the papers noted that the risk had been reassessed as moderate and unlikely to occur. Minutes of the board meeting recorded that frank and interactive discussion occurred around the proposal and that following these discussions, the board ultimately agreed to proceed with the

16 The review reported in February 2013: Deloitte, Board Governance Arrangements, available from: <http://www.ilc.gov.au/Publications/~/media/ILC/ILC%20Website/Content/Publications/Corporate%20Documents/Governance%20Review%20Report.ashx> [accessed 23 July 2013]. Overall, the review concluded that there had been a lack of cohesion at the board level; that board governance arrangements reflected the approach of the ILC prior to its expansion into larger-scale tourism ventures and that further strengthening of governing frameworks was required at the group level.

acquisition. The recent performance of ARR highlights the general importance of public sector bodies applying a sufficiently sceptical approach to assessments when decisions can have significant consequences.

Performance Reporting (Chapter 4)

20. The ILC has not met its annual targets for acquisition and divestment activities in most years between 2008–09 and 2012–13. Against a cumulative acquisition target of 30 the ILC has acquired 22 properties[17], and divested 43 properties against a revised target of 57. The ILC's performance against its targets would be enhanced by the ILC continuing to review and, where necessary, adjusting the methodology it uses to set acquisition and divestment targets and closely considering the risks to these on an annual basis as part of a broader program level risk assessment. This would allow the ILC to more accurately forecast and report against performance in relation to key LAP-related activities.

21. The Indigenous benefits framework has been developed by the ILC to outline the way in which the ILC defines, captures, measures and reports on the achievements of benefits delivered through the ILC's activities. Under the framework, benefits data collected is intended to enable the ILC to report progress and communicate project and program effectiveness. The data collected also informs preparation of the ILC's annual report, input to portfolio budget statements and responses to Ministerial or Parliamentary inquiries. Indigenous organisations provide data through six-monthly progress reports and data for ILC-operated businesses is obtained from property managers and training organisations. While the benefits framework seeks to ensure the collection and use of benefits data is accurate and consistent, the processes for achieving this are under-developed. The ILC has identified methods to support the collection and use of project and program data but has yet to develop systematic approaches for reviewing the accuracy and consistency of data.

17 Including some properties acquired as strategic projects.

Summary of agency response

22. A summary of the ILC's response to the audit is as follows:

The ILC acknowledges the ANAO's positive findings regarding the well developed administrative processes we utilise to support the land acquisition program. We have to date, acquired 246 properties and increased the Indigenous estate by almost 6 million hectares. The ILC's Land Acquisition program has been refined over the years as the ILC takes a continuous improvement approach to program delivery. We therefore welcome the ANAO's recommendations for further improvements.

The Land Acquisition and Land Management program delivery arrangements are currently under review and the ANAO's recommendations will be considered as part of revised program arrangements from 2014.

Recommendations

Recommendation No.1

Para 2.32

To improve risk management, the ANAO recommends the Indigenous Land Corporation regularly monitors and reviews risk for all stages of a project's life, including post-acquisition and post-divestment phases.

ILC's response: ***Agreed.***

Recommendation No.2

Para 3.23

To better balance competing opportunity costs across diverse land acquisition activities, the ANAO recommends the Indigenous Land Corporation develops approaches to including comparative assessments of relevant projects benefits in its project appraisal steps to assist with the assessment of potential projects and their corresponding Indigenous benefits.

ILC's response: ***Agreed.***

Audit Findings

1. Introduction

This chapter describes the background and context to the Land Acquisition Program and its administering body—the Indigenous Land Corporation. The audit objective, scope, criteria and approach are also presented.

Background and context

Addressing Indigenous disadvantage through improving economic participation

1.1 Evidence of Indigenous disadvantage in Australian society is well established[18,19], and addressing the deeply entrenched nature of disadvantage faced by Australia's Indigenous people compared to non-Indigenous people remains a key priority of the Australian Government.[20,21] However, achieving high-level outcomes has been challenging, with the majority of indicators of disadvantage demonstrating only limited improvement since systematic measurements began in 2002.[22]

1.2 To encourage better outcomes for Indigenous Australians and reduce Indigenous disadvantage, the Council of Australian Governments (COAG) agreed in 2008 to coordinate government Indigenous policy implementation through the National Indigenous Reform Agreement (NIRA) (Closing the Gap).[23] The NIRA includes the National Integrated Strategy for achieving six

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18 Banks, G. *Overcoming Indigenous disadvantage in Australia*. Productivity Commission, 2007, available from <http://www.pc.gov.au/__data/assets/pdf_file/0009/64584/cs20070629.pdf> [accessed 25 October 2012].

19 Maru, Y.T. and V.H. Chewings. *A review of measurement and causal analysis of Indigenous poverty and disadvantage in remote Australia*. Commonwealth, Scientific and Industrial Research Organisation (CSIRO), 2011, available from <http://www.csiro.au/files/files/p10rl.pdf> [accessed 25 October 2012].

20 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: key indicators 2011*, Productivity Commission, 2011, p. iii, available from <http://www.pc.gov.au/__data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf> [accessed 28 February 2013]; Council of Australian Governments (COAG) Reform Council, *Indigenous reform 2010–11: Comparing performance across Australia*, 2012, pp. 1–10, available from <http://www.coagreformcouncil.gov.au/sites/default/files/files/reports/Indigenous/performance-report-2010-11/Indigenous_Reform_2010-11_full%20report.pdf> [accessed 28 February 2013].

21 Liberal Party of Australia, 2013, The Coalition's policy for Indigenous Affairs, September, pp. 2–8, available from <http://www.liberal.org.au/our-policies> [accessed 22 October 2013].

22 ibid.

23 see COAG, *Intergovernmental Agreement (IGA) on Federal Financial Relations*, updated 2011, available from <http://archive.coag.gov.au/intergov_agreements/federal_financial_relations/index.cfm> [accessed 18 March 2013].

national Closing the Gap targets.[24] The six targets are directed at improving health, education and employment outcomes among Indigenous Australians.[25] Land is recognised as playing an important role in reducing Indigenous disadvantage with COAG noting that 'access to land and Native Title assets, rights and interests can be leveraged to secure real and practical benefits for Indigenous people' in relation to economic participation.[26] In turn, greater economic participation is expected to lead to improvements in health and education indicators. In this respect, access to land for cultural and social reasons is also recognised as important and improving Indigenous people's access to land has been an element of successive Australian Governments' approaches to reducing Indigenous disadvantage.

Indigenous Land Corporation

1.3 The ILC was originally established in June 1995 under the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act). The ILC was re-established under section 191A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) as an independent statutory authority following the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC).[27] Following the 2013 Federal election, the ILC became a portfolio body of the Prime Minister and Cabinet portfolio. Prior to this, the ILC was a body within the Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio.

1.4 The ILC's purpose, in broad terms, is to assist Indigenous Australians to acquire land and manage Indigenous-held land 'so as to provide economic, environmental, social or cultural benefits'[28] for Indigenous Australians. The Act does not explicitly define the nature of a benefit but the ILC describes benefits as being 'long-term improvements in Indigenous wellbeing'.[29] As described in the 2013–14 FaHCSIA portfolio *Portfolio Budget Statements*, the ILC's Outcome is 'Enhanced socio-economic development, maintenance of

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24 COAG, *NIRA (Closing the Gap)*, February 2011 updated agreement, p. A-19, available from <http://www.federalfinancialrelations.gov.au/content/npa/health_Indigenous/Indigenous-reform/national-agreement.pdf> [accessed 15 March 2013].

25 ibid.

26 ibid., p. 6.

27 Indigenous Land Corporation (ILC), *Annual Report*, 2006–07, p. 11.

28 Section 191B, ATSI Act.

29 ILC, *Annual Report 2011–12*, p. 128.

cultural identity and protection of the environment by Indigenous Australians through land acquisition and management.'[30] The ILC gives effect to this through its Program 1.1: 'Acquisition and Management of an Indigenous Land Base.'[31]

ILC board of directors

1.5 The ILC is governed by a board of directors (the board). The board comprises seven members, including a chairperson. Under section 191X of the ATSI Act, the board must have business and financial management experience—and the chairperson and at least four directors, must be Indigenous Australians. The board is responsible for the proper and efficient performance of the functions of the ILC, and for determining the ILC's policy. It is also the primary decision maker to acquire and divest land. The appointment of the board directors is decided by the responsible minister.[32] The ATSI Act requires that the ILC board appoints and oversees the ILC's Chief Executive Officer (CEO) who is responsible for the administration of the ILC, acting in accordance with the policies and directions set by the board.

ILC governance and organisation

1.6 As a portfolio body, the ILC operates independently but reports under the ATSI Act to the responsible minister[33], and also the Minister for Finance under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Ministers are not empowered to direct the ILC in relation to any of its activities[34], except as expressly provided for in the ATSI Act[35] or the CAC Act.[36] Under the CAC Act, the ILC is required to inform the Minister for Finance of any significant events, such as the establishment of a new company; and keep

30 FaHCSIA portfolio, *Portfolio Budget Statements 2013–14*, p. 263.

31 ibid., p.266.

32 Until September 2013, the responsible minister was the Minister for Families, Community Services and Indigenous Affairs. Following machinery of government changes, the Minister for Indigenous Affairs in the Prime Minister and Cabinet portfolio became the responsible minister.

33 ibid.

34 Section 191L, ATSI Act.

35 For example, section 191P(8), ATSI Act requires the ILC to give the responsible minister a copy of a Regional Indigenous Land Strategy produced under section 191P, if requested.

36 The *Public Governance, Performance and Accountability Act 2013*, which commences 1 July 2014, will replace the CAC Act for these provisions, and other governance, performance and accountability responsibilities. Under the new legislation, all Commonwealth entities—including the ILC—will continue to have responsibilities to, for example, keep their minister and the Parliament informed of their activities through regular and *ad hoc* reporting, including the provision of corporate plans and annual reports.

the Minister for Finance informed of its operations and provide reports.[37] The ILC governance framework is outlined in Figure 1.1 (on page 31).

1.7 In recent years, the ILC has commissioned several reviews relating to its operations and governance. In September 2010, an external review of policies and programs of the ILC was concluded.[38] This was followed by a review into board governance arrangements undertaken between December 2012 and January 2013.[39] Overall, the review concluded that there had been a lack of cohesion at the board level; that governance arrangements reflected the approach of the ILC prior to its expansion into larger-scale tourism ventures and that further strengthening of governing frameworks was required when considered across the group (ILC and its subsidiary companies). In September 2013, the ILC commenced a review to assess the short and medium term operational strategies available to the ILC in relation to Ayers Rock Resort (ARR) to improve its performance. This review was also tasked with informing the ILC board over the adequacy of the due-diligence undertaken in respect of the purchase of ARR. This review is expected to be completed in early 2014.

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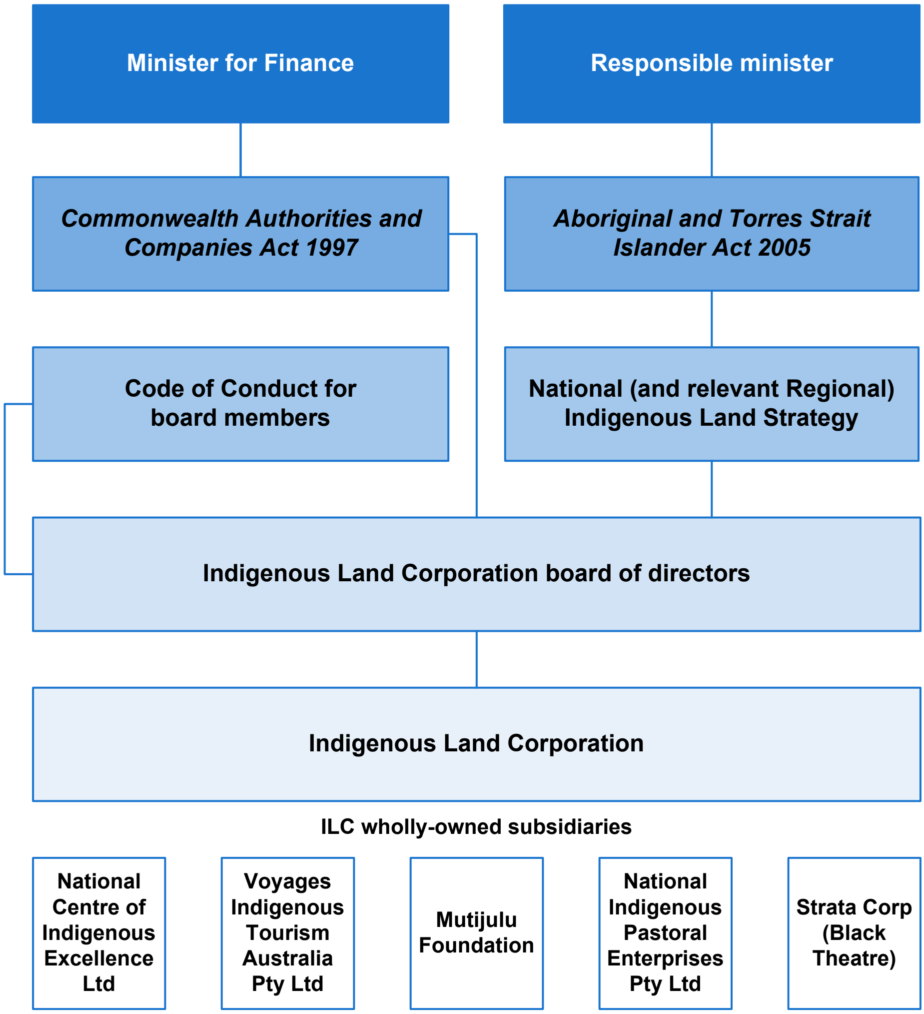
37 Sections 15 and 16, CAC Act.

38 Aegis Consulting Australia, External Review of the Policies and Programs of the Indigenous Land Corporation, September 2010, available from: <http://www.ilc.gov.au/~/media/ILC/ILC%20Website/Content/Publications/Corporate%20Documents/16323_Aegis_ILC_Audit_Report_Print.ashx> [accessed 27 March 2013]. This review is discussed further at paragraph 4.20.

39 Deloitte, Board Governance Arrangements, February 2013, available from: <http://www.ilc.gov.au/Publications/~/media/ILC/ILC%20Website/Content/Publications/Corporate%20Documents/Governance%20Review%20Report.ashx> [accessed 23 July 2013]. This review is discussed further at paragraph 3.48.

Figure 1.1: ILC governance framework as at June 2013



Source: ANAO.

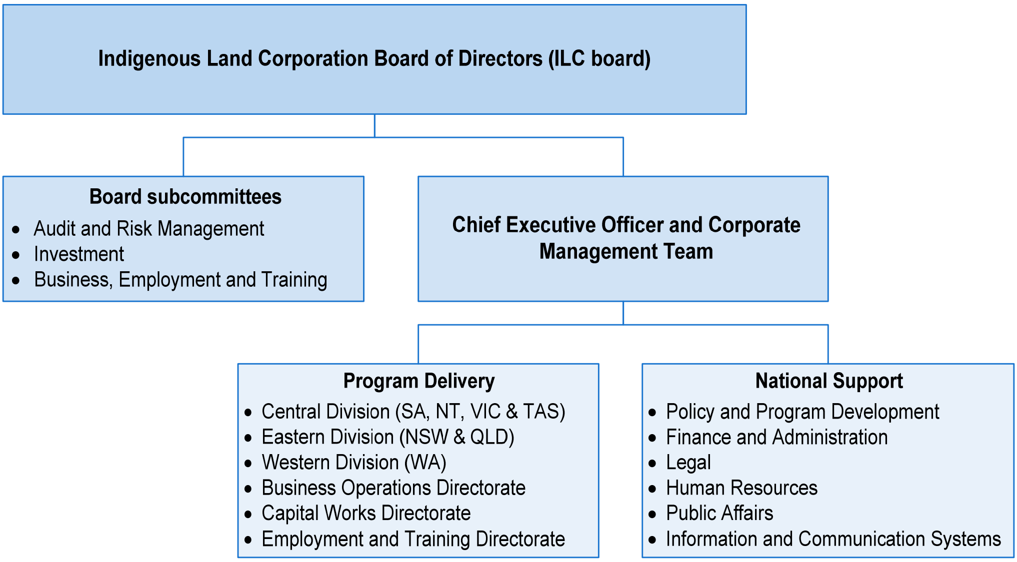
ILC subsidiaries

1.8 ILC subsidiaries, as outlined in Figure 1.1, are 100 per cent owned by the parent entity (the ILC). The ILC has the power to govern the financial and operating policies of subsidiaries so as to benefit from their activities.

ILC administration

1.9 The ILC's organisational structure is outlined in Figure 1.2.

Figure 1.2: ILC organisational structure



Source: ILC, *Annual Report 2011–12*, p. 14.

Notes: ILC only; excludes subsidiaries.

1.10 As at 30 June 2013, the ILC had 262 staff.

Funding

1.11 The ILC's primary source of income is payments made from the Aboriginal and Torres Strait Islander Land Account (Land Account) under section 193 of the ATSI Act. The Land Account is a capital fund created by the Australian Government in 1995 to provide, in perpetuity, an income stream to the ILC to fund its activities. Capital contributions were made to the fund between 1995–96 and 2003–04. Until 2010, the ILC received an annual payment from the Australian Government equivalent to the realised real return on the investments of the Land Account in the previous year. However, the realised real return fluctuated markedly during the five years from 1 July 2004, from nil (in 2007–08) to $96.4 million (in 2006–07). To provide a predictable source of funding for the ILC, the Government agreed in 2010 to provide the ILC with a guaranteed minimum amount of $45 million per annum, indexed to the Consumer Price Index (CPI).[40] At 30 June 2013, the net assets of the Land Account were $1.968 billion, an increase of $29) million from the previous

40 Macklin, J. Indigenous Land Corporation secures reliable income source, 30 June 2010, available from <http://jennymacklin.fahcsia.gov.au/node/900> [accessed 21 May 2013].

year.[41] In 2012–13, the ILC received $65.9 million from the Land Account.[42] The Land Account is administered by the Department of the Prime Minister and Cabinet.[43]

Land Acquisition Program

1.12 Under the LAP, potential land acquisitions are identified by inviting Indigenous organisations to apply to the ILC for assistance to acquire land[44] under one or both of the two streams of assistance, organised around an annual call for applications:

- socio-economic development acquisitions—to provide significant social and/or economic benefits for Indigenous people through training and employment, by developing viable and sustainable land-based business enterprises and/or implementing social programs; and
- cultural and environmental acquisitions—to provide cultural and/or environmental benefits for Indigenous people through securing access to, and the protection and maintenance of, land with high cultural and/or environmental significance.[45]

1.13 The ILC uses an established framework and specific criteria to assess applications on the basis of the Indigenous benefits expected to be achieved, as well as assessing the organisation's ability to hold title to the land and deliver benefits to Indigenous people over the longer term. Upon approval of the proposed project, the ILC board directs the ILC to purchase a suitable property at market value, after which the ILC becomes the title-holding body and enters into a lease with an Indigenous organisation, typically for a three-year period. Under the ATSI Act, divestment is required to be made within a reasonable time.[46] Should the organisation demonstrate the expected management capability, title to land is ultimately passed to the Indigenous organisation and

41 FaHCSIA, *Annual Report 2011–12*. p. 335; *Annual Report 2012–13*. p. 299.

42 FaHCSIA, *Annual Report 2012–13*. p. 298. Additional payments can be made to the ILC if the actual capital value of the Land Account exceeds the indexed capital value. This occurred in 2012-13 resulting in an additional payment to the ILC of $18.4 million. This is included in the $65 million paid to the ILC.

43 Until September 2013, the Land Account was administered by the Department of Families, Housing, Community Services and Indigenous Affairs.

44 Land includes works and improvements made to land, such as buildings, sheds, cattle yards and other assets fixed or attached to land.

45 Applications to the cultural and environmental values stream can be made at anytime; applications to the socio-economic development stream closed on 28 June 2013 for the most recent round.

46 Section 191D(3)(b), ATSI Act.

the parties enter into a post-divestment monitoring phase to ensure that the project's benefits continue to accrue. Section 191S of the ATSI Act establishes mechanisms protecting land acquired under the LAP from being dealt with or disposed without the ILC's consent. The ILC also has the ability to re-acquire divested properties under some circumstances.

1.14 As at 31 October 2013, the ILC had reported that since its inception it had acquired a total of 246 properties[47] of which 170 have been divested, and made a contribution of over 5.8 million hectares to increasing Australia's Indigenous estate. As at 30 June 2013, the value of non-financial assets held by the ILC amounted to $573.9 million. Significant elements of this amount include properties held for grant to Indigenous organisations ($151.9 million) and the ARR ($250 million).[48]

Strategic projects

1.15 The ILC defines strategic projects as projects that the ILC initiates to achieve significant Indigenous benefits, including employment and training. These projects usually involve collaboration with other Australian Government or State/Territory agencies or the private sector. Strategic projects are generally complex and long-term projects. A strategic project can involve the acquisition of land but this is not always the case and the ILC may facilitate its support through other programs such as the Land Management Program. Strategic acquisition projects are initiated through the ILC rather than through the normal assessment of applications under the LAP. If a strategic project involves the acquisition of land, the ILC expect divestment to occur over a longer period of time compared to acquisitions made through LAP. Strategic projects can include agricultural and tourism operations in regional and remote locations, as well as facilitating Indigenous businesses or Indigenous service delivery from premises in urban centres.

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47 The ILC's expenditure on acquisitions totals $541 million over this period. Contributions from other governments and stakeholders are frequently identified as part of a land acquisition project proposal so the total value of acquisitions is likely to be greater than this amount.

48 ILC, *Annual Report 2012–13*, p. 159. Non-financial assets include the value of property, plant and equipment. This includes properties acquired as strategic projects along with those acquired through the application-based LAP.

Audit objective, criteria and scope

Audit objective

1.16 The objective of the audit was to assess the effectiveness of the Indigenous Land Corporation's administration of the Land Acquisition Program.

Audit criteria

1.17 To form a conclusion against the audit objective, the ANAO's high level criteria included assessing the program management and delivery arrangements in place to acquire and divest land through LAP to the benefit of Indigenous Australians; and assessing the ILC's systems for measuring and evaluating the benefits of ILC acquisition and divestment activities against program objectives.

Audit scope

1.18 The audit scope included the ILC's land acquisition and divestment activities since 2008, although some file reviews, data analysis and site visits covered projects dating to the late-1990s, to understand changes to LAP delivery. The audit focussed primarily on the administration of the application-based LAP. In October 2013 the ILC's purchase (ARR), which was undertaken as a strategic project, began receiving increased media attention due to issues surrounding its financial performance in 2012–13. The ILC board commenced a review in September 2013 to assess the short and medium term operational strategies available to the ILC in relation to ARR to improve its performance. This review was also tasked with informing the ILC board over the adequacy of the due-diligence undertaken in respect of the purchase of ARR. The review is expected to be completed in early 2014. The ANAO has given some additional coverage to the ILC's purchase of the ARR in the light of Parliamentary interest but has not replicated the work being undertaken in the review.

Audit approach

1.19 The audit approach included:

- examination of program-related information;
- interviews with managers and project officers responsible for LAP acquisition and divestment activities, situated in Division Offices (Perth, Adelaide, Brisbane);
- interviews with ILC staff, situated in head office (Adelaide, Brisbane and Canberra);
- file reviews of a selection of 20 LAP application-based projects—across the range of socio-economic and cultural and environmental values applications; and
- site visits to eight projects and consultation with project beneficiaries.

1.20 The audit was conducted in accordance with ANAO Auditing Standards at a cost of $483 860.

Report structure

1.21 The structure of the report is outlined in Figure 1.3.

Figure 1.3: Report structure

Chapter 1—Introduction

- Background and context
- Indigenous Land Corporation
- Land Acquisition Program
- Strategic projects
- Audit objective, criteria and scope
- Audit approach
- Report structure

Chapter 2—Program Management Arrangements

- Introduction
- ILC governing frameworks
- Arrangements to support LAP decision making
- Risk management for the LAP
- Conclusion

Chapter 3—Delivery of Land Acquisition Projects

- Introduction
- Application assessment and acquisition approval
- Property acquisition
- Property leases and divestment
- Monitoring
- Strategic projects
- Conclusion

Chapter 4—Performance Reporting

- Introduction
- Indigenous benefits framework
- Program performance information management
- Evaluation
- Reporting to the Parliament
- Conclusion

Source: ANAO.

2. Program Management Arrangements

This chapter examines the ILC's program management arrangements supporting the LAP and delivery of Indigenous benefits.

Introduction

2.1 Sound program management arrangements underpin the effective delivery of programs. These arrangements include the set of responsibilities, practices, policies and procedures in place to ensure program objectives are achieved consistent with enabling legislation and Government priorities, and program risks are managed.[49]

2.2 The ILC has been administering the LAP since June 1995. Over this time, the ILC has established supporting frameworks to implement the LAP. In this context, the ANAO examined:

- ILC governing frameworks;
- arrangements to support LAP decision making; and
- risk management for the LAP.

ILC governing frameworks

2.3 The ATSI Act defines the ILC's two functions as assisting with land acquisition and land management, to benefit Indigenous Australians.[50] Key requirements under the legislation guiding the ILC in relation to land acquisition activities are that the ILC must:

- assist Indigenous Australians to achieve economic, environmental, social or cultural benefits—section 191B;
- have regard to the National (and relevant Regional) Indigenous Land Strategy—sections 191N, 191Q and 191P;
- act in accordance with sound business principles when conducting activities of a commercial nature—section 191F(1);

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49 ANAO Better Practice Guide—*Implementation of Programme and Policy Initiatives*, October 2006, p. 13. The Better Practice Guide discusses the need to have sound governance arrangements in place when implementing programs and policies. For present purposes, 'program management arrangements' refer to the governance arrangements in place which support delivery of the LAP specifically.

50 Section 191B, ATSI Act.

- give priority to social and cultural benefits—section 191F(2)(aa);
- maximise, where possible, Indigenous employment and the use of services and goods provided by Indigenous businesses—sections 191F(2)(b) and (c);
- undertake a Native Title search when considering acquisition of land—section 191D(4);
- grant land within a reasonable time—section 191D(3)(b);
- grant land subject to terms and conditions—section 191D(1A); and
- dispose of properties not achieving Indigenous benefits—section 191J.[51]

2.4 Overall, the administrative design of the LAP generally reflects the requirements of the ATSI Act. The program objective refers to the aims of achieving economic, environmental, social and cultural benefits; performance criteria are designed to focus on the extent to which LAP emphasises Indigenous employment outcomes; and the program streams enable priority to be given to social and cultural benefits. The strategy documents required to be developed under the ATSI Act[52] are established but, as discussed in paragraph 2.10, provide generally limited direction. Activities, such as undertaking Native Title searches and granting land subject to terms and conditions are included in the established administrative processes and are generally consistently performed. ILC program guidelines require divestment arrangements to be in place to divest a property 'within a reasonable time'[53]; and where the ILC board has identified that Indigenous benefits are no longer achievable, the ILC has disposed of properties in some cases.

Arrangements to support LAP decision making

2.5 The ILC has established systems to support decision making and guide management of the LAP. These include:

- producing strategies, as required under the ATSI Act;
- the implementation of a suite of guidelines, tools and templates; and

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51 ILC, *NILS 2013–17*, pp. 37–38.

52 Section 191N requires National Indigenous Land Strategies (NILS) be developed; section 191P requires Regional Indigenous Land Strategies (RILS) be developed.

53 Property divestment arrangements, including Divestment Plans, are examined in Chapter 3.

- the development and implementation of the ILC's Land Acquisition and Management Information and Reporting System (LAMIRS).

National and Regional Indigenous Land Strategies

2.6 The National Indigenous Land Strategy (NILS) and its preparation is a requirement of the ATSI Act.[54] The NILS sets out the ILC's five-year strategic direction, key priorities and how the land management and land acquisition programs will be implemented to meet the legislated function of assisting Indigenous people to acquire and manage land to achieve Indigenous benefits.[55] Regard must be had by the ILC to the NILS when fulfilling its functions under the Act.[56] In April 2013, the ILC released the NILS for the period 2013–17; having, as required by the ATSI Act, delivered a copy of the NILS to the responsible minister on 8 March 2013. The current NILS was tabled in the Senate on 14 May 2013 and in the House of Representatives on 17 May 2013.[57]

2.7 To complement the NILS, Regional Indigenous Land Strategies (RILS) are also required to be developed under the ATSI Act[58], to inform and guide ILC operations at the regional level. RILS address matters such as state laws relating to state-acquired or managed Indigenous lands, and regional demographical variation. There are currently seven RILS in place—aligned with the boundaries of the states and territories.[59] The ILC advised the ANAO that it is currently reviewing and re-aligning each of the RILS to the new 2013–17 NILS. The revised documents are scheduled to be presented to the ILC board for final clearance in December 2013.

Consultation and review undertaken in preparation for the 2013–17 NILS

2.8 The NILS is a strategic document (covering a five-year period) during which time it (and the RILS) may be reviewed by the ILC as necessary.[60] To inform the development of the 2013–17 NILS, the ILC conducted a national

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54 Section 191N, ATSI Act.

55 ILC, *National Indigenous Land Strategy 2013–17*, available from: <http://www.ilc.gov.au/~/link.aspx?_id=8D4468C409DF44AAA4461918FCCFE67F&_z=z> [accessed 3 July, 2013]; section 191F(2), ATSI Act sets out the priorities the ILC must adhere to when performing its functions.

56 Section 191Q, ATSI Act.

57 As required by sections 191N(6) and (7), ATSI Act.

58 Section 191P, ATSI Act.

59 New South Wales and the Australian Capital Territory are covered by the one RILS.

60 Sections 191N and 191P, ATSI Act.

consultation process which sought stakeholder feedback from over 300 individuals, Indigenous organisations, non-government organisations, government agencies and industry groups. The ILC informed the ANAO that consultation outcomes, coupled with the lessons learned over time, formed the foundations of the 2013–17 NILS.

Adequacy of the NILS as a strategic document in support of the LAP

2.9 The NILS provides a broad framework within which the LAP is administered. The NILS provides general information on:

- the ILC's priority outcomes, which are:
  - access to and protection of cultural and environmental values, and
  - socio-economic development;
- the Indigenous benefits framework—setting out how the ILC measures progress toward assisting Indigenous people achieve benefits; and
- how the ILC’s statutory functions will continue to be administered through the LAP and related Land Management Program (LMP).

2.10 The 2013–17 NILS also includes the introduction of a Native Title Policy; more emphasis on collaboration across regions, with government agencies and Indigenous representatives; recognition of opportunities for Indigenous benefits emerging in areas such as the carbon economy and natural resources. However, the NILS could be improved by specifying key objectives and targets to be achieved for the period concerned, and how the strategy will be assessed.

Guidelines, tools and templates

2.11 The ILC has developed and implemented a suite of internal and external guidance material, tools and templates to facilitate a consistent approach to managing LAP projects. While not explicitly required of CAC Act bodies, the ILC has nevertheless had regard to Australian Government better practice guidance for grants administration[61] by developing and publishing program guidelines for both streams of the LAP including the:

61 Australian Government agencies covered by the *Financial Management and Accountability Act 1997*, are required to adhere to Commonwealth Grants Guidelines (CGGs). The ANAO has also published a Better Practice Guide to assist agencies to comply with the CGGs: ANAO, *Implementing Better Practice Grants Administration*, Better Practice Guide, December 2013.

- Land Acquisition Socio-Economic Development Handbook; and
- Land Acquisition Cultural and/or Environmental Handbook.

2.12 The handbooks are made publicly available on the ILC website and provide interested parties, particularly applicants and potential applicants, with information on the LAP including: program objectives; application guidelines; answers to frequently asked questions; and ILC contact details.

2.13 For staff administering the LAP, the ILC has developed guidance documents, tools and templates. The ILC notes its guidance was developed based on lessons learned throughout the lifespan of the LAP and is designed to support staff in managing the land acquisition process from application submission through to post-divestment monitoring. The principal guidance material consists of the:

- Land Assessment to Acquisition User Guide;
- Land Holding to Grant User Guide; and
- Post-Grant User Guide.

2.14 Each guide is accompanied by specific tools and templates which have been created to enable staff to conduct each of the required steps outlined within the guides. The tool or template required for completion of each step is specified within the relevant area of each guide.

2.15 Overall, the ILC's guidance material and systems are appropriate to support staff to administer each process of the LAP. The ANAO's assessment of a selection of project files indicated that guidance materials were followed and templates used for the sample of projects. Program delivery is examined further in Chapter 3.

Land Acquisition and Management Information and Reporting System (LAMIRS)

2.16 LAMIRS is an information technology system designed and implemented in 2009–10 by the ILC to support program and project level governance. The system is intended to allow the ILC to better manage land acquisition and land management projects by:

- providing staff with accurate information about projects and properties;

- assisting project managers in their day-to-day management and monitoring of projects through information and tools for developing and monitoring schedules, budgets and Indigenous benefits;
- integrating with the ILC's financial management system, records management system and the contract register to support consistency across information systems;
- providing accurate and timely reports to assist managers and staff to monitor progress of programs, and projects; and
- making available a 'dashboard' that provides indicators and alerts to help monitor progress of projects.

2.17 Specifically, LAMIRS provides operational staff, executive management and the ILC board with information on:

- properties and their relationship with projects;
- beneficiaries such as applicant groups, title-holding bodies and Indigenous organisations;
- any partners or collaborating agencies involved with a project;
- benefits (projected and achieved);
- budgets and amounts expended;
- scheduled activities and a timeframe for completion; and
- dashboard alerts.

2.18 The ANAO's examination of LAMIRS for the selection of projects reviewed demonstrated that ILC staff use LAMIRS in the daily management of the LAP. LAMIRS is also used regularly to generate reports for management and the ILC board, and to inform published documents such as the ILC's annual report. LAMIRS data collection and reporting is examined further in Chapter 4.

Risk management for the LAP

2.19 Risk management refers to the coordinated activities implemented to direct and control an organisation with regard to risk—those uncertainties that impact on an organisation achieving its objectives. To effectively manage risk, organisations should systematically apply policies, procedures and practices to: communicate, contextualise, identify, analyse, evaluate, treat, monitor and review risks.[62]

ILC risk management arrangements

2.20 The ILC's risk management arrangements are outlined in the ILC Risk Management Framework and the Corporate Risk Management Plan 2012.[63] These documents outline the identification, assessment, treatment and monitoring of risks affecting the ILC and its clients. Under this framework, the ILC has identified three levels at which to focus its risk management activities:

- corporate level—the Corporate Risk Management Plan is to identify the top corporate risks annually and set out appropriate treatment plans and responsibilities;
- program level—program level risks are to be identified, assessed and treated via program level risk management plans; and
- project level—project level risks are to be identified and assessed and a treatment plan developed at the outset of each project. This is mandatory to achieve ILC board project approval.

Corporate level risk management—governance

2.21 The ILC board has overall responsibility for risk management within the organisation. The board is supported by the Audit and Risk Management Committee, which has the role of overseeing the ILC risk management program, approving an annual risk-based operational audit plan and monitoring risk ranked recommendations arising from these. The ILC governance framework for the management of ILC risk is shown in Figure 2.1.

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62 Australian, New Zealand and International Risk Management Standard 31000:2009—*Risk Management Principles and Guidelines*.

63 The ILC notes that the Risk Management Framework and Corporate Risk Management Plan are revised annually with reference to the Australian Standard.

Figure 2.1: ILC risk management governance roles

Source: ILC Corporate Risk Management Plan 2012.

Program level risk management

2.22 As discussed in paragraph 2.20 the ILC's Risk Management Framework and Corporate Risk Management Plan 2012 identifies that program level risk assessment plans are to be prepared to identify, assess and treat risks. The ILC's approach to program level risk management has been to embed risk management and treatment procedures for the LAP into individual program level processes. For instance, the standard LAP application assessment and acquisition process—as presented in the LA [land acquisition] Assessment to Acquisition User Guide—includes the following:

- the establishment of a National Assessment Team (NAT) to critically assess each application and the capabilities of the applying Indigenous organisation;

- completion of a Further Investigation Plan and due-diligence processes (which includes relevant building inspections, land zoning and Native Title enquiry);
- field workshops held with the applying Indigenous organisation to discuss the project and verify the adequacy and condition of the property; and
- completion of a risk assessment of the proposed project (which to be used throughout the life of the project).

2.23 The activities identified by the ILC as forming their program level risk approach, while to be applied across the program, are essentially project level risk activities. More limited assessment of the risks to the overall program is undertaken, with the last program risk assessment occurring in 2007. The ILC advised that it considers the risks to the LAP in the context of setting its annual targets, although key risks and relevant management activities are not documented and made available for ongoing monitoring and review. In addition, no information on risks is included in the NILS.

Project level risk management

2.24 As a part of the application assessment and approval process, short-listed applications, or those which meet all LAP criteria, are presented to the ILC using the Land Acquisition Board Report (the board report).[64] As a part of the board report, a project risk assessment must be undertaken.

2.25 ILC officers completing the risk assessment are to consider risks associated with Indigenous benefits; land use and Indigenous involvement; property (including environment and heritage issues); and project management. The risk assessments inform the ILC board of the risks associated with the proposed project and acquisition of the property; and inform risk management for the life of the project until divestment.

2.26 As a part of the ANAO's review of files for 20 LAP application-based projects, board reports and corresponding risk assessments were examined. Despite each project having unique characteristics, risk assessments commonly listed similar risks which related to the Indigenous organisations' governance

64 The Land Acquisition Board Report is expected to provide the ILC board with a compelling case for why the ILC should support the project and gives all information required for the ILC board to make sound decisions for its approval, or otherwise.

arrangements and capacity to manage the proposed project; the security of other government funding; potential failure to comply with reporting requirements; and high-level risks related to the success of the proposed project. Further, the level of detail and consideration given to each risk assessment by ILC staff varied.

2.27 In September 2012, the ILC conducted a Project Evaluation Review for the LAP. The review was undertaken to assess the quality of all project evaluations produced by staff in the 2011–12 financial year. The review made several key findings, with one primary finding relating to project risk management: 'a number of projects met with foreseeable risks that did not appear to have been identified in the project risk assessments. These included: lengthy wet seasons, drought, external funding issues, lack of insurance, staff turnover and market pressures'.

Whole of life project-life risk monitoring

2.28 The ILC emphasises the identification and assessment of project risks early during the life of a project[65]—especially during the project application and assessment stages—in preparation for the ILC board making its decision whether to approve an acquisition. The ILC advised the ANAO that the risks identified then inform subsequent whole of project-life risk monitoring for each project. The ANAO's examination of files for 20 LAP application-based projects and review of the ILC's risk management framework indicated that for this sample of projects, the ILC consistently prepared a risk management table in preparation for monitoring projects, including post-divestment. However, there was little available evidence demonstrating active monitoring of project level risks throughout the life of the project. Furthermore, LAMIRS provides the ILC with many scheduling and reporting benefits, the system does not have the ability to record or monitor risks associated with projects. The ILC has advised that it intends to modify LAMIRS to incorporate risk management features in the future.

2.29 In the absence of systematic, whole of project-life risk monitoring, the terms of the lease entered into between the ILC and the Indigenous organisation become the primary tool used to manage or alleviate risk during

65 For further information on the early stages of LAP program delivery, refer to: Chapter 3, 'Application Assessment and Acquisition Approval'.

the project lifecycle. The lease agreement enables the ILC to enforce the following activities to help mitigate risks, including:

- six-monthly reporting requirements;
- field visits;
- work plans (a structured approach to undertaking property works and maintenance); and
- the provision of insurance and public liability currency certificates.

2.30 While lease agreements, if managed well, can be effective in managing risks, over the longer term the strategies within the lease agreements may be insufficient to enable the ILC to monitor project specific risks—particularly those whole of project-life risks associated with a property, such as maintenance and repair, and natural disaster. For example, ILC acquisitions in rural areas commonly have risks associated with land and stock, and these are not routinely identified.[66] The following case study is an example of a project that the ILC subsequently evaluated as having not been successful due to the realisation of risks that were not identified.

Case Study
Acquisition of land to expand existing social services

In early 2007, the ILC board approved the acquisition of land to be used by an applicant Indigenous organisation to expand their urban-based social services and to construct a health and wellbeing centre, and child care centre. In June 2008, the ILC board agreed that, upon acquisition, the land would be divested to the Indigenous organisation. This was based on the condition that all building works would be complete by December 2011.

The primary risk identified in the board report centred on the re-zoning of the property, which took longer than anticipated and delayed acquisition by two years. In finalising the purchase in 2009, the ILC conducted investigations into the Indigenous organisation's financial status and found that the Indigenous organisation did not have sufficient funds to build the proposed facilities. Consequently, the ILC was unable to divest the property and, as of January 2013, the ILC remained the title-holding body under a three-year lease agreement.

The ILC did not identify to the ILC board the risk that the Indigenous organisation would not have the funds required to complete the project, and the Indigenous organisation's financial issues were not identified until the property had already been purchased. The Indigenous organisation is still working to secure funding to complete the project, as at January 2013.

Source: ANAO analysis of relevant ILC documents.

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66 The ILC notes that foreseeable risks associated with rural projects include: 1) potential fire, flood, or storm damage to land, buildings, machinery, infrastructure or stock; 2) land degradation caused by farming practices or environmental conditions; and 3) stock illness caused by disease, parasites or environmental conditions.

2.31 Conversely, the ILC-held businesses—where lease agreements are not required—use the ILC Corporate Risk Treatment Plan requiring that each business has a separate risk management and treatment plan in place. Additionally, for each business, an annual systematic review of risks is to be conducted, pursuant to the Business Risk Treatment Plan. The ILC could adapt the approach it takes to risk management of ILC-held businesses to its LAP properties, emphasising regular review of project risk throughout the life of an acquisition project, including the post-divestment monitoring phase. Such an approach would be supported by ensuring LAMIRS incorporates risk management features, assisting ILC staff to continuously monitor and revise project level risk.

Recommendation No.1

2.32 To improve risk management, the ANAO recommends the Indigenous Land Corporation regularly monitors and reviews risk for all stages of a project's life, including post-acquisition and post-divestment phases.

ILC's response:

Agreed. The ILC agrees with this recommendation. As part of ILC continuous improvement, the ILC is in the process of enhancing the risk management processes captured within our Land Acquisition Land Management Information Reporting System (LAMIRS) data base.

Conclusion

2.33 The administrative design of the LAP generally reflects the requirements of the ATSI Act. Overall, program management arrangements for the LAP are reasonably effective and support the ILC board in decisions to acquire and divest property. Program delivery is supported by use of information management and reporting systems but these systems could be better employed in support of project level risk management. The key strategies that are to guide the ILC's program of land acquisition and divestment over the medium-term, the NILS and RILS are in place but could be made more useful by specifying the targets to be achieved by pursuing the strategy, and how the success of the strategy is to be assessed.

2.34 The ILC requires that formal risk plans be implemented and reviewed for strategic projects, and that regular review of risk occurs for ILC-held businesses, however a similar requirement for continuing risk assessment and review to be used throughout the life of the project is not applied to all LAP projects. The ILC completes an initial risk assessment for each project in preparation for the ILC board's decision to approve an acquisition; and the ILC has embedded risk mitigating strategies into lease agreements through, for instance, imposing reporting requirements. However, these alone do not allow the ILC to monitor or remedy project-specific risks adequately through all stages of a project's life-cycle. The result is that risk management is currently centred on reacting to events, rather than by enhancing efficiency and delivery of benefits through a consistent, forward-looking basis.

3. Delivery of Land Acquisition Projects

This chapter examines the ILC's delivery of LAP projects including the processes undertaken to select and acquire properties to deliver Indigenous benefits.

Introduction

3.1 The ILC delivers the LAP under two streams: socio-economic development, and cultural and environmental values, as discussed in paragraph 1.12. These streams aim to deliver benefits to Indigenous people, including social or economic benefits, and/or benefits through the protection of cultural and environmentally significant land. Value for money of the benefits proposed is a key consideration and, in this context, it is important that a systematic approach to property acquisition and divestment is defined and consistently administered. To determine the effectiveness of the ILC's program delivery, the ANAO examined the following LAP delivery processes:

- application assessment and acquisition approval;
- property acquisition;
- property leases and divestment;
- monitoring; and
- arrangements for strategic projects.

Application assessment and acquisition approval

Program promotion and applicant guidance

3.2 The ILC promotes the LAP through a variety of activities including: website advertising; direct mail advertising; Indigenous media print, television and radio advertising. Information relating to the LAP is published on the ILC website including: guidelines, case studies and application forms; frequently asked questions; and contact details. The guidelines—one for each stream—outline the program objective, criteria, assessment process, and the responsibilities of successful applicants.

Program criteria

3.3 To be eligible for assistance under the LAP, applicants must be able to demonstrate, through their application, that they are able to meet the required criteria. The criteria developed for the two streams differ, and are listed below in Table 3.1.

Table 3.1: Criteria used for the two LAP streams

Socio-economic development stream	Cultural and environmental values stream
Applicant	**Applicant**
Must be an Indigenous-controlled organisation that is: • incorporated (or in the process of becoming incorporated); • legally able to enter into a lease arrangement and hold land title; and • effectively governed and compliant with regulatory responsibilities	Must be an Indigenous-controlled organisation that is: • incorporated (or in the process of becoming incorporated); • legally able to enter into a lease arrangement and hold land title; and • effectively governed and compliant with regulatory responsibilities
Demonstrate capacity to own and manage land, and undertake the proposed land use	Include in its membership, Traditional Owners or people with traditional links to the land
Demonstrate a need for land ownership that cannot be met through the functions of other agencies or use of other Indigenous-held land in the region	Demonstrate that there are no disputes about people's connection to land
Demonstrate how it will be actively involved in managing the property and land use	Demonstrate commitment /capacity to manage and undertake the proposed land use
	Demonstrate how it will be actively involved in managing the property and land use
Proposed Land Use	**Proposed Land Use**
Deliver achievable and sustainable training and employment benefits	Deliver achievable and sustainable cultural and/or environmental benefits
Demonstrate support from other agencies and stakeholders	Demonstrate support from Traditional Owners or those with traditional links to the land
Be viable and economically sustainable, and not require ongoing funding from the ILC	Be viable and economically sustainable, and not require ongoing funding from the ILC
Comply with relevant national, state and territory legislation and regulations	Comply with relevant national, state and territory legislation and regulations
Use sound land and environmental management practices	Use sound land and environmental management practices
	Be consistent with the cultural and/or environmental values of the property
The profile of the proposed property must be:	**The profile of the proposed property must:**
Suitable for the proposed land use	Have significant cultural and/or environmental values
Of reasonable cost given the benefits to be delivered	Be of reasonable cost given the benefits to be delivered

Source: ILC socio-economic development stream; and cultural and environmental values stream, handbooks.

3.4 The ILC guidelines include sufficient detail to enable applicants to make an informed decision on completing and submitting an application for the LAP. Further support for applicants is available within the application form to better enable applicants to complete each question correctly. ILC staff and applicants interviewed by the ANAO advised that Indigenous organisations sometimes engaged an external consultant or industry professional to help complete the application forms.

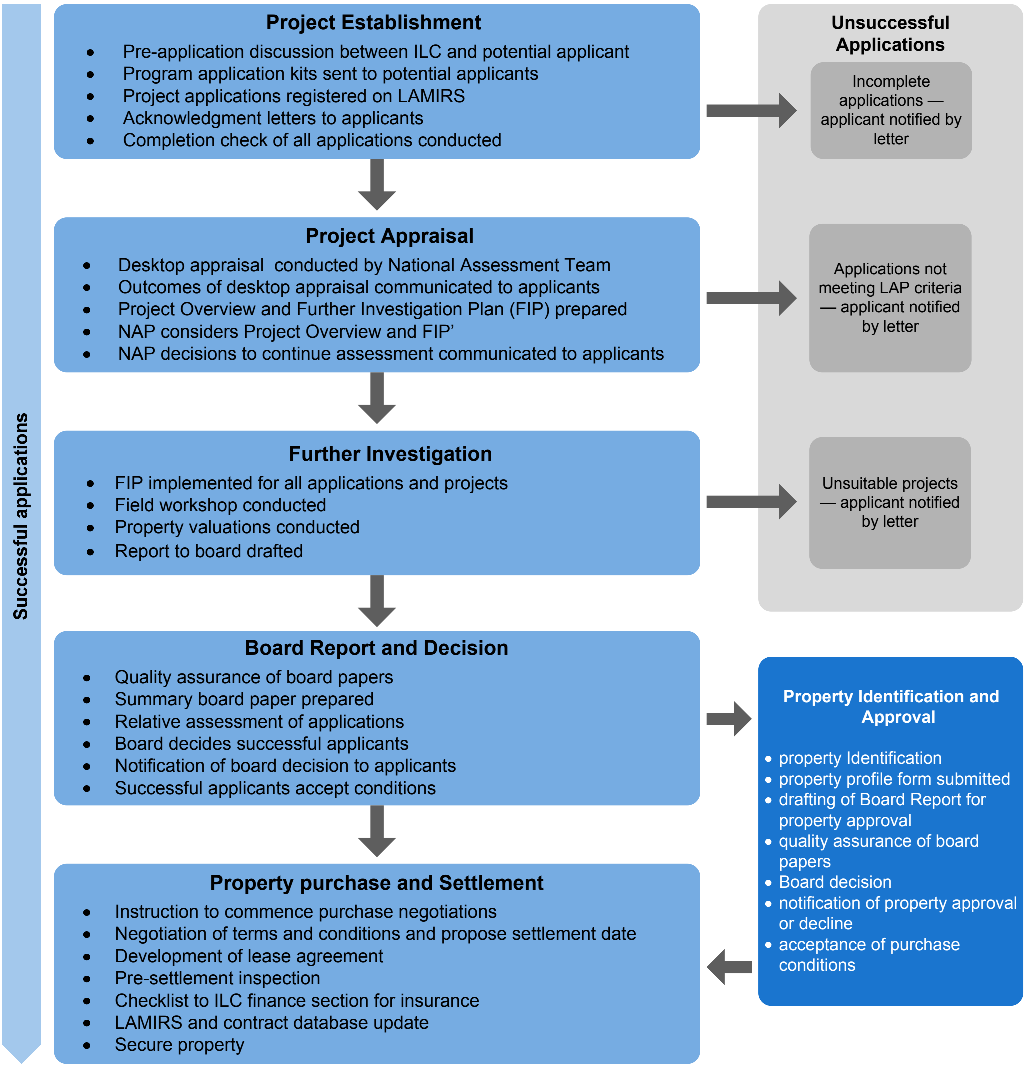
Application assessment

3.5 The ILC's assessment of applications occurs in a four-stage process:

- project establishment;
- project appraisal;
- project overview and further investigation (including due-diligence); and,
- ILC board reporting and decision.

3.6 To guide staff through each of the stages, and for consistency across ILC offices, guidance material, tools and templates are available to staff on the ILC intranet. The assessment process is illustrated in Figure 3.1. Project establishment and subsequent assessment and decision making activities are examined further in paragraphs 3.7 to 3.22.

Figure 3.1: Assessment process



Source: ILC, LA [land acquisition] Assessment to Acquisition User Guide.

Notes: 'NAP': National Assessment Panel.

Project establishment

3.7 Project establishment encapsulates the development and submission of an application for a project under one of the two streams. Prior to an Indigenous organisation completing and submitting an application form, the organisation must contact the ILC to discuss the details of the proposed project. Once the ILC has established that the proposed project meets the LAP criteria and objectives, an application pack which includes an application form, relevant program handbook and the Business Plan Terms of Reference, is sent to the applicant.

3.8 The application forms used for both streams of the LAP seek to obtain sufficient information from the applicant so as to reach an informed assessment of the merits of each application—including the extent to which the applicant feels that it is likely to contribute to the achievement of LAP objectives. Other details relevant to the applicant and the proposed property are obtained through a later due-diligence[67] process conducted by ILC assessment officers and legal counsel.

Desktop Appraisal, Further Investigation and due-diligence

Desktop Appraisal

3.9 Applications assessed as complete and compliant with LAP objectives proceed to the first assessment phase—Desktop Appraisal. At this stage the primary aim is to establish if the proposed project should proceed to the 'Further Investigation' phase—a second assessment which closely examines applications.

3.10 As described in the Land Acquisition Assessment to Acquisition User Guide, the purpose of the Desktop Appraisal is to:

- assess the application against the program criteria; and
- identify potential issues/risks and actions/treatments to be undertaken during Further Investigation (see paragraph 3.13).

3.11 Assessing applications against threshold requirements is an appropriate approach which can reduce inefficiencies in the assessment process to the benefit of applicants and agencies. For each of the 20 application-based projects reviewed by the ANAO, the ILC had completed Desktop Appraisals for each project. The Desktop Appraisal process is outlined in Figure 3.2 below.

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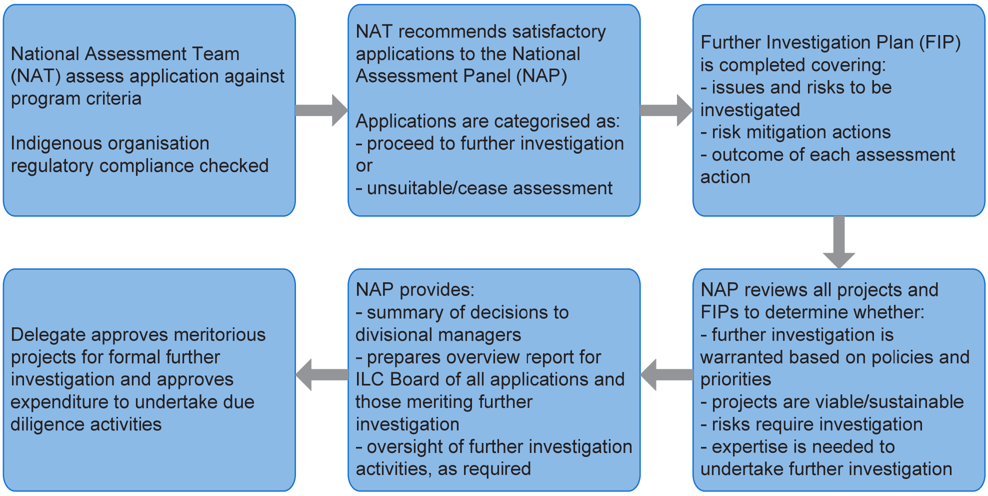
67 The ANAO Better Practice Guide—*Implementing Better Practice Grants Administration*, December 2013, p. 34, describes due-diligence as: a process undertaken to obtain sufficient information for informed decision making and to verify the accuracy and completeness of information that has been provided. In that context, another important factor in determining the appropriate application process for a grant program is the information that will be required to properly assess applications and adequately inform funding decision.

Figure 3.2: Desktop Appraisal process



Source: Adapted from ILC, LA [land acquisition] Assessment to Acquisition User Guide.

3.12 For applications passing the Desktop Appraisal phase, a Project Overview and Further Investigation Plan (FIP) is completed. The Project Overview report summary details of the applicant and proposed project including: anticipated project benefits; organisational governance and capacity; project costs; and property details. The FIP identifies issues and risks associated with the acquisition and proposed risk management options. A due-diligence plan and budget is also developed. This information is then supplied to the National Assessment Panel (NAP) to determine which projects proceed to the Further Investigation and due-diligence phase. For those applications considered most meritorious, due-diligence costs are approved and are recorded in the financial management module of LAMIRS. Of the 20 application-based projects reviewed, the ANAO observed that the ILC had completed the desktop project overview reports, as required, for each project.[68]

68 This figure includes four projects that were approved before the Project Overview reports process was developed by the ILC. For these older projects, the requirement to have completed Project Overview reports was not applicable.

Further Investigation

3.13 Further Investigation is described by the ILC as: the comprehensive, in-depth assessment of a proposed project. It is a due-diligence process intended to:

- gather high-quality evidence and verify claims about a project;
- investigate that the project meets all program criteria; and
- develop the board paper to present a compelling case for the project to the ILC board.

3.14 Due-diligence and assessment activities will vary depending on the project, and are to be tailored to the particular risks of the project, but generally include: applicant capacity including credit checks and financial viability; land valuation; Native Title search; land valuation; zoning, building and pest inspections. Further Investigation activities will often occur concurrently; with field workshops[69], searches, valuations and inspections each occurring while other research about a potential acquisition is ongoing.

3.15 Project files reviewed by the ANAO indicated[70] that each of the completed Project Overview Reports was recorded on file as required, and the ILC had undertaken a range of due-diligence steps on approved applications. As an illustration, the due-diligence undertaken in respect of a recent acquisition is outlined in the following example.

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69 A field workshop is organised with the applicant using the Notification of Field Workshop letter. The purpose of the workshop is to: verify details of the application; verify benefit data provided; inform the Indigenous organisation of the ILC's lease requirements; and explain other relevant requirements should an application be successful.

70 This figure includes four projects that were approved before the Further Investigation process was developed by the ILC. For these older projects, the requirement to have completed Further Investigation Reports was not applicable.

Due-diligence activities for an environmental acquisition
In August 2011, an Indigenous organisation applied to the ILC for assistance under the LAP cultural and environmental values stream for assistance to purchase three contiguous parcels of land totalling 103.5 hectares. The ILC conducted the following due-diligence activities during the Desktop Appraisal and Further Investigation stages of assessing the project proposal: • title search; • valuation, including infrastructure survey; • analysis of zoning in context of intended uses; • Native Title search; • registration and financial viability checks of the Indigenous organisation; • review of land holding history of the organisation (including ILC and non-ILC acquired properties); • physically attend, survey and photograph—a site visit; • environment legislation Protected Matters Report; and • identification of potential stakeholders, partner agencies and future opportunities.

Source: ANAO analysis of relevant ILC project files.

ILC Board Report and decision

3.16 Following the Further Investigation process, the ILC prepares two types of reports for the board. The first paper prepared is a Summary Board Paper which outlines details pertaining to the application round. The summary includes:

- the total number of applications received for each category;
- the number of applications that did not pass the assessment process, and the reason; and
- a summary of applications going to the ILC board for relative assessment (when the value of applications exceeds the annual funds available)[71], the total costs of the applications and the intended benefits to be gained.

3.17 The Summary Board Paper is accompanied by a Board Report which is completed for each application. ILC guidelines state that the Board Report: 'must present a compelling case for why the ILC should support the project, and give all information required for the board to make sound decisions

71 This has only occurred once, in August 2008.

regarding its approval or decline'.[72] The Board Report template requires each report address the following information requirements:

- project proposal;
- project Indigenous benefits;
- Indigenous organisation governance and capacity;
- Indigenous organisation viability and sustainability;
- project implementation and monitoring; and
- property needs and profile (including risk identification and treatment).

3.18 The 20 application-based project files examined by the ANAO indicated that the ILC had followed its agreed procedure in relation to the provision of required information to the ILC board.

3.19 The ANAO analysed five Board Reports to determine the level of assessment and examination that the ILC had conducted on applications. The level of information and detail presented to the board was generally commensurate with the amount of information that the organisation provided in their application. For more sophisticated organisations with comprehensive applications, this meant the information and assurance provided to the board was correspondingly greater than it was for less sophisticated Indigenous organisations that provided less information or detail in their application.

3.20 For those applicants with less comprehensive applications, the ILC did not consistently conduct additional research into the organisation's governance and capacity to deliver Indigenous benefits. While the ILC engages with organisations when applications are proposed, the administrative capacity and governance capabilities of an organisation are key influences on the successful divestment of properties to Indigenous organisations and sustainability of benefits. As such, robust assessments of capacity are important to support decisions to acquire land and need to be consistently undertaken.

Comparative assessment

3.21 A key consideration for agencies is achieving best value for the public moneys entrusted to them, by selecting projects that are most likely to contribute to Government objectives. In general, competitive, merit-based

72 ILC, Land Acquisition Assessment to Acquisition User Guide. p.15.

processes to select projects are considered to be an important element of achieving value for money.[73] Additionally, conducting due-diligence and obtaining independent expert advice on applicants and properties, where appropriate, also assist sound decision making. Finally, forms of comparative assessment are useful steps to consider to identify potential opportunity costs incurred and to facilitate the selection of cost-effective projects.

3.22 The LAP criteria allow for the assessment of proposed projects on their merits, however processes supporting comparative assessment of applications between similar projects, both within and across application rounds and years, have not been developed to fund those projects with the greatest expected impact. The ILC's NILS and program guidelines provide for 'relative assessment' of projects when the annual value of proposals exceeds available funding. To date, this situation has occurred only once, in August 2008. Otherwise the ILC has not developed a methodology that would enable it to undertake comparative analysis and assessment to judge the relative costs of alternative projects and their expected benefits. For many projects, particularly cultural and environmental projects, assessing the financial value of the benefits achieved is difficult, as the benefits are intangible. However, where a project benefit is more specific, for example, the numbers of people to be employed or trained, such assessments can be undertaken. Acknowledging that benefits under different projects can be difficult to compare, there is scope for the ILC to strengthen its assessment process to better compare similar projects in the same assessment round. Comparative assessments could also occur against similar projects that have previously been funded or evaluated to compare potential Indigenous benefits.

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73 Department of Finance and Deregulation, *Commonwealth Grant Guidelines—Policies and Principles for Grants Administration*, Financial Management Guidance No.23, July 2009, p. 29; ANAO, *Implementing Better Practice Grants Administration*, Better Practice Guide, December 2013, pp. 32–34.

Recommendation No.2

3.23 To better balance competing opportunity costs across diverse land acquisition activities, the ANAO recommends the Indigenous Land Corporation develops approaches to including comparative assessments of relevant projects benefits in its project appraisal steps to assist with the assessment of potential projects and their corresponding Indigenous benefits.

ILC's response:

Agreed. The ILC agrees with this recommendation. The ILC is currently reviewing land acquisition and land management program delivery arrangements and this recommendation will be considered in the context of revised program arrangements from 2014.

Property acquisition

3.24 All ILC property acquisitions are undertaken by a specialist Property Acquisition Officer (PAO). Negotiations for the purchase of a property start once the successful Indigenous organisation has signed and returned the required acknowledgement letter to the ILC agreeing to the following conditions:

- the proposed purchase is subject to the ILC's conditions relating to land acquisition;
- the property is to be purchased on the open market—if the vendor and the ILC are unable to reach agreement on the price or other sale conditions, the purchase will not be completed; and
- the Indigenous organisation shall have no dealings with the vendor, lawyers or agents, or disclose any information regarding the acquisition of the property, without the permission of the ILC.

3.25 Prior to the contract exchange, an ILC officer undertakes a property inspection which ascertains that the property is in an acceptable condition. Details of the property, including a listing of assets is provided to the ILC's finance department for insurance and registration. The ILC legal department is advised of any issues identified during the inspection so that, where necessary, these can be addressed before contract exchange and settlement. The ANAO's review of 20 application-based project files demonstrated that the ILC attended to pre and post-settlement activities, including legal work and assets registration, as required by the guide.

Property leases and divestment

3.26 Once a property is acquired by the ILC and repaired as necessary, the ILC and Indigenous organisation enter a three-year lease agreement. The aim of the leasing process is to provide the Indigenous organisation with an opportunity to demonstrate its capacity to manage the property and achieve intended Indigenous benefits. Where the organisation has demonstrated that it has the appropriate capacity, and that Indigenous benefits are sustainable, then the ILC will divest title in the land to the organisation.

Lease and land holding

3.27 The following management and reporting obligations are incorporated into the standard three-year lease agreements:

- Work Plan—provides the Indigenous organisation with a structure and timeframes for carrying out property works and tasks associated with the land use and property maintenance;
- risk table—sourced from the Land Acquisition Board Report;
- reporting—six-monthly progress reports based on intended Indigenous benefits;
- responsibilities for land holding costs; and
- Property Management Plan—to be completed by Indigenous organisations within six months of signing the lease. The Plan guides Indigenous organisations in the management and maintenance of a property.

3.28 In the event that an Indigenous organisation requires more time to demonstrate their capacity to manage the property and achieve stated Indigenous benefits, the ILC may extend the lease period. The ANAO's examination of 20 application-based projects indicated that the ILC largely implemented lease agreements as required, and in accordance with the guidelines. Where Indigenous organisations received immediate divestment, or a shortened lease period, adequate evidence regarding the Indigenous organisation's capacity to manage the project, was available on file.

Divestment plans and property divestment

3.29 As noted in paragraph 2.4, under the ATSI Act properties acquired are to be divested 'within a reasonable time'.[74] The ILC's program guidelines require a divestment plan to be developed within six months of property acquisition. The divestment plan: 'summarises the ILC's intentions for grant of the property, including a clear summary of the timeframe and key milestones required [to be achieved] for the property to be divested to the Indigenous organisation...the Divestment Plan is a summary that specifically targets arrangements and conditions for divestment of the property'.[75]

3.30 In instances where an Indigenous organisation has proven its capacity to successfully manage a project, the ILC board may approve the divestment of a property immediately after acquisition. In most cases however, divestment is planned over a longer period.

3.31 To facilitate the divestment process, the ILC develops and presents to the ILC board a Decision to Grant Report. The report is to evidence that:

- the project Work Plan has been successfully completed;
- approved benefits are, and will continue to be delivered;
- the Indigenous organisation has the capacity to continue to sustainably manage the property;
- the Indigenous organisation has demonstrated appropriate levels of governance and that the organisation is compliant with all regulatory responsibilities;
- the land has proved to be suitable for the activity and consistent with the original stated purpose;
- the land use and financial viability of the property is sustainable and the group is able to pay land holding costs; and
- terms and conditions set by the ILC board have been met.

3.32 Of the 20 application-based project files reviewed by the ANAO, all but one of the projects had a divestment plan on file. However, divestment plans were not completed consistently and contained a varying degree of detail, with some plans containing little or no information that would support planning for

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74 Section 191D(3)(b), ATSI Act.

75 ILC, Land Acquisition Land Holding to Grant User Guide, p. 5.

the divestment process. Information held on a divestment plan should provide a summary of the timeframe and key milestones required to be achieved—a plan of how divestment will be achieved. Often this information was not included in the divestment plan, which reduces its effectiveness. The ILC recognises that timely and successful divestment is a recurring issue for it to focus on, and that divestment can take longer than expected, with some property having been held for more than ten years before divestment.

3.33 To support the ILC's requirement to divest properties 'within a reasonable time'[76], a more thorough and consistent approach to planning for divestment, and risks that can arise preventing timely divestment, should be undertaken. This could be achieved by emphasising divestment as a key element of the whole of project-life risk assessment discussed in Chapter 2, addressing project-specific risks to divestment, but also those which program delivery experience demonstrates can affect divestment 'within a reasonable time'. The ILC's performance against divestment targets is examined in Chapter 4.

Monitoring

3.34 The relationship between the ILC and an Indigenous organisation arising from a land acquisition typically lasts several years to over a decade, from initial application, to acquisition and leasing of a property, through to the post-divestment phase. During this time, the ILC's project processes provide for monitoring of the Indigenous organisation and the Indigenous benefits delivered through reporting or site visits.

Reporting

3.35 The ILC's Landholding to Grant user guide outlines a range of monitoring activities conducted during the lease period, including monitoring compliance with the terms of the lease, and those activities outlined in paragraph 3.27. In relation to the reporting of Indigenous benefits, the user guide and terms of the lease agreement require half-yearly progress reports (due 15 January) and full-year progress reports (due 15 July) be submitted,

76 Section 191D(3)(b), ATSI Act.

aligned to the ILC's benefits framework.[77] The information obtained in progress reports includes:

- achievement of Indigenous benefits;
- uses to which the property is put;
- financial reporting;
- progress against project tasks; and
- statements of compliance with terms of lease and legislation relevant to the status of the Indigenous organisation.

3.36 Following the divestment of a property to an Indigenous organisation, reporting obligations usually continue for a five-year period.

Property visits

3.37 In addition to reporting, the other significant monitoring activity completed by the ILC is to periodically visit the property acquired under the LAP. Both during term of the lease, and following divestment, ILC officers are to conduct visits to properties annually. Visits are intended to:

- confirm that the property is being used in accordance with the conditions of the lease agreement;
- validate the information presented in reports, particularly around Indigenous benefits;
- inspect the current condition of the property, infrastructure and assets; and
- speak face-to-face with Indigenous people about issues.

3.38 The ANAO's examination of the 20 application-based projects revealed that the ILC generally implemented the monitoring activities outlined, with evidence on the file of progress reports being submitted when required, and file notes (some with photographs) evidencing that ILC staff visited ILC-acquired properties, both during the lease period as well as in the post-divestment phase.

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77 The ILC's Indigenous benefits framework is discussed further in paragraphs 4.3 to 4.6.

Strategic projects

3.39 Strategic projects are projects that the ILC 'initiates to achieve significant Indigenous benefits, including employment and training. They usually involve collaboration with other Australian Government or State/Territory agencies or the private sector'.[78] Strategic projects can involve the use of funds allocated to either or both land acquisition and land management uses. The ILC board has identified the agricultural and tourism industries as key areas of focus for strategic projects, but are not limited to these industries.[79] Strategic projects are generally complex and long-term.

Ayers Rock Resort

3.40 In recent years, the ILC has initiated some substantial strategic project activities. The largest of these was the May 2011[80] acquisition of the Ayers Rock Resort precinct, including most of the infrastructure and tourism businesses comprising the township of Yulara in the Northern Territory. Purchased for over $300 million[81], together with an additional $60 million allowed for capital expenditure and improvements[82], the ILC's acquisition of ARR aimed to substantially increase Indigenous economic participation and deliver a range of benefits, including training outcomes, for Indigenous people living in the area, but also throughout Australia.

Divestment plan for ARR

3.41 An Aboriginal corporation representing Indigenous communities that surround Uluru (Ayers Rock) first approached the ILC in 2008 proposing that the ILC work in partnership to purchase ARR to achieve significant benefits for the local Anangu people. In developing its proposal, the ILC intended that the 104 000 hectares of land associated with the ARR precinct would be divested to an appropriate title-holding body when secured and unencumbered title is available through discharge of the ILC's financial and security obligations. The

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78 ILC, Land Acquisition Land Assessment to Acquisition User Guide, p. 3.

79 ibid.

80 ILC, *Annual Report 2012–13*, pp. 16, 168. The decision to acquire ARR was made in October 2010.

81 The vendor-finance payment schedule for the $300 million purchase price for ARR was: $13.5 million (deposit on exchange); $67.5 million (on completion, expected 120 days after exchange); $81 million (first anniversary of completion); $138 million (fifth anniversary of completion), with 6.5 per cent interest (fixed) per annum for deferred payment amounts. At 30 June 2013, the then carrying amount of the ARR acquisition was $312.25 million, based on an August 2011 assessment.

82 Through a debt facility with a major bank, at a variable interest rate.

divestment was intended to be structured around a lease-back arrangement to ensure the ongoing successful operation of the resort.

Interagency engagement prior to the ILC's acquisition of ARR

3.42 During 2009 and 2010, in the lead-up to the decision to acquire ARR, both the then Minister for Families, Community Services and Indigenous Affairs and the then Minister for Finance and Deregulation (and their respective departments) alerted the ILC to their concerns about potential risks for the continued operations of the ILC's other programs, should planned revenue for ARR be insufficient to meet payments due in respect of the resort[83], and the impact that the purchase could have on the Australian Government's budget position.

3.43 On 1 October 2010, the ILC advised the then Minister for Finance and Deregulation that the ILC board has resolved to acquire ARR. The then Minister had written to the ILC noting the ILC's responsibility to undertake financial analysis to further test the assumptions of the viability of the resort. The then Minister had expressed concerns about the potential financial viability of the proposed purchase and its impact on the ILC's ability to perform its broader obligations. The Minister's concern lay with identified key risks facing ARR in the medium to long-term, which could potentially result in poor occupancy rates. Noting the ILC's intention to proceed with the acquisition, the Minister requested the development and provision of:

- an independent and detailed sensitivity analysis;
- a detailed contingency plan on actions the ILC board intended to take under various revenue and expense scenarios; and
- quarterly information on the resort's performance including comparisons to projected performance data.

3.44 In response to the then Minister's request for information about the acquisition, the ILC provided financial projections and also confirmed that it would meet quarterly with the then Department of Finance and Deregulation to provide details of ARR's performance following settlement of the

83 The ILC and Voyages have provided cross guarantees for obligations under the sale agreement for the purchase of Ayers Rock Resort which includes a cross guarantee for deferred payment arrangements to the vendor: ILC, *Annual Report 2012–13*, p. 215.

acquisition.[84] At the time of the acquisition, the ILC considered that there would be no adverse impact on the delivery of the ILC's existing operations including work in relation to Native Title settlements, further strategic acquisitions, or expenditure on existing programs. Income received from the Land Account would continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations.

3.45 While the ARR acquisition is in the first years of a potentially decades-long project, the ILC reports that benefits are already being delivered to Indigenous Australians.[85] However, the financial performance of ARR is not meeting forecasts and the value of the ILC's investment is lower than expected in the two and a half years since the acquisition of the resort. The current ILC board has indicated that it has concerns with the cost effectiveness and risks of the project. The ILC wholly-owned subsidiary Voyages[86] is noted in the ILC's consolidated entity financial statements for 2012–13 as having concluded that ARR incurred an impairment loss of $62.25 million, resulting in an aggregate fair value (equal to recoverable value) of $250 million at 30 June 2013.[87,88]

3.46 At a Senate Finance and Public Administration Legislation Committee meeting on 22 November 2013, the ILC advised that in the absence of a fundamental turnaround in the tourism market, the ARR acquisition would impact for at least 15 to 20 years on the ILC's ability to fulfil its core statutory functions—land acquisition and land management. The ILC also advised that servicing the interest and principal debt repayments associated with the acquisition of ARR was expected to consume at least $20 million of approximately $35 million available each year to fund the ILC's core functions.[89]

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84 Settlement occurred in May 2011.

85 See, for example: ILC, *National Indigenous Land Strategy 2013–17*, p. 30; Prime Minister of Australia, *Closing the Gap: Prime Minister's Report 2012*, p. 98; Prime Minister of Australia, *Closing the Gap: Prime Minister's Report 2013*, p. 108; ILC, *Annual Report 2011–12*, pp. 112–113; ILC, *Annual Report 2012–13*, pp. 36, 39, 108, 113–116.

86 Voyages Indigenous Tourism Australia Pty Ltd., was incorporated to own, manage and operate ARR on behalf of the Indigenous Land Corporation: ILC, *Annual Report 2012–13*, p. 168.

87 ILC, *Annual Report 2012–13*, pp. 26, 109,168,199.

88 The impairment loss is based on an assessed carrying amount (non-financial assets) for the resort of $312.25 million, assessed in August 2011: ILC, *Annual Report 2012–13*, pp. 26, 109,168,199.

89 Senate of Australia, Finance and Public Administration Legislation Committee estimates, Proof Committee Hansard, 22 November 2013, p. 27.

3.47 In relation to the ARR acquisition, the ILC had undertaken a range of investigations and due-diligence activities although these have not necessarily reduced the identified risks of the acquisition, including potential broader financial consequences for the ILC, and the ILC's ability to deliver Indigenous benefits over the longer-term. In proposing the acquisition to the board, the ILC supporting papers noted the inherent volatility of the tourism sector and its sensitivity to external influences. The papers identified a range of significant risks including that the purchase price paid over the five-year period would not remain commensurate with ARR's value. This was considered as an extreme risk and likely to occur, however following the completion of various due-diligence activities, the papers noted that risk had been reassessed as moderate and unlikely to occur.

3.48 As noted in paragraph 1.7, the purchase of the ARR has been considered by reviews commissioned by the ILC board following its acquisition in 2011. These include a review of board governance arrangements and accountability and reporting relationships existing between the ILC and its subsidiary companies, which reported in February 2013.[90] The review recommended, among other things, that governance structures for the group (the ILC and subsidiaries) and processes better reflect the organisational and structural changes to the ILC over recent years caused by a shift in focus of the ILC's acquisition activities towards larger scale and complex strategic projects, including ARR.[91] In September 2013, the ILC commenced a review to assess the short to medium-term operational strategies available to the ILC in relation to ARR to improve its performance. This review was also tasked with informing the ILC board over the adequacy of the due-diligence undertaken in respect of the purchase of ARR. The ILC informed the ANAO this review will be completed in early 2014. The ILC has also reported that it has commissioned a comprehensive valuation for ARR, to be completed by 30 June 2014.[92]

90 Deloitte, Board Governance Arrangements, February 2013, available from: <http://www.ilc.gov.au/Publications/~/media/ILC/ILC%20Website/Content/Publications/Corporate%20Documents/Governance%20Review%20Report.ashx> [accessed 23 July 2013].

91 ibid., p. 8.

92 ILC, *Annual Report 2012–13*, p 169.

Conclusion

3.49 The ILC has developed a structured approach to the delivery of the LAP. Detailed guidance has been developed to support the assessment of proposals and the subsequent steps to purchase properties. More detailed assessment of project-specific risk and divestment planning would improve the administrative approach taken by the ILC. Furthermore, making greater use of comparative assessments of projects, where feasible, would provide further assurance that projects most likely to contribute to the Government's objectives are selected and that consideration of the costs of achieving the proposed outcomes, relative to other opportunities, is undertaken.

3.50 The processes developed for the LAP are generally appropriate for the acquisition of the lower-risk and lower-cost properties that are commonly purchased through the LAP. The ILC also acquires land as strategic projects. These are generally identified by the ILC or stakeholders so as to take advantage of perceived opportunities. In recent years the ILC has made several higher-risk and more complex acquisitions, including ARR. The ILC has undertaken a range of investigations and due-diligence activities in respect of its strategic projects, although these have not necessarily reduced the risks involved in their purchase—particularly evident in the reported underperformance of the ARR acquisition. The ILC board commissioned several reviews during 2012 and 2013 of matters relating to the ARR acquisition. In this context, existing program management arrangements would benefit from review to consider the need for additional strengthening.

4. Performance Reporting

This chapter examines the ILC's performance reporting and evaluation approach and considers the extent to which they support the effective administration of the LAP.

Introduction

4.1 A sound program performance measurement and reporting approach supports the effective administration of a government program. It enables administering agencies to assess performance so that managers can improve program delivery over time. Effective measurement of program performance also delivers meaningful reporting to both senior and project level managers; and enables performance outcomes relating to program objectives to be communicated to the Parliament, program beneficiaries, and the community more broadly.

4.2 This chapter examines the ILC's:

- Indigenous benefits framework;
- program performance information management;
- evaluation; and
- reporting to the Parliament.

Indigenous benefits framework

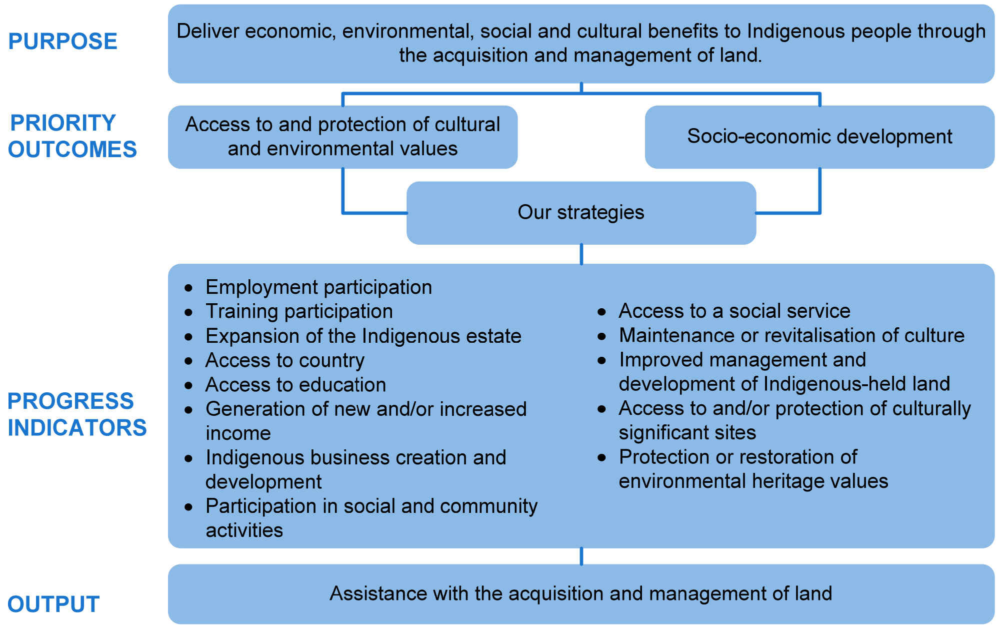
4.3 The ILC's internal performance reporting framework is based on identifying Indigenous benefits. As noted in paragraph 1.4, the ATSI Act does not explicitly define the nature of an Indigenous benefit and the ILC describes benefits as 'long-term improvements in Indigenous wellbeing'.[93] Accordingly, a wide range of results are considered by the ILC when assessing the benefits of a project.

4.4 The Indigenous benefits framework is described by the ILC as a mechanism to deliver assurance to the ILC board about the soundness of program delivery and performance, and to provide useful information to ILC managers and project officers. The framework sets out the way the ILC defines,

93 ILC, Benefits Framework, July 2011, p. 1.

captures, measures and reports on the achievement of benefits[94]. It seeks to give assurance that the collection and use of benefits data is accurate and consistent. Performance data is sourced from properties managed by Indigenous organisations, or subsidiaries of the ILC, through the monitoring and reporting arrangements discussed in Chapter 3. The ILC's benefits framework is outlined in Figure 4.1.

Figure 4.1: ILC benefits framework



Source: ILC, *National Indigenous Land Strategy 2013–17*, p.11.

4.5 Providing clarification of the nature of benefits through this framework is useful in establishing a consistent understanding of high-level priorities for the ILC's land acquisition activities. Nonetheless, the 13 progress indicators identified in the framework cover a wide variety of benefits and in themselves do not serve as key performance indicators through which the ILC could measure its overall effectiveness, other than to the extent that it ensures that it funds projects that can contribute to one or more of these areas.

4.6 As noted in Chapter 3, prior to the acquisition of land, project applications, and the Indigenous benefits intended to be achieved within those

94 ibid.

projects, are initially assessed by the ILC against the indicators contained in the benefits framework. Applications are to identify which benefits they are seeking to contribute to and, once a project is approved, these identified benefit indicators are included in lease agreements and are to be reported on by the successful applicant organisation. The indicators are also to be assessed in project evaluations.

Program performance information management

4.7 Project level data, based on the Indigenous benefits framework, is entered into projects' electronic files in the ILC's Land Acquisition Management Information Reporting System (LAMIRS). Data is sourced from:

- Indigenous organisations—data is collected through six-monthly progress reports; or
- for ILC-operated businesses—data is collected from property managers and training organisations.

4.8 The ILC advised that it collects both qualitative and quantitative Indigenous benefits information from Indigenous organisations. In the case of ILC strategic projects, project officers gather data in collaboration with relevant Indigenous stakeholders who are identified as being the beneficiaries of the ILC's strategic activities throughout the life of the project. The data and performance information made available under the framework is used to inform the ILC's annual report, portfolio budget statements and for Ministerial or Parliamentary inquiries.

4.9 One of the primary aims of the benefits framework is to give assurance that the collection and use of benefits data is accurate and consistent. The framework provides an outline of how the ILC will collect and use project and program data, however it does not outline how the ILC will gain assurance that the data collected is accurate and consistent.

4.10 Without verifying that source data provided by Indigenous organisations or ILC-owned businesses and subsidiaries is accurate, the ILC is unable to assure the ILC board that the benefits data and information reported is accurate, or that the LAP is achieving Indigenous benefits and outcomes as intended. Further, relying on these reports to inform public reporting obligations, such as annual reports, may expose the ILC to the risk of reporting inaccurate data, benefits and outcomes. The ILC can improve this aspect by developing and including data verification processes to review the accuracy and consistency of data provided to it.

Reporting from LAMIRS

4.11 LAMIRS is an in-house, purpose-built program information management system which has been developed around the Indigenous benefits framework and reflects LAP program objectives. LAMIRS is capable of sufficiently capturing the kind of qualitative and quantitative information necessary for the ILC to be able to produce useful management information. LAMIRS is also capable of producing reports reflecting performance against program objectives consistent with the ILC's legislated aims of delivering through land acquisitions social, economic, cultural and environmental benefits.

4.12 LAMIRS is capable of producing a broad range of project and program level reports, used by managers and project offices in program delivery, as well as for reporting purposes. While, as outlined, the verification of Indigenous benefits source data reported by Indigenous organisations could be improved, the accuracy of the data that is entered is checked by the relevant division office's operations manager. High-level program and lower-level project summary reports generated include:

- PBS projected benefits report (aggregated);
- PBS achieved benefits report (aggregated);
- approved projected benefits report (individual project);
- individual project benefit report by financial year (current); and
- whole of project-life benefits (all years).

Evaluation

4.13 Establishing a sound program evaluation framework enables a government body to assess the progress and outcome of a program against objectives, learn from and improve program delivery over time, and inform management decision making. Such an approach can also reveal the extent to which resources are being used to deliver program outcomes efficiently. The ILC has developed an evaluation framework to guide staff in undertaking evaluations at the corporate, program and project level.

Project evaluation for the LAP

4.14 Project evaluation processes are set out in the ILC Evaluation Framework 2011–12, further supported by the Evaluation Quick Guide and Evaluation Plan template.

4.15 The ILC's evaluation framework is intended to assess and provide feedback on the relevance, effectiveness, efficiency, impact and sustainability of Indigenous benefits delivered under the LAP. The framework also notes that the evaluations' outcomes are used to inform policy and decision making.

4.16 The ILC identified two approaches for inclusion in its evaluation activities:

- Outcome evaluations—judging the extent to which the program or policy affected the outcomes sought, and whether goals and objectives have been met; and
- Process evaluations—examining the activities of a program or project; whether they were managed efficiently, who the project has reached and the quality of activities.

The approach undertaken depends upon the objectives of the evaluation, the questions that need to be answered; and when it is conducted. The main indicators that evaluations are required to cover are presented in Table 4.1.

Table 4.1: Project evaluation indicators

Indicators	Evaluation criteria
Effectiveness	• did the project achieve projected benefits; • were all agreed activities completed, were any changes made to these activities; • were the risks identified in the Board Report adequately managed; and • were there additional risks that the ILC did not anticipate in its risk assessment.
Efficiency	• has the project been implemented on-budget and on-time; • were inputs sufficient to undertake planned activities and achieve projected outcomes; • did the ILC achieve good value for money; and • how could the project have been delivered more efficiently.
Impact	• has the project resulted in any unintended consequences or benefits; and • has the project contributed to broader social change.
Sustainability	• will the benefits and other outcomes produced by the project be sustained after the ILC's assistance is concluded; • is the group willing to continue project activities on their own; and • is there a plan to guide the future of the project.

Source: ILC Project Evaluation template.

4.17 Individual project evaluations are incorporated into the ILC's project cycle and involve an evaluation occurring prior to divestment taking place.[95] For those projects that are not divested, evaluations continue to be undertaken every three years until the property is divested to an Indigenous organisation. These evaluations are undertaken by ILC project officers. The ILC has developed evaluation criteria for each indicator described in Table 4.1 but, in some cases, these do not adequately guide and support project assessments. For example, one criterion asks: 'did the ILC achieve good value for money?' Without the development and application of a consistent value for money measure, or guidance as to how this is to be assessed and evidenced, evaluation can provide little assurance that the ILC did in fact achieve value for money. The evaluation framework also does not provide the ILC with a realistic understanding of a project's performance, relative to that of other projects. A rating or scaling system has not been developed, which results in reports that do not identify poor performers relative to strong performers. In

95 This evaluation seeks to ascertain if the Indigenous organisation has achieved intended benefits and has demonstrated that it has the capability to manage the project after divestment.

addition to the evaluations undertaken as a part of the project life cycle, the ILC has periodically undertaken more detailed evaluations of specific acquisitions. These evaluations have been undertaken by external consultants or by the ILC's senior evaluation officer. The greater investment made in those evaluations has enabled a fuller assessment of benefits and outcomes.

4.18 In September 2012, the ILC conducted a Project Evaluation Review. The Review was undertaken to assess the quality of all project evaluations produced by staff in 2011–12. The review observed several areas of concern in the ILC's evaluation practice, including:

- omitting answers to evaluation questions;
- unclear articulation of Indigenous benefits;
- limited explanation of delays; and
- lack of reflection—few evaluations reflected on whether the project could have been more efficient, whether the risks were adequately managed and whether the ILC received value for money.

4.19 The wide variety and scale of projects funded, and the different Indigenous benefits expected from each project presents the ILC with challenges in readily comparing and aggregating benefits—as these are specific to each project and will generally have a localised impact. Furthermore, the information required to appropriately assess impact and sustainability is in some cases likely to be beyond the short timeframes of LAP evaluation. In reviewing the files of 20 LAP application-based projects, the ANAO observed that project evaluations were generally limited in their analysis of whether intended Indigenous benefits were achieved.

Program level evaluation

4.20 In 2002 the ILC undertook an evaluation of the properties purchased under the first National Indigenous Land Strategy 1996–2001. To complete the review, the ILC conducted a stock-take of properties that had been acquired since 1995. In response to the critical findings of the stocktake[96], the ILC initiated a remediation program to improve the physical condition of the properties and assist title-holding bodies to improve governance and property planning. The

96 The evaluation noted that many properties had not at that point met their full potential, resulting in fewer benefits than anticipated.

ILC conducted an evaluation of the remediation program in 2008, concluding that the remediation program had met its objectives of improving property conditions and strengthening property management and planning. The evaluation of the remediation program did not address whether properties were achieving greater benefits.

4.21 In 2010, the ILC board commissioned a review of ILC programs and policies.[97] The review was, among other things, tasked with considering whether the ILC's policies, objectives, outcomes and performance indicators were consistent with its aims as described in the ATSI Act. The review did not assess the impact of the ILC's activities but did conclude that the ILC's Indigenous benefits framework was aligned to measures of overall Indigenous well-being and the ILC was likely to be contributing to improvements. It would be timely for the ILC to consider undertaking a similar program-wide evaluation as was implemented in 2002, using that evaluation as a baseline against which performance since then, could be benchmarked.

Reporting to the Parliament

4.22 In accordance with the Australian Government's Outcomes and Programs Reporting Framework, each public sector agency or body must assess, and report to the Parliament, the progress and performance of programs for which it has responsibility. To monitor the achievement of program objectives, an administering body needs to define performance information, including deliverables and key performance indicators (KPIs), against which to measure performance.

4.23 As noted in paragraph 1.4, the ILC's program objective is to assist Indigenous people to acquire and manage land to achieve economic, environmental, social and cultural benefits. The LAP is designed to contribute to this objective.

Program performance—deliverables

4.24 'Deliverables' are the goods and services produced by a program in meeting its objective. Collectively, the deliverables represent the intervention

97 Aegis Consulting Australia, External Review of the Policies and Programs of the Indigenous Land Corporation, September 2010, pp. 20–21, available from: <http://www.ilc.gov.au/~/media/ILC/ILC%20Website/Content/Publications/Corporate%20Documents/16323_Aegis_ILC_Audit_Report_Print.ashx> [accessed 27 March 2013].

the government has chosen to take to address a particular issue—in this case, to increase the Indigenous estate and deliver Indigenous benefits. ILC deliverables assess performance in terms of the land acquisition (and land management) activities that help deliver these benefits. Table 4.2 illustrates the ILC's performance based upon acquisition-relevant deliverables, reported annually for the period 2008–09 to 2012–13.

Table 4.2: ILC acquisitions and divestments 2008–09 to 2012–13

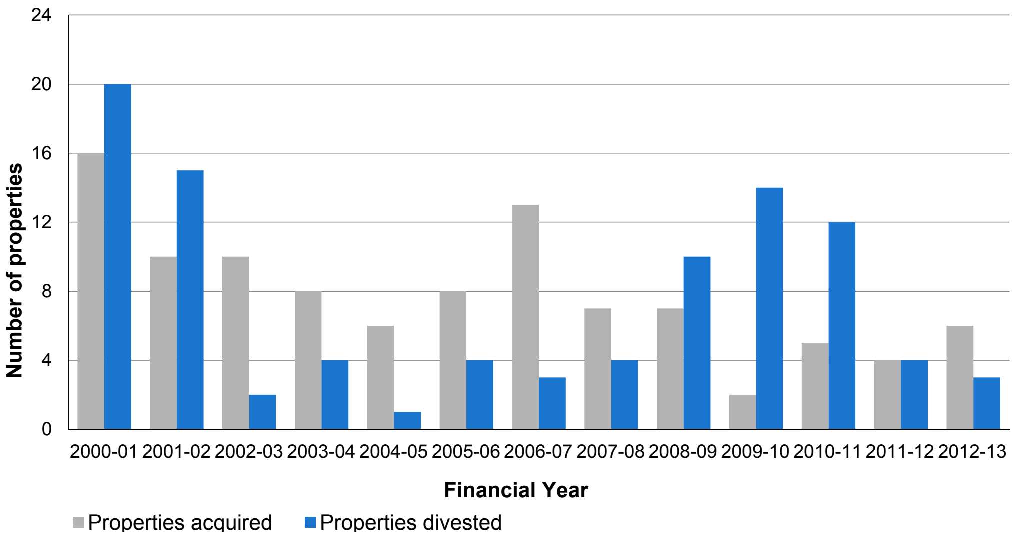
	Acquisitions				Divestments			
Year	**Forecast**	**Revised forecast**	**Actual reported**	**Variation (from revised)**	**Forecast**	**Revised forecast**	**Actual reported**	**Variation (from revised)**
2008–09	6	6	7	+1	8	8	10	+2
2009–10	6	6	2	-4	15	15	14	-1
2010–11	6	6	5	-1	15	14	12	-2
2011–12	6	6	4	-2	10	10	4	-6
2012–13	6	6	4	-2	10	10	3	-7
Totals	30	30	22	-8	58	57	43	-14

Note: Acquisition totals include some strategic projects.

Source: ILC Portfolio Budget Statements; Annual Reports.

4.25 Table 4.2 demonstrates that the ILC has not met its target for acquisition and divestment activities in recent years—even following final revision forecasts. Of the 30 acquisitions forecast for 2008–09 to 2012–13, 22 (73 per cent) were achieved. For the same period, of the 57 divestments under revised forecasts, 75 per cent were actually achieved over the longer term. As Figure 4.2 (below) demonstrates, divestment activity has generally equalled or exceeded acquisition activity in recent years except for the 2012–13 financial year. This reverses a trend observed during the eight years prior to 2008–09, during which period there were only two years when divestments exceeded acquisitions.

Figure 4.2: Properties reported as acquired and divested by ILC: 2000–01 to 2012–13



Notes: ILC received 15 additional properties (not shown) upon abolition of ATSIC in the mid-2000s. Acquisition totals include some strategic projects.

Source: ILC annual reports.

4.26 To some extent, performance is influenced by the pace at which each individual acquisition and divestment takes place, and is subject to external factors. The ILC's accountability against deliverables would be enhanced by the ILC continuing to review and, where necessary, adjusting the methodology used to set acquisition and divestment targets. This would allow the ILC to more accurately forecast and report against performance, in relation to key LAP-related activities.

Program performance—KPIs

4.27 KPIs measure the effectiveness of programs, particularly against the intended program objectives. A balanced set of KPIs includes quantitative and qualitative data and provides information on the extent to which the program is achieving its objectives. As noted in paragraphs 4.3 to 4.5 above, the ILC's activities cover a wide range of potential benefits which are difficult to aggregate. To provide for a level of common assessment of benefits when reporting to the Parliament, the ILC has adopted proxy indicators for use in its annual report. Performance in assisting Indigenous organisations to protect cultural and environmental values of land is measured, for example, by the proportion of ILC projects directed at cultural and environmental benefits. To assess its performance in achieving social and economic benefits, the ILC reports on the number of training and employment outcomes achieved directly through its own business activities and through the Indigenous organisations that it has funded.

4.28 The four KPI measures that most relate to the LAP are outlined in Table 4.3. Since 2008–09, the description given to each has remained unchanged, enabling comparison over time.

Table 4.3: ILC KPIs and definitions

	KPIs	Definition
1	Total number of Indigenous staff employed directly through ILC agricultural and tourism businesses.	Indigenous staff employed by the ILC and ILC owned subsidiaries which are responsible for managing ILC business properties, at any time during the reporting period (could be employed for one day only). Includes all employment measures full-time, part-time, casual/seasonal, contract, traineeships and apprenticeships.
2	Total number of Indigenous trainees hosted through ILC agricultural and tourism businesses.	Total number of trainees hosted at any time during the reporting period by ILC owned businesses—includes trainees working at the ARR. Numbers include trainees that have since left.
3	Total number of Indigenous employment outcomes enabled through ILC land acquisition and land management projects.	Total number of Indigenous people employed through ILC land acquisition projects (acquired in the last three years) and land management projects that were operational at any time during that period. Includes all employment measures full-time, part-time, casual/seasonal, contract, traineeships and apprenticeships.
4	Total number of Indigenous training outcomes enabled through ILC land acquisition and land management projects.	Includes the total number of participants, who may not have completed or are yet to complete relevant training programs enabled through ILC land acquisition projects (acquired in the last three years) and land management projects that were operational at any time during that period. Includes employees' participating in non-employment and training outcomes.

Source: ANAO—adapted from information provided by ILC.

4.29 As outlined in Table 4.3, the ILC's KPIs are separated into two categories, 'direct' outcomes and 'enabled' outcomes. The ILC defines these outcomes as:

- Direct outcomes—an employment or training outcome achieved as a direct result of the ILC's activities. For example: an Indigenous person employed directly by the ILC or by an ILC subsidiary; and

- Enabled outcomes—an employment or training outcome that has been facilitated through the ILC's collaboration with Indigenous groups and other agencies. For example: an Indigenous person employed by an Indigenous organisation funded by the ILC.

4.30 The ILC reports the different types of employment outcomes[98] separately within its annual report to inform the public and the Parliament. Although it is reasonable to associate employment outcomes with social and economic benefits, the range of events the ILC counts towards outcomes is expansive and includes full-time positions of varying duration, casual work attendances and paid training outcomes. To enable year-on-year comparison of actual performance in relation to direct employment, the ILC reports on employment outcomes by category: full-time; part-time; casual; contract; apprentice; and trainee.

4.31 Direct employment and training outcomes are calculated on a financial year basis however, the results reported for enabled outcomes are calculated by counting the training and employment outcomes from properties that have been acquired at any time in the previous three years. The ILC's reported results for training and employment outcomes enabled through property acquisitions and through land management projects are shown in Table 4.4.

Table 4.4: Indigenous training and employment outcomes enabled through the acquisition and management of a land base

	Year	Target	Reported achieved	%
Training	2012–13	800	2347	293 %
	2011–12	800	5456	682 %
	2010–11	600	4834	805 %
	2009–10	600	3093	515 %
Employment	2012–13	500	1451	290 %
	2011–12	300	1612	537 %
	2010–11	300	1446	482 %
	2009–10	300	974	325 %

Source: ANAO review of ILC annual reports.

98 Employment types reported against include: full-time; part-time; casual; contract; apprentice; and trainee.

4.32 As illustrated, for the KPI's: 'total number of Indigenous training outcomes enabled through ILC land acquisition and land management projects' and 'total number of Indigenous employment outcomes enabled through ILC land acquisition and land management projects', the ILC reported exceeding the revised forecasts significantly for the last four years—the greatest achievement reported was 805% over the set target. Since 2009, there has been some adjustments to the targets but based on the results reported, there would be merit in the ILC reviewing both its methodology for setting these targets and the methodologies for calculating and verifying the results reported to it for enabled outcomes. The current method for calculating a target is based on information and assumptions contained in Indigenous organisations' applications for LAP assistance and an estimate of expected outcomes from Land Management Program activities. This is determined at the time of the preparation of annual portfolio budget statements. Throughout the reporting period, changes to assumptions or the funding of new projects (applications under the cultural and environmental stream can be made at any time during the year) can result in higher activity than was reflected in the original target. Where necessary, targets could be revised as new information is received or assumptions change and new, more accurate targets developed against which actual outcomes can be reported.

Closing the Gap in employment participation

4.33 The ILC notes in its *Annual Report 2012–13* that: the ILC's achievement of Indigenous benefits in 2012–13 has contributed to the Closing the Gap target of halving the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade. It is reasonable to consider that the ILC's activities have made a contribution as the Australian Bureau of Statistics (ABS) notes that 'according to established international standards, everyone who works for at least one hour or more [in a week] for pay or profit is considered to be employed'.[99] Overall reporting by the COAG Reform Council on the achievement of this target uses ABS data drawn from surveys and the Census. As these are periodic measurements, the NIRA also includes a range of other indicators to gauge progress more regularly including monitoring data

99 Australian Bureau of Statistics, *Understanding the Australian labor force*, series 6202.0—Labour Force: Australia, December 2011, available from: <http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/6202.0Main%20Features999Dec%202011?opendocument&tabname=Summary&prodno=6202.0&issue=Dec%202011&num=&view=> [accessed 26 August 2013].

on three month employment outcomes achieved through programs administered by the then Department of Education, Employment and Workplace Relations where measurement of 13 week and 26 week outcomes are performance indicators of most employment programs.

4.34 Many ILC employment outcomes can be of shorter periods, so on its own a reporting approach based only on 13 and 26 week outcomes would not be effective in assessing the ILC's performance. However, there would be value in the ILC supplementing its current reporting with information on the length of employment achieved, providing greater visibility of its contributions to a key NIRA performance indicator in relation to Closing the Gap.

Conclusion

4.35 The ILC has developed processes and frameworks to support an assessment of program performance and evaluation. The primary approaches used to guide staff are the Indigenous benefits framework and the evaluation framework. Both of these aim to support staff to measure and report on program performance and evaluation, but further work could be undertaken by the ILC to increase the effectiveness of both and, in turn, the quality of the information reported by the ILC.

4.36 The Indigenous benefits framework has been developed by the ILC to outline the way in which the ILC defines, captures, measures and reports on the achievement of benefits delivered through the ILC's activities. To support the effectiveness of the benefits framework the ILC has identified and implemented methods to collect and use project data from Indigenous organisations and ILC subsidiaries. However, the ILC has yet to develop systematic approaches for gaining assurance on the accuracy of the data collected.

Ian McPhee — Canberra ACT

Auditor-General — 19 December 2013

Index

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