

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ATSIC AMENDMENT (INDIGENOUS LAND CORPORATION
AND LAND FUND) BILL 1994

EXPLANATORY MEMORANDUM

PART A

(Circulated by authority of the Prime Minister)



OVERVIEW OF THE ATSIC AMENDMENT (INDIGENOUS LAND CORPORATION AND LAND FUND) BILL 1994

This document provides a broad overview of the major features of the ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994. The overview does not deal with all matters covered by the legislation, but is intended to be a guide to the major features and how they will work.

This legislation is part of the Commonwealth's overall response to the High Court's historic Mabo decision and complements the *Native Title Act 1993*. As most indigenous Australians have been dispossessed of their lands, they have been prevented from meeting the criteria laid down in *Mabo* which requires a continuing connection with land or waters. This legislation represents a further significant step in reversing the process of dispossession which has been ongoing for over 200 years.

The Commonwealth's specific objectives in establishing the Land Fund and the Indigenous Land Corporation are to enable indigenous people to acquire land and to manage it in a sustainable way to provide economic, social and cultural benefits. The focus on land management extends to other indigenous-owned land, as well as that acquired by the Indigenous Land Corporation. The establishment of a self-sustaining capital fund will provide a secure and ongoing source of funds to the Indigenous Land Corporation for expenditure on land acquisition and management. It is intended that the Corporation operate on the basis of regionally based strategies and involve regional representative interests. It will have the ability to operate on a commercial basis.

Structure and funding of the Aboriginal and Torres Strait Islander Land Fund

The Aboriginal and Torres Strait Islander Land Fund is to be set up as a trust account in the Public Account, to which the provisions of Part IX of the Audit Act will apply. Money paid into the Fund but not required for making payments to the Corporation will be invested. For the first ten years of its operation, the legislation provides that allocations from Consolidated Revenue will be made to the Land Fund. For 1994-95 an amount of \$200 million has been allocated to an interim fund established under the *Native Title Act 1993*; from 1995-96 an amount of \$121 million indexed in terms of 1994-95 dollars will be allocated. At the end of ten years it is expected that the Fund will be self-funding.

There will be a period of transition while the Corporation is being established, during which both the Corporation and ATSIC will receive moneys for land acquisition and management purposes. In 1994-95 ATSIC will retain the \$21 million it currently spends on these functions, while the new Corporation will receive \$25 million drawn down from the Fund.

In 1995-96 and 1996-97 the Corporation will receive \$24 million from the Land Fund, and ATSIC will receive \$21 million, both amounts indexed in terms of 1994-95 dollars.

From 1997-98 ATSIC will cease to receive moneys for land acquisition and management and the Corporation will be paid \$45 million annually from the Fund, indexed in terms of 1994/95 dollars. After ten years, the Indigenous Land Corporation will be paid the return, after inflation, on investments made by the Land Fund.

The attached chart, Flow of Moneys Into And Out Of The Land Fund, illustrates the process.

Provision is made for a formal meeting at least annually between representatives of the Board of the Corporation and the Minister for Finance's delegate to discuss the investment policy of the Fund.

Functions of the Indigenous Land Corporation

The Indigenous Land Corporation has **land acquisition and land management** functions, which it carries out with moneys drawn down from the Land Fund. In relation to **land acquisition** the Bill provides for the Indigenous Land Corporation to undertake the following functions:

- purchasing interests in land for the benefit of Aboriginal and Torres Strait Islander communities;
- transferring land it acquires to Aboriginal and Torres Strait Islander communities for the benefit of those communities;
- making grants to Aboriginal or Torres Strait Islander corporations so that they can acquire interests in land; and
- acting as guarantor for loans made by third parties to Aboriginal or Torres Strait Islander corporations so that they may acquire interests in land.

In carrying out its land acquisition functions, the Indigenous Land Corporation must have regard to the desirability of:

- acquiring interests in land and granting these interests to Aboriginal or Torres Strait Islander corporations, rather than making grants of money to such corporations to purchase land directly;
- acting as agent of Aboriginal or Torres Strait Islander corporations in cases where it makes grants to the corporations for the acquisition of land; and
- granting interests in land acquired for Aboriginal or Torres Strait Islander corporations within a reasonable time after acquiring the land.

In relation to **land management**, the Indigenous Land Corporation will have these functions:

- undertaking or arranging for land management activities in relation to indigenous-held land under agreements with the land holders;
- arranging land management activities in relation to land held by the Indigenous Land Corporation;
- making grants or loans for land management activities on indigenous-held land; and
- guaranteeing loans made for land management activities on indigenous-held land.

In carrying out its land management functions the Indigenous Land Corporation must have regard to the desirability of:

- adopting sound land and environmental management practices;
- making grants or loans only where the Indigenous Land Corporation considers that alternative approaches are impracticable; and
- directly involving indigenous land holders in land management activities.

In relation to its functions generally, the Indigenous Land Corporation will act in accordance with sound business principles when operating on a commercial basis. It will also be required to have regard to maximising the employment of Aboriginal people and Torres Strait Islanders, and maximising the use of goods and services provided by businesses owned or controlled by Aboriginal people or Torres Strait Islanders.

National Strategies of the Indigenous Land Corporation

The Indigenous Land Corporation will be required to prepare and revise regularly a **national indigenous land strategy** for a three to five year period, covering such matters as the acquisition of land for granting to Aboriginal and Torres Strait Islander corporations, and land management and environmental issues affecting indigenous held land.

Regional Strategies of the Indigenous Land Corporation

In addition, the Indigenous Land Corporation is required to prepare and revise regularly **regional indigenous land strategies** relating to areas whose boundaries it will determine. Like the national strategy, regional strategies will cover a three to five year period, and deal with land acquisition and land management and environmental issues in each region.

The Indigenous Land Corporation must make copies of its strategies available on request.

Subsidiaries of the Indigenous Land Corporation

The Indigenous Land Corporation can establish subsidiaries to undertake some of its functions. This could be particularly relevant in relation to the regional operations of the Corporation.

Powers of the Indigenous Land Corporation

The powers of the Indigenous Land Corporation include the power to make contracts, to invest its money, to appoint agents and be appointed as an agent, to set up companies, to invest in companies, to enter into partnerships, joint ventures and profit sharing arrangements, to accept gifts, grants and bequests, to act as a trustee and to charge for its services.

Ministerial powers of direction

The Minister has some specific powers under the legislation, including appointments to the Board of Directors, and obtaining information from the Indigenous Land Corporation about its activities. The Minister does not have a general power of direction.

Board of Directors

The Indigenous Land Corporation will be administered by a Board of seven Directors, comprising a Chairperson, Deputy Chairperson, the ATSIC Chairperson and four others. Apart from the ATSIC Chairperson, one other member of the Board must be an ATSIC Commissioner.

The Board will be appointed by the Minister in consultation with ATSIC and the Minister for Finance. At least five members of the Board including the Chairperson must be Aboriginal persons or Torres Strait Islanders, and all of the Directors must have experience in land or environmental management, business or financial management, or in Aboriginal and Torres Strait Islander community life. Directors can be appointed for up to four years.

Transfer of ATSIC property

The legislation enables ATSIC to transfer land to the Indigenous Land Corporation where the land it holds would be more appropriately handled by the Indigenous Land Corporation in view of the functions conferred on it by the legislation.

Purchase of land in the Northern Territory

The Indigenous Land Corporation will be able to purchase land in all States and Territories. In the case of the Northern Territory however, such land will not be able to be claimed under the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The effect of this is to ensure that there is not a significant increase in the number of pastoral properties converted to inalienable title under that Act as a result of the establishment of the Land Fund; this provision will not preclude the conversion of acquired pastoral leases to native title under s.47 of the *Native Title Act 1993*.

FLOW OF MONEYS INTO AND OUT OF THE LAND FUND

