



AIATSIS

Australian Institute of Aboriginal
and Torres Strait Islander Studies

*Further understanding of Australian Indigenous cultures, past and present through undertaking
and publishing research, and providing access to print and audiovisual collections*

Julie Dennett
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
The Senate
Via email: LegCon.Sen@aph.gov.au

**Re: Inquiry into Schedule 4 of the Families, Housing, Community Services and Indigenous
Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010**

AIATSIS makes only summary submissions on proposed amendments to the *Aboriginal and Torres Strait Islander Act 2005* to include a power for the Minister to make guidelines that would apply to the Indigenous Land Corporation (ILC) when it performs its functions to support native title settlement.

AIATSIS views the Indigenous Land Corporation and the Indigenous Land Fund as intimately tied to native title settlements, but with particular attention to recovering land where native title has been extinguished or can no longer be established. The Indigenous Land Fund was established as part of a settlement package between Indigenous peoples and the Australian government (which also included the Native Title Act and the never fulfilled social justice package) in the wake of the recognition of Indigenous peoples' rightful ownership of their traditional territories established in the Mabo case.

We understand there are concerns within the Indigenous community about the operation of the ILC in fulfilling its functions in relation to the purchase and return of lands.

However, AIATSIS is of the view that providing Ministers with powers to issue binding guidelines to the board of the ILC is inappropriate. Interference in the independence of a statutory authority, particularly an Indigenous body established in the way described, is problematic. Allowing ministerial control over this Indigenous Land Fund may lead to appropriation for other purposes, including subsidising compensation settlements for new acts of extinguishment. The Indigenous Land Fund in particular must be protected from the policy whims of successive ministers or governments, regardless of whether the current policy intention is sound.

Ensuring that the ILC meets the purposes for which it was established should be achieved by other means.

If the amendment is to go ahead the purposes of directions should be carefully drafted and circumscribed to ensure that any guidelines should;

- only be those relating to native title or Indigenous land settlements to traditional owners;

- should be consistent with the functions of the ILC and Indigenous Land Fund under the Act; and
- should not be used to compensate for future extinguishment of native title or other Indigenous interests in land.

Thank you for the opportunity to provide comment on this proposal. If you would like any further information on these comments, please contact _____ or lisa.strelein@aiatsis.gov.au.

Yours Sincerely,

Mick Dodson
Chairperson
AIATSIS

16 December 2010