

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE FALSE OR MISLEADING
EVIDENCE BEFORE THE PARLIAMENTARY
JOINT COMMITTEE ON NATIVE TITLE AND
THE ABORIGINAL AND TORRES STRAIT
ISLANDER LAND FUND**

104TH REPORT

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POSSIBLE FALSE OR MISLEADING EVIDENCE BEFORE THE PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

Introduction

1. On 19 September 2001, Senator McGauran, at the request of Senator Ferris, the Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the Native Title Committee), moved that the following matter be referred to the Committee of Privileges:

Having regard to the 18th report of the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, the statement by the chair of the committee on the tabling of the report on 30 August 2001, and the letter of the chair of the committee of 3 September 2001 to the President, whether any false or misleading evidence was given to the committee, and whether any contempt was committed in that regard.¹

The Senate agreed to the motion.

2. Given the general nature of the reference, it has been necessary to examine closely the documents mentioned to ascertain exactly what evidence the Native Title Committee regarded as being false or misleading.

18th report of Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund

3. Two possible cases of misleading evidence are highlighted in the committee's report.

4. Pages 40 to 43 of the report detail issues surrounding the Australian National Audit Office (ANAO) issues paper relating to the ANAO's performance audit of the Indigenous Land Corporation (ILC) and in particular the fact that the paper was leaked to the media. This ANAO document is also referred to as the ANAO draft report. Of specific concern appears to be whether or not the leaking of the issues paper to the media was referred to the Australian Federal Police. Paragraph 4.85 of the 18th report states:

The ILC Board ultimately referred the leaking of the ANAO issues paper to the Australian Federal Police in September 2000. While the AFP did not accept the matter for investigation, the Committee is concerned by the inconsistencies between evidence given by the Chairperson [of the ILC, Ms Sharon Firebrace], on the one hand, and the former ILC General

1 Appendix B, p. 3.

Manager (Mr Wilson) and the former ATSIIC Director of Evaluation and Audit (Mr Miller) on the other. **The Committee is concerned that it may have been misled by Ms Firebrace. That is, she should have sought confirmation from the ILC Board and reported that to the Committee.** [emphasis in original]

5. Much potentially contradictory evidence is cited in pages 40 to 43 of the Native Title Committee's 18th report; however, the chief misleading statements are indicated as being found on pages NT 62 and 100 of that committee's evidence and are considered in more detail below.

6. The second matter relates to whether or not the Australian Federal Police was conducting an inquiry into the ILC's purchase and management of the Roebuck Plains station. Paragraph 4.93 of the Native Title Committee's 18th report reads:

The Committee is concerned about the ILC Chairperson's evidence and her statement to the media that an AFP investigation into Roebuck Plains was proceeding. Ms Firebrace's assertions are inconsistent with the AFP's advice that, as at 17 May 2001, it was still deciding whether to initiate an investigation. **Again, the ILC Chairperson may have misled the Committee.** [emphasis in original]²

Statement of Chair of Native Title committee on tabling of Native Title Committee's 18th report on 30 August 2001

7. In her tabling statement, the Chair of the Native Title Committee, Senator Jeannie Ferris, outlined the commissioning of two inquiries into the ILC during the year 1999-2000: one by the then minister, Senator the Hon. John Herron, into the behaviour of ILC directors and conducted by Mr Stephen Skehill, former secretary to the federal Attorney-General's Department; and another requested by the ILC Board, and completed by Mr Andrew Rogers QC, into the purchase of two cattle stations in Western Australia. Senator Ferris noted:

Regrettably, the Skehill inquiry arose from a request by four ILC directors for the minister to terminate the appointment of the ILC's chairperson, Ms Sharon Firebrace. Ms Firebrace subsequently also made a variety of allegations concerning directors. ... [T]he committee notes Ms Firebrace's admission that the minister suggested on three separate occasions that she should stand down from her position. In these circumstances, regrettably the committee seriously must question Ms Firebrace's claims about the causes of dysfunction within the ILC during her two-year term of office, which expired in August this year.³

2 Appendix E, pp. 14-15.

3 Appendix D, p. 8.

8. Against this background, ‘the committee ... concluded that, in the course of its inquiry, it may have been misled by Ms Firebrace about two separate matters’,⁴ as discussed in its 18th report.

Letter of Chair of Native Title Committee of 3 September 2001 to President

9. Senator Ferris, Chair of the Native Title Committee, outlined the two matters in a letter to the President in the following terms:

At page 43 of its report the Committee concluded that it may have been misled by Ms Firebrace. This conclusion relates to Ms Firebrace’s advice in Submission Nos 1 and 1a, and in her evidence on 27 March 2001, about the leaking of a draft issues paper from the Australian National Audit Office. That is, apparently without consulting the ILC Board, on three occasions Ms Firebrace gave evidence that contradicted advice by the ILC Board through its General Manager.

Further, at page 46 of its report the Committee again concluded that it may have been misled. This conclusion relates to advice from Ms Firebrace in Submission No 1a, repeated in (confidential) Submission No 1f, about referral to the Australian Federal Police (AFP) of the purchase of a cattle station (Roebuck Plains) in Western Australia. Ms Firebrace’s evidence was contradicted by the ILC General Manager (Submission No 2a) and in correspondence from the Australian Federal Police.⁵

Conclusions on what evidence was deemed to be misleading

10. In general terms, the allegedly misleading evidence is that from the then Chair of the Indigenous Land Corporation (ILC) Ms Sharon Firebrace relating to, firstly, the handling of the leak of a draft issues paper from the Australian National Audit Office and secondly, whether the purchase by the ILC of the Roebuck Plains cattle station in Western Australia had been referred to the Australian Federal Police. The specifics are canvassed below.

Conduct of inquiry

11. On 27 September 2001, the Chair of the Privileges Committee wrote to the Chair of the Native Title Committee, seeking detail on the manner in which that committee had been misled, why it might have occurred, and whether it considered any specific comments to be deliberately misleading. The Privileges Committee also sought relevant documents, both public and private, indicating that it would follow its normal practice of initially receiving the documents as private documents but reserving the right to publish them at a later stage of the inquiry.

4 *ibid.*

5 Appendix C, pp. 5-6.

12. The Chair of the Native Title Committee responded on 2 October 2001, restating briefly the themes which provoked the reference, and supplying the public evidence in which it occurred, namely transcripts of three public hearings into the ILC's annual report 1999-2000; the committee's two most recent reports on annual reports; and a volume of submissions. The Native Title Committee was to consider authorising publication of unpublished documents at its next private meeting. The House of Representatives was dissolved on 8 October, however — before that committee could meet. The committee did not meet until 21 March 2001, when it agreed to the publication, to the Privileges Committee only, of three documents: a letter dated 17 May 2001 from the AFP; the committee's letter dated 25 June 2001 to the Chair of the ILC; and the ILC Chair's response dated 10 July 2001, marked '*Private and Confidential*'.⁶ As indicated at paragraph 11, the Committee of Privileges had advised the Native Title Committee that, while it would receive documents in private during the initial stages of its inquiry, it normally expected to publish any relevant documents. Given the nature and conduct of the inquiry, however, the committee has determined that it need publish only a limited part of the documentation.

13. Furthermore, having analysed these documents, the committee has not found it necessary to seek supplementary information from any of the persons referred to in this report. It has been able to draw conclusions on the evidence which the Native Title Committee made available to it. However, because the matters referred to the committee did not arise in isolation, and because of the number of other contemporaneous inquiries into related matters, the committee provides in this report some broader background information, as well as discussing and reaching conclusions on the specifics of the alleged misleading information. A brief chronology of the events is at Appendix A.

Persons and organisations involved

Indigenous Land Corporation

14. The Indigenous Land Corporation is an Adelaide-based independent statutory authority, established on 1 June 1995 by the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* pursuant to section 191A of the Aboriginal and Torres Strait Islander Commission Act (the ATSIC Act) as part of the then government's response to the High Court's 1992 *Mabo* decision, to assist those indigenous Australians whose native title rights have been extinguished. Its planned \$1.3 billion funding to the year 2004 is received from the Aboriginal and Torres Strait Islander Land Fund, initially a perpetual public trust account but now a 'reserved fund' within the public account. The ILC's two main functions are to assist indigenous Australians to acquire land and to manage it in a sustainable way to provide economic, environmental, social or cultural benefits for themselves and for future generations. The ILC is governed by a seven-member board, appointed by the relevant minister.

6 Appendix I, p. 26, Appendix G, pp. 18-22 (excerpts only), and Appendix H, pp. 23-25 (excerpts only).

The ILC Chairperson is appointed by the minister on a part-time or full-time basis for a term of up to four years.

15. Board membership at the relevant time was as follows [titles as preferred by Board]:

Chairman — Ms Sharon Firebrace
Deputy Chairman — Mr Clem Riley
Mr Geoff Clark — ex officio, as ATSIC Chairman
Mr Stephen Gordon — ATSIC nominee
Mr David Baffsky
Mr Kevin Driscoll
Ms Lois Peeler

16. The General Manager/CEO was Mr Murray Chapman (until December 1999), Mr John Wilson (until February 2001) and Mr Roger Haebich (Acting CEO, presumably till the appointment of Mr David Galvin in September 2001).

Ms Sharon Firebrace

17. Ms Sharon Firebrace was appointed Chair of the ILC on 10 August 1999 by the then Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon. John Herron, to replace the founding chair, Mr David Ross, on a four-days-per-week basis for a two-year term, her term expiring in August 2001. Ms Firebrace was described in the minister's press release announcing her appointment as 'a leading indigenous business woman and principal director of a consultancy firm specialising in business, project and enterprise development'.

18. She quickly experienced difficulties with other ILC Board directors. On 21 March 2000, they moved a no confidence motion against her, over her unilateral attempts to remove the CEO, Mr John Wilson; again at the Board meeting of 8 May 2000 they attempted to remove her; in June they refused to approve charter flights or discretionary expenditure for her. Following a series of complaints from both sides, then Minister Herron instigated an inquiry, to be conducted by Mr Stephen Skehill, former Secretary to the Commonwealth Attorney-General's Department, into whether the conduct of any ILC director constituted misbehaviour under the ATSIC Act. The Federal Court dismissed Ms Firebrace's attempt to block the inquiry. While the Skehill report has not been released, a journalist asserts that, at an ILC Board meeting, the other six directors tabled individual correspondence from the minister stating that Mr Skehill had found no improper behaviour on their part.⁷

⁷ Mike Steketee, 'Chair in flames', *The Australian*, 20 June 2001.

Other persons involved

19. Dr Paul Nicoll headed the ANAO inquiry into the ILC while Mr Bill Miller was the Director of Evaluation and Audit at ATSIC.

Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund

20. The Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund was established under Part 12 of the *Native Title Act 1993*, to consult and report on the operation of the Act and related matters. Its present chair is Senator Jeannie Ferris. The Committee routinely examines and reports on the annual reports of those bodies whose activities it oversees.

Mr Andrew Rogers, QC

21. Former Chief Judge of the Commercial Division of the Supreme Court of NSW 1987-92, Mr Rogers holds various directorships and consultancies. He took over from Sir Laurence Street QC the ILC Board-initiated inquiry into all aspects of the purchase and management of Roebuck Plains and Cardabia Stations when Sir Laurence was unable to continue through pressure of other work. His report was completed in June 2001 and he briefed the Board on his findings on 18 June 2001, saying he found no evidence of illegality, criminal behaviour or serious misconduct. However, in accordance with his advice, the Board asked him to seek an indemnity from the Government against any claims for defamation for the ILC, its directors and officers, prior to formally providing his report to the ILC Board and its publication.⁸ It is unclear what has happened since.

First matter raised by Native Title Committee —leaking of ANAO issues paper

22. An ANAO performance audit was conducted into the adequacy of the ILC's operations and performance in assisting indigenous Australians to acquire and manage land. The audit, arising in part from a recommendation of the Senate Select Committee on Certain Land Fund Matters in November 1995, covered the period from the establishment of the ILC in June 1995 to December 1999. An issues paper was produced in November 1999 and the final report, tabled in Parliament on 29 June 2000, contained nine recommendations, accepted by the ILC, for strengthening its governance framework.

23. During the Native Title Committee's examination of the ILC 1998-99 annual report on 15 February 2000, committee members questioned the ILC representatives about an article in the *Sydney Morning Herald* under the byline of Gerald Ryle, purporting to discuss findings of the ANAO issues paper.⁹ The same journalist

8 ILC, *Annual Report 1999-2000*, p. 2.

9 Gerald Ryle, "'Litany of breaches' in black land fund", *Sydney Morning Herald*, 14 Feb 2000.

published other articles on the ILC, and in particular on its purchase of the Roebuck Plains cattle station, throughout 2000. The following exchange took place in the committee hearing:

Mr SNOWDON - I am quite concerned, and I am sure others are, that a draft report of this nature should find its way to the press. I am concerned because it is clearly a possible breach of section 70 of the Crimes Act. I am wondering if you have sought advice or referred the matter to the Federal Police or whether you intend to refer the matter to the Federal Police.

Ms Firebrace - We have committed to the process and have had consultation and discussion with the Australian National Audit Office. According to the act, as we are instructed, we have had a meeting and discussions with Bill Miller, who is the minister's appointee for the audit and evaluation.

Mr SNOWDON - That is not the answer to my question.

Ms Firebrace - Can I just continue. We have had discussions with him and he has been fully briefed on what has occurred. He has been familiar with the articles and with what has ensued. He has committed himself to a time with our office next Monday and he is going to be taking up all that is inferred within the article and all that is concerning us at this point regarding that.

Mr SNOWDON - The article is a grave breach of propriety. The fact that this person has had access to a draft Audit Office document which has not been finalised is a major cause for concern. It is a possible breach of the Crimes Act. I am wondering whether or not you intend to refer the matter to the Federal Police.

Ms Firebrace - We have followed the path and the procedure that are set before us and that are within our act. We have committed it to the office of audit review and evaluation. Bill Miller is processing it and he is taking the issue up.

Mr SNOWDON - Have you expressed your concern to the Federal Police that this document may have leaked from your organisation?

Ms Firebrace - We have referred it through to Bill Miller's office and he will process it and take that up accordingly. He has advised us on that matter. We have been open to him for his advice.

Mr SNOWDON - Has he suggested to you that this may be a breach of the Crimes Act?

Ms Firebrace - He has suggested all kinds of possibilities but the whole issue has been reported to him. It is fully in his hands. He has been totally briefed. He is taking it up and he is going to take the necessary course of action.

Mr SNOWDON - Your board and organisation is responsible for managing its own affairs. There has clearly been, somewhere or other, a breach of security. I am suggesting that you, as the chair of this organisation, should be most concerned that this breach may have happened within your organisation.

Ms Firebrace - We are concerned; I am concerned.

Mr SNOWDON - Will you come back to us next week with advice as to whether or not you have discussed the matter of the referral to the Federal Police with Mr Miller?

Ms Firebrace - Mr Miller will be giving a full report on Monday. He has currently got the audit report in his possession. He is combing through that and he will give us all the advice that is necessary.

Mr SNOWDON - I want you to ask Mr Miller for me whether or not this matter should be referred to the Federal Police.

Ms Firebrace - I will definitely ask him that.¹⁰

24. In its 17th report, the Native Title Committee outlined subsequent correspondence between the committee and the ILC, including as an appendix a letter from Ms Firebrace dated 2 August 2000. In this, she stated:

I subsequently discussed this case with Mr Bill Miller, Director Evaluation and Audit who felt it was preferable to review the adequacy of ILCs internal control systems to ensure the safeguarding of current and future sensitive and confidential material. He felt this would be a more positive response to the matter, than seeking a Federal Police investigation.¹¹

25. She added that at a subsequent ILC Board meeting on 8 May 2000, at which she was present for only part of the proceedings and not for the discussion of the ANAO audit, 'The Board did not resolve to refer any matter to the Federal Police'. According to Ms Firebrace, the minutes record that the Board 'is taking what it considers to be appropriate responses to the issues raised by both Dr Nicholl [sic] and Mr Miller'.¹²

26. Subsequent evidence revealed that, at the 8 May 2000 Board meeting, there was an attempt by the other directors to remove Ms Firebrace as chair, after which she left the meeting and was not present for the consideration of the ANAO draft report.¹³ In compiling her 2 August 2000 correspondence Ms Firebrace was relying on the Board minutes and her discussion(s) with Mr Bill Miller about what had occurred. The Privileges Committee has not sought minutes of the 8 May 2000 ILC Board meeting,

10 Native Title Committee, *Hansard*, 15 February 2000, pp. NT 4-5.

11 Native Title Committee, *17th Report*, September 2000, Appendix 3.

12 *ibid.*

13 Native Title Committee, *Hansard*, 21 May 2001, p. NT 107.

but there appears no reason to doubt that Ms Firebrace's account and quote above is accurate about what they say on the ANAO topic. It is, however, the interpretation of the wording of the minutes that is in dispute. The fact that the minutes apparently do not record a referral of the leak of the ANAO report to the AFP could mean, as Ms Firebrace chose to interpret them, that the referral of the leak to the AFP was discussed and rejected as an option, or that it was not discussed at all, as Mr John Wilson, the CEO of the ILC at the time, asserts. On balance, for the reasons set out below, the latter seems more likely.

27. The matter of the leaking of the ANAO issues paper again became the subject of scrutiny following the Native Title Committee's receipt of a letter dated 12 September 2000 from Mr Wilson, which included the following:

I am writing to inform you that the ILC Board, which met yesterday, did not sanction and was not aware of this letter [Chairman of ILC to Secretary of Native Title Committee dated 2 August 2000] ... The ILC Board wants you to be aware of its displeasure about this letter, which implies that the Board discussed the question of referral to the Australian Federal Police and dismissed it as an option. This is not true, as the matter of referral to any third party was never raised at the Board meeting of 8 May or any other Board meeting prior to yesterday's meeting.

You should also be aware that I had originally intended to raise the matter with the Australian Federal Police and had made initial enquiries in February. I was directed by the Chairman not to pursue those enquiries.

At Board discussion yesterday, the ILC Board took the view that the ILC should be pro-active in this matter and has asked me to raise the matter with the Australian Federal Police, which I shall be doing in the next few days.¹⁴

28. The ILC annual report for the year 1999-2000 was tabled in both Houses of Parliament on 10 October 2000 and was examined by the Native Title Committee by way of extensive correspondence with the ILC and others, as well as by public hearings on 27 March, 21 May and 18 June 2001. In its 18th report, the Native Title Committee explained that it was not satisfied that it could properly complete its inquiry into the ILC annual report on the basis of the evidence given by the ILC at the first public hearing, because so many questions put by the committee had been taken on notice, a pattern which continued at the second public hearing.¹⁵

29. In response to requests from the Native Title Committee, Mr Bill Miller, Director of Evaluation and Audit of ATSIC at the time in question, gave a written account dated 14 May 2001 of his appearance at the ILC Board meeting of 8 May 2000. He stated that he had responded in writing on 23 February 2000 to a request from the ILC Chairperson for advice about the leak, including in his response

14 Native Title Committee, *Annual Report 1999-2000: Submission Numbers 1-8*, p. 27.

15 Native Title Committee, *18th Report*, pp. 38-39.

a suggested letter to the Auditor-General. He further stated that he had briefly explained the issues raised in that letter to the ILC Board on 8 May 2000.¹⁶

30. He noted that at the Native Title Committee's public hearing on 27 March 2001, when questioned about her 2 August 2000 statement that the Board had discussed the leaking of the ANAO issues paper at its 8 May 2000 meeting and had not resolved to refer the matter to the AFP, Ms Firebrace had given a somewhat different account of events. She had told the committee:

The point that you have made here is that the board did not resolve to refer any matter to the police. I believe that to be absolutely accurate and true. If you look at the minutes of 8 May, to which I was referring at the time, I was making reference to the 8 May board minutes and also to the discussion that I had with Bill Miller at the time, because Bill Miller was actually scheduled on the agenda and discussed the matter with the board. He did advise the board at the time not to actually refer the matter to the police because he felt that that was futile.

...

Mr Miller reported to the board on 8 May about the matter. As the minutes indicate from the 8 May meeting, he touched on that subject and that topic. Mr Miller told me after that meeting that he had discussed the matter and he recommended to the board that they not take the matter to the police at that stage.¹⁷

31. In his submission, Mr Miller asserted:

I would like to make it clear that I did not advise the ILC Board on 8 May 2000 to not refer the matter to the police nor did I say that referral would be futile ... I was aware that the Chairperson had signed and despatched my recommended letter to the Auditor-General, as were the Directors of the Board, and thus there was no reason for me to raise the issue of a possible police referral.¹⁸

32. Mr Miller went on to explain his reasoning for not recommending that the ILC refer the leak to the police. When questioned about internal security arrangements for the issues paper, Ms Firebrace had informed him that a number of copies of the issues paper had been circulated to officers within the ILC. Mr Miller then took the view that, as originator of the document, the Auditor-General would be in the best position to determine the seriousness of the leak and whether it should be formally investigated, either by his staff, the ILC or the police. He added that he did not ever recall saying that a referral of the leak by the ILC to the police would be futile,¹⁹

16 Native Title Committee, *Annual Report 1999-2000: Submission Numbers 1-8*, p. 112.

17 Native Title Committee, *Hansard*, 27 March 2001, p. NT 24.

18 Native Title Committee, *Annual Report 1999-2000: Submission Numbers 1-8*, p. 112.

19 *ibid.*

though he subsequently accepted that that would be a reasonable interpretation of the tenor of his comments.²⁰

33. On 21 May 2001 Mr Miller, by then retired, gave further evidence to the Native Title Committee. He explained his role at the 8 May 2000 Board meeting:

When we were asked finally to attend a meeting, the acting chair asked [Dr Nicoll and me] if we would speak very quickly — and I think I have mentioned about 10 minutes in total — to just both of us explain our involvement and what we said. ... The meeting was very short. I went through every part of [my letter of advice to the Chair of 23 February]. That is why I say that I did raise the issue of the advice about writing to the Auditor-General. I went through every part of the paper. I was not questioned on that part of the paper whatsoever. At the finish I simply said to the ILC board that I believed when the ANAO report was finally issued the media would be again onto the issue of Roebuck Plains and Cardabia station, and that my recommendation that both matters be investigated stood ...²¹

34. When asked if a request had ever been made of him or his office to undertake an investigation within the ILC into the leak of the report, he replied ‘No’.²² When asked specifically about whether he had said to Ms Firebrace that referring the leak to the police would be futile, he replied:

I do not ever recall using the word ‘futile’. I do not think it is a term that I would use. I may have given the impression that a referral would not be successful, because ... I firmly believe that in relation to a referral direct to the AFP— who are very stretched for resources —about a leak, the first thing they would ask is, ‘How serious is the leak? How important is the information? How confidential is the information?’ For those reasons, I believe, therefore, that the best person to refer to, if there needed to be a referral, was the Auditor-General himself whose document it was.

There is also a policy, which has been in place now for about three years, instituted by the Auditor-General’s Department, where every department and agency is responsible for internal investigation of fraud and matters like leaks. They are to conduct their own investigations, and any evidence is then presented not to the AFP but direct to the Director of Public Prosecutions. I had the Commonwealth policy in mind as well at the time. I suppose in some ways I was saying to the ILC, ‘Look, I don’t think you’re going to be successful in pursuing this direct yourselves, but go to the Auditor-General, who can make the decision, because he was the originator of the documents.’²³

20 Native Title Committee, *Hansard*, 21 May 2001, p. NT 109.

21 *ibid.*, p. NT 107.

22 *ibid.*

23 *ibid.*, p. NT 108.

35. Apparently unknown to the ILC Board or to Mr Miller at the time of the 8 May 2000 ILC Board meeting was the fact that the Auditor-General had replied to Ms Firebrace's letter on 31 March 2000. When asked in writing by the Native Title Committee to explain her apparent failure to inform the Board, Mr Miller or the General Manager of the Auditor-General's reply, Ms Firebrace replied that a faxed copy of the Auditor-General's original letter had been received on 31 March 2000 on the general office fax line in the ILC Canberra office and forwarded to her home fax; it is unclear what happened to the original. She further explained that it was administrative practice within the ILC at that time for official correspondence addressed to the Chairperson to be processed in-house whenever practicable and hence it was 'extremely unlikely' that she would have been the sole recipient of the Auditor-General's letter.²⁴

36. The Auditor-General's letter indicates that he was of the view that it was 'highly unlikely' that the leak had occurred in his office and that 'I understand that you have asked ATSIAC's Office of Evaluation and Audit to undertake an investigation within your office to determine if the leak was from the Indigenous Land Corporation.'²⁵ But in her 2 August 2000 correspondence Ms Firebrace appears to have misrepresented the Auditor-General by stating that 'The Auditor General noted my intention to approach ATSIAC's Office of Evaluation and Audit to conduct an investigation into this matter' [emphasis added].

37. At its 27 March 2001 public hearing, the Native Title Committee endeavoured to clarify the matter of the so-called referral to Mr Miller's office of the leak of the Audit issues paper. Ms Firebrace was asked specifically when the leak had been referred, to which she replied 'It was February'.²⁶ But as noted above, in evidence to the Native Title Committee on 21 May 2001 Mr Miller denied that any such request was made of him or his office.²⁷ Mr Miller asserts that, while he had had discussions with Ms Firebrace, he was not formally approached to conduct an inquiry at any stage.

38. While the end result was confusion, it can be possibly explained by the fact that Ms Firebrace used the expression 'referred' to mean that she raised the matter, rather than 'referred' in any formal sense. In her response to the Native Title Committee,²⁸ Ms Firebrace agreed that 'Mr Miller's observation that there was never a request made of him to undertake an investigation is clearly correct and consistent with the evidence I have provided' [emphasis added]. In that response she attempted to clarify the nature of the communication with Mr Miller, stating 'The discussion focused on whether an investigation should be conducted into the leak, and if so, by whom'. Both Mr Miller and Ms Firebrace agree that he stated that he felt it preferable to review the adequacy of the ILC's internal security rather than to proceed with an investigation.

24 Appendix H, p. 23.

25 Native Title Committee, *Annual Report 1999-2000, Submissions Numbers 1-8*, p. 4.

26 Native Title Committee, *Hansard*, 27 March 2001, p. NT 20.

27 Native Title Committee, *Hansard*, 21 May 2001, p. NT 107.

28 Appendix H, p. 23.

39. When Mr John Wilson, the then ILC General Manager, was asked, ‘Could you clarify for us what your understanding is of the outcomes of the board meeting of 8 May in relation to the federal police?’²⁹, his initial response was to explain that he had become aware through the Native Title Committee’s web site of Ms Firebrace’s letter of 2 August 2000 to the Committee. He then stated:

[The letter] implied that at the meeting of 8 May there had been some discussion about the virtue or otherwise of inviting the AFP to look at Roebuck Plains. The fact is, that no such discussion took place. I have not got the minutes with me, but I am damn sure that the minutes do not say anything about it either.³⁰

40. Mr Wilson went on to describe the 8 May Board meeting in the following terms:

Dr Paul Nicoll of the ANAO joined the board after the chairman had left and there was no discussion. It is certainly not recorded in the minutes whether it was sensible or not to invite the AFP. ... We had an ANAO report ... So it was a briefing to the board about what that report would say before it was tabled in the parliament. There was discussion about Roebuck Plains as you would expect... . Bill Miller discussed the same thing. He suggested to the board that they invite one of the big chartered accountant firms to come and do some sort of independent review. I do not recall any discussion at all. I am quite sure that there was not any with the federal police.³¹

41. Mr Wilson’s evidence clearly focuses on a possible referral to the AFP of the matter of the purchase of the Roebuck Plains station, a topic covered in the ANAO report, (and which is considered below) and not the leaking per se of the ANAO report (which dealt in part with the purchase of Roebuck Plains). When Mr Miller’s account of the meeting is also taken into consideration, the only logical interpretation of the above quote is that Mr Wilson used ‘discuss’ to mean two quite separate things: the matter was given an airing by an individual; and there was an exchange of views between two or more persons.

42. However, Mr Wilson was also asked what provoked the chairman’s February direction to him not to pursue inquiries with the AFP and he replied specifically in terms of the leak:

I suggested that we should invite the federal police to have a look at it because a leaking of an issues paper — and you mentioned the Crimes Act tonight — is a serious matter. We needed to be seen to be doing something and taking it seriously. I was directed by the chairman not to pursue those inquiries. I cannot remember whether she informed me that she was going to

29 Native Title Committee, *Hansard*, 27 March 2001, p. NT 46.

30 *ibid.*

31 *ibid.*, pp. NT 46-7.

talk to Bill Miller. She may have done at the time, or she may not have. I do not remember.³²

43. At the Native Title Committee's public hearing on 21 May 2001, a further attempt was made to sort out what had happened at the 8 May 2000 board meeting. Ms Firebrace explained that she had not attended the whole meeting, having left because an attempt was made to remove her as chair; however, she subsequently had contact with Bill Miller, and

Bill Miller said to me that he had advised the board not to refer the matter to the AFP, the Federal Police, because he felt that it was futile.³³

44. The Native Title Committee added:

She asserted she had a witness to her conversation with Mr Miller and a note taken at the time, both of which she subsequently provided to the Native Title Committee.³⁴

45. As the committee pointed out:

[Y]our note [of a conversation with Mr Miller (provided as an attachment to her letter dated 14 June, Submission No 13)] was not made at the time of the 8 May 2000 Board meeting. According to the statutory declaration by [your husband], your note was made on or about 5 March 2001, some 10 months following the Board meeting and more than 6 months after your letter of 2 August 2000 regarding this issue. ... The question remains how a file note of a telephone conversation on 5 March 2001 can substantiate your claim of 2 August 2000 about what transpired at the 8 May 2000 Board meeting. Further, despite not being present at the time, you have not accepted the Board's own account of the meeting as provided to the Committee by Mr Wilson on 12 September 2000 (Submission No 2). Notably, the Board's account is consistent with Mr Miller's submission.³⁵

46. Ms Firebrace's reply missed the Native Title Committee's point entirely when she asserted that 'It remains clear that I acted on Mr Miller's advice not to refer the matter to the AFP', and protests 'I would suggest that any attempt to "muddy the waters" in respect of the elapse of time between events and file notes is purely speculative and mischievous'.³⁶ Given the timing of one of her responses to the Native Title Committee (6 March 2001), it appears that her telephone call to Mr Miller on 5 March 2001 was to refresh her memory as to what had happened at the 8 May 2000 Board meeting.

32 *ibid.*, p. NT 47.

33 Native Title Committee, *Hansard*, 21 May 2001, p. NT 52

34 Native Title Committee, *Annual Report 1999-2000, Submission Numbers 1-8*, p. 21.

35 Appendix G, p. 20.

36 Appendix H, p. 24.

Second matter raised by Native Title Committee — AFP investigation into Roebuck Plains purchase

Background on ILC purchase of Roebuck Plains cattle station

47. Before Ms Firebrace took office, the Roebuck Plains cattle station was purchased by the ILC in May 1999 for \$8m, a purchase price which represented a third of the ILC's total land acquisition expenditure for 1998-99. There was extensive media speculation that the ILC had paid too much for the station and that other aspects of the purchase were irregular.

48. As noted in paragraph 22, the ANAO conducted a performance audit of the ILC to assure Parliament that the ILC was achieving what it had been established to do. The audit report, which was tabled on 29 June 2000, identified administrative flaws in the purchase but no corruption. The audit did not cover ongoing management arrangements, because, as the report noted, the ILC had launched its own inquiry into this and other aspects of the purchase.³⁷

49. That 'own inquiry' has become known as the Rogers inquiry, though it was conducted initially by Sir Laurence Street QC. No report of the inquiry has been released. The Board issued a press release on 18 June 2001 after its briefing by Mr Rogers³⁸ and, in its annual report for 2000-01, the Board recorded:

The ILC Board commissioned Mr Andrew Rogers QC to conduct an investigation into the ILC's purchase and management of two pastoral stations in Western Australia - Cardabia and Roebuck Plains Stations. Mr Rogers finalised his report in June 2001 and has briefed the Board saying he found no evidence of illegality, criminal behaviour or serious misconduct. In accordance with his advice, the Board asked Mr Rogers to seek indemnity from any claims for defamation for the ILC, its Directors and officers, prior to providing his report to the ILC Board and its publication.³⁹

50. Both the *Sydney Morning Herald*⁴⁰ and *The Australian*⁴¹ reported on the matter, the latter in an article highly critical of Ms Firebrace and her allegations of misconduct. Ms Firebrace did not attend the 18 June ILC Board meeting during which Mr Rogers briefed the board.⁴²

37 ANAO, *Indigenous Land Corporation - operations and performance*, Report No. 49, 1999-2000, p. 75.

38 Native Title Committee, *Annual Report 1999-2000 Submission Numbers 1-8*, pp. 94-95.

39 ILC, *Annual Report 2000-01*, p. 2.

40 Mark Metherell, '\$8m Aboriginal land deal above board, inquiry finds', *Sydney Morning Herald*, 19 June 2001.

41 Mike Steketee, 'Chair in flames', *The Australian*, 20 June 2001.

42 ILC, *Annual Report 2000-01*, p. 132.

Alleged misleading information relating to AFP investigation into the Roebuck Plains purchase

51. On 4 December 2000, an article entitled 'Land of Strife' by Mike Steketee was published in *The Australian* newspaper. It states it was based in part on the leaked draft report into the conduct of ILC directors by Stephen Skehill. In relation to the Roebuck Plains purchase, the journalist states that, contrary to Ms Firebrace's claim that she had insisted on an inquiry into alleged corruption in the ILC purchase of Roebuck Plains cattle station in the Kimberley in 1999, it was other directors who initiated the inquiry. On 13 December 2000, Ms Firebrace wrote in reply to *The Australian*, stating:

I was the one who insisted on an independent inquiry into the purchase of Roebuck Plains, bought for \$8m one year after it had been sold for \$1.3m. A call for an inquiry was backed by Bill Miller, the Director of Evaluation and Audit, ATSIC. The ILC received personal reports from Mr Miller, and from Dr Paul Nicholl [sic] from the Australian National Audit Office but, despite prompting, it did not investigate the matter until June, when requested to do so by Minister John Herron. ... Why does Mr Steketee fail to mention that the Australian Federal Police are investigating the purchase and management of Roebuck Plains?⁴³

52. Against this public exchange of claims, the Native Title Committee commenced its examination of the ILC's annual report. In correspondence dated 6 March 2001 to that Committee, Ms Firebrace stated:

My comment in the press regarding an AFP investigation into Roebuck Plains acknowledges the fact that an AFP investigation was proceeding at that time, and as I understand, is still proceeding.⁴⁴

Similarly in correspondence dated 11 May 2001, Ms Firebrace reiterated:

With regard to the AFP investigation into Roebuck Plains, I do not believe it is appropriate for me to comment on what are essentially confidential police matters, other than to state that on several occasions I have confirmed with AFP spokespersons that an investigation into the purchase of Roebuck Plains is proceeding.⁴⁵

53. When the matter was raised in the Native Title Committee's public hearing on 21 May 2001, a formal response from the AFP had not been received.⁴⁶ In correspondence of 17 May 2001 to the Native Title Committee, however, Federal Agent V Stevenson advised that the AFP was still assessing the matter, and had

43 Letters to the editor, *The Australian*, 13 December 2000, p. 14.

44 Native Title Committee, *Annual Report 1999-2000: Submission Numbers 1-8*, p. 7.

45 *ibid.*, p. 14.

46 Native Title Committee, *Hansard*, 21 May 2001, p. NT 68.

requested copies of the Skehill and Rogers reports to assist the AFP in determining whether to initiate an investigation.⁴⁷

54. Ms Firebrace nevertheless asserts that she had a telephone discussion on 2 November 2000 with a Ms Andrea Humphreys of the AFP, who advised her that ‘the AFP is now investigating; the AFP is committed to the formal investigation process; the ILC case is now classified “sensitive”’.⁴⁸ She further asserts, but does not state when, that Ms Humphreys confirmed that at an AFP senior executive meeting the AFP agreed on 7 December 2000 that an investigation would proceed in three parts, commencing with Roebuck Plains, and that on 4 or 5 January 2001 Ms Humphreys told her by telephone that investigations were starting immediately through the WA arm of the AFP. Ms Firebrace also cites an article by Michael Harvey, which states:

Police are investigating allegations of impropriety involving a major Aboriginal organisation.

Senior Australian Federal Police have confirmed the inquiry into serious claims against the Indigenous Land Corporation. ... The allegations have been raised by ILC chairwoman Sharon Firebrace. ... The police investigation is now the third official inquiry into the ILC controversy. “We have received certain allegations or complaints concerning the ILC,” said an AFP spokeswoman. “We are certainly having a look at them.”⁴⁹

55. The Native Title Committee questioned the AFP involvement at its 21 May 2001 public hearing, the Chair advising that a formal response had been sought from the AFP on 19 April 2001; and that a secretariat file note dated 11 May read as follows:

I spoke to Mr Paul Weller, AFP on 11 May 2001 about Mr Grundy’s letter of 19 April regarding whether the AFP was investigating the purchase of Roebuck Plains by the ILC.

Mr Weller said he would search the AFP database and he would be able to advise me with ‘98% certainty’. Mr Weller subsequently advised me that the AFP had a policy not to comment on current investigations, so he was not in a position to tell me anything.⁵⁰

56. During the examination by the Legal and Constitutional Legislation Committee of the additional estimates of the Australian Federal Police on 28 May 2001, Commissioner Keelty was questioned about Ms Firebrace’s allegations. He responded:

47 Appendix I, p. 26.

48 Appendix H, p. 25.

49 *ibid.*

50 Native Title Committee, *Hansard*, 21 May 2001, p. NT 68.

On 18 October 2000, Mrs Firebrace, who is Chairman of the Indigenous Land Corporation, contacted the AFP and advised of possible criminal conduct occurring within the Indigenous Land Corporation and also of the alleged inappropriate conduct of ILC members and the former Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron. The matter is not currently being investigated by the AFP.⁵¹

He later confirmed that, from an AFP perspective, the matter was closed.⁵² The matter was not raised at the Native Title Committee's 18 June 2001 hearing.

57. There appears to be no independent corroboration of Ms Firebrace's claim that the AFP was investigating the Roebuck Plains purchase. Ms Firebrace may have been under the misapprehension that an approach to the AFP automatically triggered a full investigation rather than a background check to ascertain whether an inquiry was warranted or not.

Conclusions

58. It is clear from the above account of evidence before the Native Title Committee that there was general confusion by the relevant players as to what precisely had occurred at the Indigenous Land Corporation Board meeting of 8 May 2000, which is at the heart of the Native Title Committee's concerns. The Committee of Privileges can understand why the Native Title Committee regards itself as having been misled, specifically by Ms Firebrace, as a result of the claims and counter-claims, over a period of months, as to the involvement by the Australian Federal Police in the activities of the ILC. Given the consistency and extent of the misleading nature of the evidence, the Committee of Privileges also understands why the Native Title Committee might have considered it necessary to raise these matters as possible contempts, on the grounds that the evidence was deliberately misleading.

59. The Committee of Privileges, however, has formed a different view. When teasing out the two strands relating to possible AFP involvement in the leaking of the ANAO issues paper and in the ILC purchase of Roebuck Station, the Committee of Privileges realised that, first, there was some degree of expectation created, not least by the Native Title Committee itself in the early stages of the ILC's difficulties with its new Chairman, that the leaking of the ANAO report might warrant AFP investigation.⁵³

60. Secondly, the committee noted that there was, by the time of the meeting of 8 May 2000, an obvious breakdown of communications between the Chairman and other board members, resulting in another attempt (the previous one having been in March 2000) to remove the Chairman from the board. The Chairman was not present

51 Senate Legal and Constitutional Affairs Legislation Committee, *Hansard*, 28 May 2001, p. LC 144.

52 *ibid.*

53 See exchange during Native Title Committee's examination of 1998-99 ILC Annual Report quoted at paragraph 23 above.

at the crucial point of discussion of the ANAO report. It is therefore not surprising that the parallel strands relating to AFP investigations of the leaking of the ANAO report and of the Roebuck Station became confused. Her own view, which must have been arrived at following discussions with at least one other person (Mr Miller) who attended the meeting for this item only, was no doubt confused by the acknowledged fact that the ANAO audit was dealt with at that meeting.

61. It is important to note that Mr Miller has accepted that Ms Firebrace could well have interpreted his earlier comments about referring the leak to the AFP as meaning that it would be ‘futile’ to do so. In addition, regarding her perception that the AFP was actively investigating the ILC’s administration of Roebuck Station, it is equally important to note that the AFP did not publicly advise that the Roebuck Plains matter was closed until 28 May 2001, well after Ms Firebrace claimed to have been in touch with the AFP.⁵⁴

62. The Committee of Privileges has therefore concluded that it is unlikely that Ms Firebrace’s evidence to the Native Title Committee on the two matters referred to in that committee’s correspondence was deliberately or intentionally misleading. It draws this conclusion on two bases:

- that she was not present for the vital part of the ILC Board meeting of 8 May 2000; and
- that she probably believed that the act of referring a matter to the Australian Federal Police meant that the Australian Federal Police actually investigated it.

Additional observation

63. In her letter of 2 October 2001, the Chair of the Native Title Committee specifically drew attention to the fact that that committee had limited itself to referring only two instances of possible misleading evidence, those discussed above. The basis of doing so was that ‘those instances were characterised by repetition on Ms Firebrace’s part, and by repeated rebuttal by others.’⁵⁵

64. In the course of its present inquiry the Committee of Privileges too has noted possible discrepancies in evidence before the Native Title Committee. The Committee of Privileges agrees with the Native Title Committee that further evaluation of this evidence, which is confused and based on perspectives and perceptions of the persons involved, does not warrant further examination. Such instances have not been further identified in this report. The committee has concluded that even the clear-cut instances of misleading evidence which have been referred to it are likely to have arisen from misunderstanding and misperceptions of what was being dealt with by the ILC Board

54 Appendix H, p. 25, and see paragraphs 51 and 54.

55 Appendix F, p. 16.

on 8 May 2000, rather than from any intention by Ms Firebrace deliberately to mislead the Native Title Committee.

Finding

65. The Committee of Privileges has found that, while misleading evidence was given to the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, it is unlikely that it was given with deliberate intent. Therefore no contempt has been committed.

Robert Ray
Chair

APPENDICES

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CHRONOLOGY

May 1999	ILC purchases Roebuck Plains cattle station
10 August 1999	Ms Sharon Firebrace appointed ILC chair
December 1999	Mr Murray Chapman General Manager ILC resigns and has his contract paid out; Mr John Wilson is appointed at some time thereafter
15 February 2000	Native Title Committee public hearing into ILC 1998-1999 annual report
21 March 2000	ILC Board passes motion of no confidence in chair after she attempts unilaterally to suspend Chief Executive John Wilson
19 April 2000	Four ILC directors (Messrs Baffsky, Riley, Driscoll and Ms Peeler) request minister to terminate the appointment of Ms Firebrace, on the grounds, inter alia, that she had seriously misled the Board on more than one occasion, and that she purported to act on behalf of the ILC without authority
8 May 2000	ILC Board meeting - Ms Firebrace attends part only - attempt to remove Ms Firebrace as Chair - Dr Nicoll (ANAO) and Mr Miller (ATSIC Office of Evaluation and Audit) address Board on ANAO audit
30 May 2000	Minister Herron advises ILC Deputy Chair Mr Clem Riley that he has decided to commission an inquiry by Mr Stephen Skehill into behaviour of ILC directors
29 June 2000	ANAO performance audit of the ILC tabled in Parliament
June 2000	ILC board-instigated inquiry into purchase of two cattle stations in WA, firstly conducted by Sir Laurence Street then completed by Mr Andrew Rogers QC
30 Jun 2000	Ms Firebrace commences proceedings in Federal Court against ILC/Mr Skehill
5 September 2000	Federal Court dismisses Ms Firebrace's application for an interlocutory injunction restraining Mr Skehill from proceeding with his inquiry
6 September 2000	17 th report of Native Title Committee presented Leak of ANAO issues paper referred by ILC Board to AFP; they do not investigate
1 December 2000	Report on behaviour of ILC directors by Mr Stephen Skehill presented to Minister Herron; the report is not released but a journalist states that Minister Herron wrote to directors individually and that the six other directors tabled their letters, which stated that Mr Skehill found no improper behaviour on their part, at a board meeting
February 2001	Mr Wilson resigns as ILC General Manager 'to pursue interests in the private sector'
5 March 2001	Ms Firebrace telephones Mr Miller, to refresh her memory about events of 8 May 2000
6 March 2001	Ms Firebrace makes submission to Native Title Committee

27 March 2001	First Native Title Committee public hearing into ILC 1999-2000 annual report
2 May 2001	Second Native Title Committee public hearing into ILC 1999-2000 annual report
18 June 2001	Third Native Title Committee public hearing into ILC 1999-2000 annual report
18 June 2001	Statement to ILC Board by Mr Rogers QC dismissing corruption claims re purchase of the two WA cattle stations
1 August 2001	Minister Ruddock announces appointment of Ms Shirley McPherson as Chair of ILC.
30 August 2001	18 th report of Native Title Committee presented
3 September 2001	Letter from Chair of Native Title Committee to President, raising privilege matter
18 September 2001	President determines precedence
19 September 2001	Matter referred to Committee of Privileges

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Extract from Journals of the Senate
No. 212 dated 19 September 2001

13 PRIVILEGES—STANDING COMMITTEE—REFERENCE

Senator McGauran, at the request of the Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (Senator Ferris) and pursuant to notice of motion not objected to as a formal motion, moved—That the following matter be referred to the Committee of Privileges:

Having regard to the 18th report of the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, the statement by the chair of the committee on the tabling of the report on 30 August 2001, and the letter of the chair of the committee of 3 September 2001 to the President, whether any false or misleading evidence was given to the committee, and whether any contempt was committed in that regard.

Question put and passed.

PRIVILEGE

The PRESIDENT (3.06 p.m.)—On a matter of privilege, the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, by a letter dated 3 September 2001 from the chair, has raised a matter of privilege under standing order 81 and asked that it be referred to the Standing Committee of Privileges. This matter was recorded in the committee's 18th report, presented on 30 August 2001. The committee stated that it may have been misled by evidence before it. The giving of misleading evidence is declared by the Senate's privileges resolution No. 6 to be a contempt of the Senate.

Senator Alston interjecting—

The PRESIDENT—I am on my feet and speaking, Senator Alston. The Senate and the Privileges Committee have always taken very seriously any suggestion that misleading evidence has been given. In this case, the concluded and unanimous conclusion of a committee duly reported sufficiently indicates that the matter meets the criteria I am required to consider. I therefore give precedence to a motion to refer the matter to the Privileges Committee. I table the correspondence from the committee. A notice of motion may now be given to refer the matter to the Privileges Committee.



PARLIAMENT OF AUSTRALIA

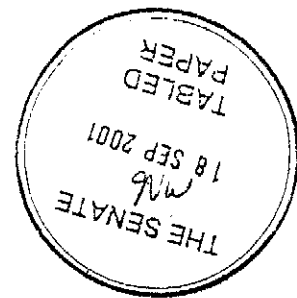
PARLIAMENTARY JOINT COMMITTEE ON
NATIVE TITLE AND THE ABORIGINAL AND
TORRES STRAIT ISLANDER LAND FUND
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3 September 2001

NT 2.5

NT 2.6

Senator the Hon Margaret Reid
President of the Senate
SG.40
Parliament House
Canberra ACT 2600

Dear Madam President

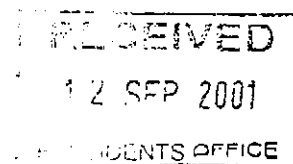
Referral to Committee of Privileges

This Committee tabled its eighteenth report in both Houses on Thursday 30 August. The report examines three annual reports including that of the Indigenous Land Corporation (ILC).

The Committee held public hearings and received submissions for this inquiry. During two of the public hearings, the then ILC Chairperson, Ms Sharon Firebrace, gave evidence. She also provided seven written submissions.

At page 43 of its report the Committee concluded that it may have been misled by Ms Firebrace. This conclusion relates to Ms Firebrace's advice in Submission Nos 1 and 1a, and in her evidence on 27 March 2001, about the leaking of a draft issues paper from the Australian National Audit Office. That is, apparently without consulting the ILC Board, on three occasions Ms Firebrace gave evidence that contradicted advice by the ILC Board through its General Manager (Submission No 2 and public hearing evidence on 27 March).

Further, at page 46 of its report the Committee again concluded that it may have been misled. This conclusion relates to advice from Ms Firebrace in Submission No 1a, repeated in (confidential) Submission No 1f, about referral to the Australian Federal Police (AFP) of the purchase of

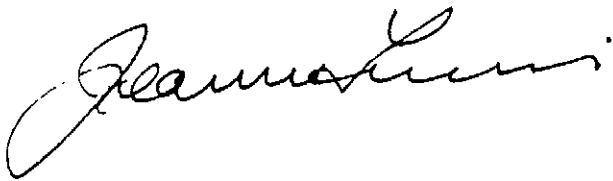


a cattle station (Roebuck Plains) in Western Australia. Ms Firebrace's evidence was contradicted by the ILC General Manager (Submission No 2a) and in correspondence from the Australian Federal Police.

In my tabling statement to the Senate last Thursday I alluded to these matters and advised that they would be referred to the Senate Committee of Privileges. The Deputy Committee Chair, the Hon Warren Snowdon, tabling in the House on the same day, made the same comment.

Accordingly, please be advised of these matters and of the Committee's recommendation that they be referred to the Senate Committee of Privileges pursuant to Senate Standing Order 81.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Jeannie Ferris".

Senator Jeannie Ferris
Committee Chair

COMMITTEES: Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee: Report

Senator FERRIS (South Australia) (10.57 a.m.)—I present the report of the parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the examination of the annual reports for 1999-2000, together with the *Hansard* report of the committee's proceedings, submissions received by the committee and comments on adverse mentions in evidence presented to the committee.

Ordered that the report be printed.

Senator FERRIS—I move:

That the Senate take note of the report.

Just as Senate legislation committees do, the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund also reviews annual reports. The native title committee is entitled to take a broad approach to its powers and duties in this regard under the Native Title Act 1993; that is, in its examination of annual reports since March 1995 the committee has conducted what might be regarded as performance audits of the Native Title Tribunal, the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund. The report I tabled today covering these annual reports continues with the objective of reviewing the performance of those bodies. In so doing, the committee reports comprehensively. For example, the Senate may wish to note that this inquiry into three annual reports required four public hearings and, in addition, some 20 submissions were received. The Native Title Tribunal is now well established as a significant statutory authority. In 1999-2000 it maintained 215 employees and had an operating expenses budget for the year in excess of \$23 million. The tribunal occupies an important place in national affairs as a consequence of its role on aspects of land management across the states and the territories.

The committee has commented in previous reports on the tribunal's workload and, at the close of the reporting period, although 241 claimant applications had been discontinued or combined with others, there remained 539 claimant applications awaiting resolution. Notably, the tribunal has indicated that more resources will now be available for the mediation of claimants' applications, and this is a very welcome development.

One matter that has continued to concern the committee, however, is the use of consultants by the tribunal. In the reporting period, the tribunal engaged 49 consultants with a total expenditure of almost \$2 million, which represented an increase of 12 extra consultants and almost \$900,000 in expenditure over 1998-2000. The committee believes in the principle that tribunal members should be engaged to do the work of members and that, when there is a shortage, that should be the subject of advice from the tribunal president to the Commonwealth government, so that adequate numbers of staff and members can be appointed. However, that said, the committee does record its impression that the tribunal is a most professional authority performing its functions well.

The tribunal has also performed an important service in assisting with the introduction of a new regime for the developments affecting land use; that is, the provision of indigenous land use agreements, which were introduced as a result of the amendments to the act in 1998. I should note that the committee has recently concluded its inquiry into the ILUA regime and expects to table a report later in this session. The tribunal was of considerable assistance to the committee during that inquiry.

The Aboriginal and Torres Strait Islander Land Fund was established to assist indigenous people to acquire land and to manage it. In 2004, the Commonwealth allocations to the land fund will cease. Should the target balance not be met by that time, a top-up payment will be made to bring the account to \$1.106 billion, indexed from 1994. The value of the fund at 30 June 2000 was more than \$784 million. ATSI's 1999-2000 report contains the land fund report as an

appendix. Importantly, in the reporting period, an amount of \$50,712,000 was drawn down to the Indigenous Land Corporation, and similar amounts are to be drawn down to the ILC from the fund indefinitely. The ILC's operations then are funded from the land fund. Whereas the land fund annual reports are contained in an appendix to the ATSIC report, the ILC itself presents its own report. As I have already said, an amount of almost \$51 million was drawn down to the ILC in the year 1999-2000.

The ILC's recent history must be described as unfortunate and very troubled. In the reporting period, the board approved the purchase of only 18 properties, a significant decline on the 69 properties approved in the previous year. While the ILC has attributed this decline to the land needs process of planning, it causes the committee considerable concern, and it is a matter that will be monitored in the future. Further, two inquiries affecting the ILC were commissioned during the year 1999-2000. Firstly, the then minister, Senator Herron, commissioned an inquiry by Stephen Skehill into the behaviour of ILC directors. Secondly, the ILC board requested an inquiry, completed by Mr Andrew Rogers QC, into the purchase of two cattle stations in Western Australia. Regrettably, the Skehill inquiry arose from a request by four ILC directors for the minister to terminate the appointment of the ILC's chairperson, Ms Sharon Firebrace. Ms Firebrace subsequently also made a variety of allegations concerning directors.

While Mr Skehill's report was delivered to the minister on 1 December, the findings have not been made public. The Skehill report deals with sensitive and complex matters, and the committee has not been able to examine them. Nevertheless, the committee notes Ms Firebrace's admission that the minister suggested on three separate occasions that she should stand down from her position. In these circumstances, regrettably the committee seriously must question Ms Firebrace's claims about the causes of dysfunction within the ILC during her two-year term of office, which expired in August this year.

With regard to the Rogers inquiry, I understand the report has been completed but has also not been released. However, Mr Rogers has released a statement in which he confirmed that he had found no evidence to support the allegations of criminality and serious misconduct in relation to the purchase of those two cattle stations. Importantly, the committee has concluded that, in the course of its inquiry, it may have been misled by Ms Firebrace about two separate matters. These conclusions will be referred to the Senate Standing Committee of Privileges.

In summary, the committee has been very concerned about the unfortunate performance of the ILC over the past two years. Many of the events that have affected the ILC and its programs have been widely made public, and this is to be regretted. However, there is reason to believe that the ILC's performance has affected the delivery of benefits to indigenous people by way of land ownership. The committee is very hopeful that the newly appointed chairperson and general manager will direct the ILC into a more positive performance. I commend the native title committee's 18th report to the Senate.

Question resolved in the affirmative.

Australian National Audit Office (ANAO) issues paper

4.75 It has been noted above that an ANAO performance audit of the ILC was carried out during the reporting period. In its seventeenth report (p.36), the Committee expressed its dissatisfaction with the response of the ILC in relation to the leaking of an ANAO issues paper to the media.

4.76 Subsequently, the ILC Chairperson (Ms Firebrace) advised the Committee in a letter dated 2 August 2000 that, at the ILC Board meeting on 8 May 2000, the leaking of the ANAO issues paper was discussed and that:

... [t]he ILC Board did not resolve to refer any matter to the Federal Police.²⁷

4.77 The then ILC General Manager (Mr John Wilson) subsequently advised the Committee in a letter dated 12 September 2000 that:

The ILC Board wants you to be aware of its displeasure about this letter, which implies that the Board discussed the referral to the Australian Federal Police and dismissed it as an option. This is not true, as the matter of referral to any third party was never raised at the Board meeting of 8 May or any other Board meeting prior to yesterday's meeting.²⁸

Mr Wilson further stated that:

²⁵ Evidence, p.NT1.

²⁶ Subsection 191M(6) of the ATSI Act 1989 requires that the Board must give a copy of the NILS within 2 months of agreeing to the strategy. The Minister must cause a copy of the strategy to be tabled within 15 sitting days of receiving it (s.191M(7)). See also Evidence, p.NT120.

²⁷ This letter was attached to the Committee's seventeenth report as Appendix 3.

²⁸ Submission No 2.

I had originally intended to raise the matter with the Australian Federal Police and had made initial enquiries in February. I was directed by the Chairman not to pursue those enquiries.²⁹

4.78 The ILC Chairperson, responding to questions from this Committee, wrote (6 March 2001) advising:

That the ILC Board now maintains it did not discuss the question of referral of the leak to the AFP ignores the fact that Mr Bill Miller, Director Evaluation and Audit, ATSIAC, briefed the Board on 8 May 2000 on his view that the matter should not be referred to the AFP as it would be a futile exercise.³⁰

4.79 The ILC Chairperson and the former ILC General Manager gave similarly contradictory evidence regarding the referral of the leak to the Australian Federal Police at the public hearing on 27 March 2001. There Ms Firebrace gave evidence that she was not present at the 8 May 2000 meeting of the ILC Board during the discussion of the ANAO report. However, she understood from her discussions with Mr Bill Miller, Director of Evaluation and Audit ATSIAC, that he had advised the ILC Board at that meeting that referral of the leak to the AFP would be futile.³¹ For his part, Mr Wilson gave evidence at the same hearing in the same terms as his letter of 12 September 2000 to the Committee.³²

4.80 Mr Bill Miller's submission to the Committee³³ states that he does not ever recall saying to Ms Firebrace or anyone else that a referral by the ILC to the police would be 'futile'. Mr Miller's point is that he would not have made such a statement because:

At that stage I was aware that the Chairperson had signed and dispatched my recommended letter to the Auditor-General, as were Directors of the Board, and thus there was no reason for me to raise the issues of a possible police referral.

²⁹ Ibid.

³⁰ Submission No 1a.

³¹ Evidence, p.NT25.

³² Evidence, pp.NT46-47.

³³ Submission No 4.

Further, Mr Miller stated:

I would like to make it clear that I did not advise the ILC Board on 8 May 2000 to not refer the matter to the police nor did I say that referral would be futile.³⁴

4.81 At the second hearing of the Committee in relation to examination of the annual report, the ILC Chairperson gave evidence asserting that she was:

... the messenger ... I will stand by what was told me at the time – Bill Miller said to me that he had advised the board not to refer the matter to the AFP, the Federal Police, because he felt that it was futile ... I have a witness to the time that I had that conversation with Mr Miller. I have a note that I did take at the time.³⁵

4.82 According to a statutory declaration by Mr Sinnott,³⁶ the Chairperson's note was not made at the time of the 8 May 2000 Board meeting. Rather, it was made on or about 5 March 2001, some 10 months following the Board meeting and more than 6 months after the Chairperson's letter of 2 August 2000 regarding this issue. The Committee is doubtful whether a file note about a telephone conversation on 5 March 2001 is able to sufficiently substantiate a claim of 2 August 2000 about what had transpired at the 8 May 2000 Board meeting.

4.83 Further, it is noted that despite not being present at the time, the Chairperson did not accept the Board's account of the meeting as provided to the Committee by the ILC General Manager (Mr Wilson) on 12 September 2000.³⁷ Notably, the Board's account is consistent with Mr Miller's submission, as are the minutes of the 8 May 2000 Board meeting.

4.84 Mr Miller does not dispute that he advised Ms Firebrace whether or not there would be any use in referring the matter to the AFP. And he has given evidence to the Committee that it would be reasonable that Ms Firebrace would use the word

³⁴ Ibid.

³⁵ Evidence, p.NT52.

³⁶ Submission No 1e.

³⁷ Submission No 2.

'futile' in summing up his advice to her.³⁸ This, however, is to be distinguished from the account that Mr Miller claims to have given Ms Firebrace about his advice to the Board.

4.85 The leaking of the ANAO issues paper was ultimately referred to the Australian Federal Police by the ILC Board in September 2000.³⁹ While the AFP did not accept the matter for investigation, the Committee is concerned by the inconsistencies between evidence given by the Chairperson, on the one hand, and the former ILC General Manager (Mr Wilson) and the former ATSIC Director of Evaluation and Audit (Mr Miller) on the other.⁴⁰ **The Committee is concerned that it may have been misled by Ms Firebrace.⁴¹ That is, she should have sought confirmation from the ILC Board and reported that to the Committee.**

4.86 Finally, the Committee notes that the Chairperson received a letter from the Auditor-General (dated 31 March 2000). Ms Firebrace, however, appears not to have provided it to the ILC Board or the General Manager prior to the 8 May 2000 Board meeting, during which discussion of the leak occurred. Given that Mr Miller appears also not to have known about the Auditor-General's letter, consideration of that letter at the Board meeting may have influenced the Board's consideration of the way in which to proceed about the leak issue. **On that occasion, Ms Firebrace may have failed in her duty to the ILC Board.**

Land acquisition in urban areas

4.87 The Committee noted in its seventeenth report that it would continue to monitor ILC activity in urban areas and in particular ILC policies designed to meet the land needs of urban indigenous people.⁴² The ILC has made a detailed submission to the inquiry into the needs of country and metropolitan urban dwelling

³⁸ Evidence, p.NT109.

³⁹ Ibid.

⁴⁰ Letter from Ms Andrea Quinn, Coordinator National Operations Monitoring Centre, AFP to Mr John Wilson, then General Manager of the ILC, 6 November 2000.

⁴¹ Evidence, pp.NT62,100.

⁴² Para 4.89, p.37.

Aboriginal and Torres Strait Islander peoples by the Standing Committee on Aboriginal and Torres Strait Islander Affairs.⁴³ The ILC submission notes that:

It appears indigenous people in urban areas are seeking and successfully acquiring land located in rural areas in close proximity to urban metropolitan and urban regional areas.⁴⁴

4.88 This is reassuring advice from the ILC.

Other Matters

Roebuck Plains

4.89 Roebuck Plains Station is a 290,000 hectare pastoral property located near Broome in Western Australia. It was purchased by the ILC on 18 May 1999 (pp.43,156); the purchase included stock valued at \$8.2 million.⁴⁵ The Committee visited Roebuck Plains on 2 July 2001 and had the opportunity to meet with the station manager and other employees operating the property. The ILC reports (p.43) that:

Reaching an agreement as to which of the Aboriginal families with traditional attachment to Roebuck Plains should comprise the title holding body has continued to prove difficult. Until this is satisfactorily resolved, the property will continue to be owned by the ILC.

4.90 The ILC Chairperson wrote to *The Australian* on 13 December 2000 referring to an article by Mr Mike Steketee. In that letter the Chairperson asked:

Why does Mr Steketee fail to mention that the Australian Federal Police are investigating the purchase and management of Roebuck Plains?⁴⁶

⁴³ Submission 39, 'Inquiry into the needs of country and metropolitan urban dwelling Aboriginal and Torres Strait Islander peoples', House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, October 2000.

⁴⁴ Ibid, p.11.

⁴⁵ Evidence, pp.NT8,42.

⁴⁶ 'Out of context leaked papers ignite brushfire', *The Australian*, 13 December 2000, p.14.

In response to an inquiry from the Committee about this matter, Mr John Wilson, the then ILC General Manager, advised on 22 December 2000 that:

This is not true. It has never been contemplated by the Board nor ever discussed.⁴⁷

Nevertheless, in a letter to the Committee dated 6 March 2001 the ILC Chairperson stated:

My comment in the press regarding an AFP investigation into Roebuck Plains acknowledges the fact that an AFP investigation was proceeding at that time, and as I understand, is still proceeding. That the ILC Board did not contemplate or discuss such an investigation is irrelevant to the AFP's commitment to an investigation following allegations it received privately.⁴⁸

4.91 The Committee wrote to the ILC Chairperson and the AFP requesting further information regarding this matter. The AFP responded to the Committee on 17 May 2001, advising that the AFP was still deciding whether to initiate an investigation. In particular, the AFP was seeking access to the Rogers and Skehill reports before determining whether to initiate an investigation. It is understood that neither report has yet been published.

4.92 The Committee wrote to the ILC Chairperson on 25 June 2001 to seek clarification. Ms Firebrace's response on 10 July was as follows:

I do not believe it is appropriate for me to comment on what are essentially confidential police matters, other than to state that on several occasions I have confirmed with AFP spokespersons that an investigation into the purchase of Roebuck Plains is proceeding.⁴⁹

4.93 The Committee is concerned about the ILC Chairperson's evidence and her statement to the media that an AFP investigation into Roebuck Plains was proceeding. Ms Firebrace's assertions are inconsistent with the AFP's advice that,

⁴⁷ Submission No 2a.

⁴⁸ Submission No 1a.

⁴⁹ Submission No 1d.

as at 17 May 2001, it was still deciding whether to initiate an investigation. Again, the ILC Chairperson may have misled the Committee.



PARLIAMENT OF AUSTRALIA

PARLIAMENTARY JOINT COMMITTEE ON
NATIVE TITLE AND THE ABORIGINAL AND
TORRES STRAIT ISLANDER LAND FUND
PARLIAMENT HOUSE, CANBERRA ACT 2600

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RECEIVED

12 OCT 2001

CLERK'S OFFICE

2 October 2001

NT 1.24

NT 2.5

NT 2.6

Senator Robert Ray
Chair
Committee of Privileges
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Ray

***Committee's Eighteenth Report:
Referral to Committee of Privileges***

Thank you for your letter dated 27 September 2001 concerning referral to the Committee of Privileges of the matter relevant to this Committee's eighteenth report.

Ms Sharon Firebrace was the Chairperson of the Indigenous Land Corporation (ILC); and the Committee has reported to the Parliament the belief that it may have been misled by Ms Firebrace during its inquiry for the eighteenth report. The account of that matter and the evidence on which it is based is provided in Chapter 4 of the report (pp.23-50). The conclusions are given at pp.43 and 46.

On several occasions during the inquiry, statements given by Ms Firebrace were contradicted by others (para 4.104 refers). Nevertheless, only two instances were referred to the Parliament in regard to the possibility of misleading evidence. Importantly, those instances were characterised by repetition on Ms Firebrace's part, and by repeated rebuttal by others.

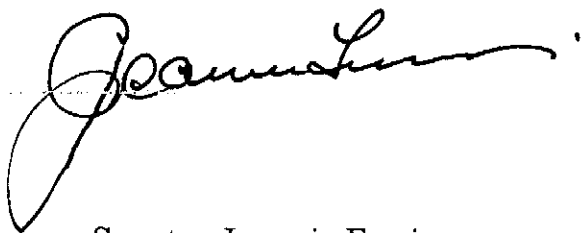
The conclusion at p.43 of the Committee report relates to Ms Firebrace's advice in Submission Nos 1, 1a (and confidential Submission No 1f), and in her evidence on 27 March 2001, about the leaking of a draft issues paper from the Australian National Audit Office. That is, Ms Firebrace

gave evidence to the Committee that contradicted advice by the ILC Board through its General Manager (Submission No 2 and public hearing evidence on 27 March 2001).

Similarly, at p.46 of its report the Committee concluded that it may have been misled by Ms Firebrace. This conclusion related to her advice in Submission No 1a, repeated in Submission No 1d (and the confidential Submission No 1f), about referral to the Australian Federal Police (AFP) of the purchase of a cattle station in Western Australia. Ms Firebrace's evidence was contradicted by the ILC General Manager (Submission No 2a) and in correspondence from the AFP provided subsequent to her Submission Nos 1a and 1d.

Published documents relevant to this matter are enclosed. Your request for unpublished documents will be considered by the Committee at its next private meeting. That material includes a letter from the AFP dated 17 May 2001, the Committee's letter to Ms Firebrace dated 25 June 2001 and Submission No 1f in response from Ms Firebrace.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeannie Ferris', with a large, stylized flourish at the end.

Senator Jeannie Ferris
Committee Chair



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25 June 2001

NT 2.6
NT 5.33
NT 6.64

Ms Sharon Firebrace
Chairperson
Indigenous Land Corporation
GPO Box 586
Curtin ACT 2605
Fax: 02 6285 4300
03 5159 9365

Dear Ms Firebrace

*Committee's Duties
Pursuant to s.206(c) of the Native Title Act 1993*

As you know, this Committee is fulfilling its duties pursuant to s.206(c) of the *Native Title Act 1993*. That is, with respect to the 1999-2000 annual report of the Indigenous Land Corporation, the Committee has held public hearings on 27 March, 21 May and 18 June 2001. And, to date, 17 submissions have been received about the performance of the ILC during the 1999-2000 period. (All of this material has been made available on the Parliament's website.)

In fulfilment of its duties, the Committee will prepare a report concerning this matter; it will be tabled in the Parliament. In considering the preparation of its report, the Committee will have regard to the range of issues on which it has sought your advice both in correspondence and at public hearings.

Accordingly, please be advised that this Committee will soon consider its conclusions about your evidence in regard to the performance of the ILC during the 1999-2000 period. The purpose of this letter is to articulate those matters on which your advice is incomplete, inconsistent or remains in dispute given the content of other submissions to the Committee. Of course, this letter does not raise these matters for the first time. From the Committee's previous correspondence (dated 13.12.00, 12.2.01, 9.4.01,

19.4.01, 14.5.01, 28.5.01 and 7.6.01), numerous telephone conversations and the public hearings, you have been aware of the fact that the Committee has taken considerable interest in them.

The Committee now invites your final written submission about these matters. Any response that you wish to make to this letter should be provided by Friday 6 July. The matters that are of continuing significance are:

Excerpt from page 3

- Leak of ANAO Issues Paper
 - You wrote to the Auditor-General on 29 February 2000 about the leaking of the ANAO issues paper. You stated: 'I am referring the matter to enable you to consider whether you should have it investigated'. The Auditor-General responded on 31 March 2000 that it was 'highly unlikely' that the leak had originated with ANAO. The Auditor-General also stated: 'I understand that you have asked ATSIIC's Office of Evaluation and Audit to undertake an investigation within your office to determine if the leak was from the Indigenous Land Corporation'.

But, Mr Bill Miller has given evidence (NT 107) that there was never a request made of him or the Office of Evaluation and Audit to undertake an investigation within the ILC regarding the leak of the draft report.

Further, you received an important letter from the Auditor-General (dated 31 March 2000), and you appear not to have provided it to the ILC Board or the General Manager prior to the 8 May 2000 Board meeting. Given that Mr Miller also appears not to have known about the Auditor-General's letter, consideration of that letter at the Board meeting may have influenced the Board's consideration of the way in which to proceed about the leak issue.

• **8 May 2000 Board Meeting**

- Also in regard to the leak of the ANAO draft issues paper, you have claimed (Submission No 7 dated 11 May 2001) that Mr Bill Miller confirmed with you following the 8 May 2000 Board meeting that he 'conveyed his view regarding the futility of referring the matter of the leak to the AFP'.

But you have not advised the Committee of the date on which Mr Miller 'conveyed his view' to you. Further, Mr Miller has stated (Submission No 8 dated 14 May 2001) that 'I do not ever recall saying to Ms Firebrace or anyone else that a referral by the ILC to the police would be "futile"'. Mr Miller's point is that he would not have made such a statement because: 'At that stage I was aware that the Chairperson had signed and despatched my recommended letter to the Auditor-General, as were Directors of the Board, and thus there was no reason for me to raise the issue of a possible police referral'.

Further, your note of a conversation with Mr Miller (provided as an attachment to your letter dated 14 June, Submission No 13) makes no reference to the word 'futile'. Importantly, your note was not made at the time of the 8 May 2000 Board meeting. According to the statutory declaration by Mr Sinnott, your note was made on or about 5 March 2001, some 10 months following the Board meeting and more than 6 months after your letter of 2 August 2000 regarding this issue. (You then wrote to the Committee about the matter on 6 March 2001, employing the word 'futile'.)

The question remains how a file note of a telephone conversation on 5 March 2001 can substantiate your claim of 2 August 2000 about what had transpired at the 8 May 2000 Board meeting. Further, despite not being present at the time, you have not accepted the Board's own account of the meeting as provided to the

Committee by Mr Wilson on 12 September 2000 (Submission No 2). Notably, the Board's account is consistent with Mr Miller's submission.

- You have indicated (NT 52) that, not being present at the Board meeting on 8 May 2000 when the matter was discussed, you relied on Mr Miller's advice that the Board considered his view and decided not to pursue police action at that time. In regard to correspondence from this Committee, you further stated: 'I did say that I did not think it was suitable that I actually do respond because I was not at the meeting the entire time. He [Mr Wilson] insisted that I do ...' (NT 52).

But, if Mr Wilson is correct, you cannot mean that you suggested to Mr Wilson that, instead of your letter of 2 August 2000, he should have responded to the Committee. Mr Wilson advises (Submission No 12 dated 13 June 2001) that he was unaware of the Committee's correspondence (10 April and 24 July 2000) to you (and your 2 August reply) until September 2000.

Alternatively, you are referring to the Committee's letter dated 12.2.01. Against that alternative Mr Wilson has stated (Submission No 12 dated 13 June 2001): 'My advice to the Chairman was that since I had responded on behalf of the Board on 12 September, as instructed to and in doing so contradicted some of the advice she had provided to the PJC in her letter of 2 August 2000, it would have been impossible for me to reply or indeed to draft a reply given I would have had to contradict myself. The suggestion that I insisted on her responding is not true'. Notably, your response to the Committee dated 6 March 2001 maintained, contrary to Mr Wilson's letter dated 12 September 2000, that the Board decided not to pursue AFP action.

- AFP Investigation into Roebuck Plains

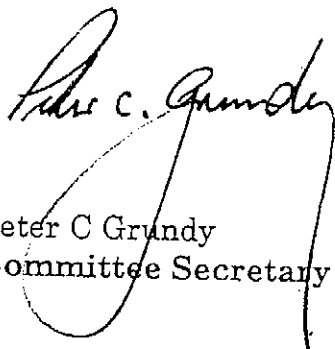
- Your letter of 13 December 2000 to *The Australian* and your letters to this Committee dated 6 March and 11 May 2001 stated that an AFP investigation into Roebuck Plains was proceeding.

But the AFP wrote to the Committee on 17 May 2001 advising that the AFP was still deciding whether to initiate an investigation. In particular, the AFP was seeking access to the Rogers and Skehill reports before determining whether to initiate an investigation. It is understood that neither report has yet been made available.

• • •

Please be assured that the Committee will welcome your further written advice on all of these matters. Where possible, you should provide written evidence to substantiate your claims. If the Committee can assist you further, please call 02 6277 3598.

Yours sincerely



Peter C Grundy
Committee Secretary



10 July, 2001

INDIGENOUS LAND CORPORATION

Private and Confidential - Subject to Parliamentary Privilege

Mr Peter C Grundy
Committee Secretary
Parliamentary Joint Committee on Native Title
and the Aboriginal and Torres Strait Islander Land Fund
Parliament House
CANBERRA ACT 2600

Dear Mr Grundy,

I refer to your letter of 25 June, 2001 in which you invite further comment on matters on which you claim my previous advice is incomplete, inconsistent or remains in dispute given the content of other submissions to the Committee.

Leak of ANAO Issues Paper

Excerpt from page 3

In respect of the Auditor-General's comment of 31 March, 2000 that "*I understand that you have asked ATSIC's Office of Evaluation and Audit to undertake an investigation*" I direct your attention to my correspondence of 2 August, 2000 to Ms Robina Jaffray, acting Secretary of your Committee. In that letter I noted that following receipt of the Auditor-General's comments I discussed the case with Mr Bill Miller, Director of the Auditor-General's comments I discussed the case with Mr Bill Miller, Director OEA. The discussion focused on whether an investigation should be conducted into the leak, and if so, by whom. Mr Miller felt it was preferable to review the adequacy of ILC's internal control systems rather than proceed with an investigation. My letter of 2 August, 2000 specifically mentions this in the context of a possible Federal Police investigation, which was the area of interest promoted by your Committee at the time. However, Mr Miller's preference for review of internal controls was also held against the possibility of an OEA investigation. Mr Miller's observation that there was never a request made of him to undertake an investigation is clearly correct and consistent with the evidence I have provided.

I now turn to your imputation that I did not provide the Auditor-General's letter of 31 March, 2000 to the ILC Board or the General Manager prior to the 8 May 2000 Board meeting. I am unable to conclusively establish the circumstances of this matter other than to report the following. Both a faxed copy and the original letter were received in the ILC/LEA office in Canberra, the former being received on 31 March, 2000 on the general office fax line (and refaxed to my home office), and the latter, presumably on or shortly after that date. It was administrative practice within the ILC at that time for official correspondence addressed to the Chairperson to be processed in-house whenever practicable whilst simultaneously onforwarding a copy to the Chair if appropriate. Clearly, given the mode of transmission of the correspondence and established correspondence handling practices, it is extremely unlikely that I would have been the sole recipient of the Auditor-General's letter. Hence, I maintain the Auditor-General's letter, or a copy of it, would have found its way at least to the General Manager, the appropriate action officer.

8 May, 2000 Board Meeting

I have provided a first-hand witness's account of my conversation with Mr Miller on or about 5 March, 2001 that supports my contention that following the 8 May, 2000 Board meeting that he *'conveyed his view regarding the futility of referring the matter of the leak to the AFP.'* Whilst I am unable to confirm the actual date on which Mr Miller's view was conveyed, I direct your attention to Mr Miller's evidence given to the hearing on 21 May, 2001 (NT 109) where, in response to the question *"in recalling that conversation is it fair to say that she would sum up your advice by saying, 'Your advice indicated that it would be futile?'"*, Mr Miller responded, *"Yes my personal view is that she could have assumed that."* In summary, the evidence is that a witness has supported my account of this matter and Mr Miller has willingly conceded that even if the word futile had not been used by himself, I could have assumed his advice indicated it would be futile (to refer the leak to the AFP). It remains clear that I acted on Mr Miller's advice not to refer the matter to the AFP. Against that background I would suggest any attempt to "muddy the waters" in respect of the elapse of time between events and file notes is purely speculative and mischievous.

In regard to Mr Wilson's contention that my suggestion that he respond to correspondence from the Committee (dated 10 April and 24 July, 2000) is not true, *...* He has *...* misled the Committee. I have enclosed a Statutory Declaration, (dated 27 March, 2001) from Graeme Robert Sinnott, who witnessed my calling Mr Wilson, on or about 2 August, 2000, to suggest he, or the Board, respond to the Committee's correspondence. Mr Sinnott confirms my evidence that Mr Wilson disagreed with my suggestion and insisted I respond, along the lines that Mr Wilson and I agreed during the conversation. *...*

As to not accepting the Board's account of the 8 May, 2000 meeting, I suggest that my advice of 2 August, 2000 is not inconsistent with actual events. That is, I have merely quoted from the Minutes of Meeting and noted, quite factually, that the Board did not resolve to refer any matter to the Federal Police.

Excerpt from page 7

AFP Investigation into Roebuck Plains

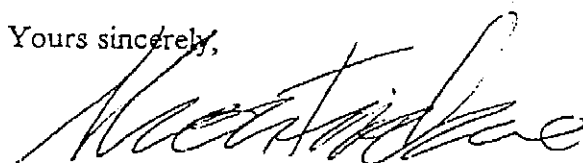
Factors that led me to advise the Committee that an AFP investigation into Roebuck Plains was proceeding include:

- telephone discussion on 2 November, 2000 with Ms Andrea Humphreys, acting Superintendent AFP who advised me that *"the AFP is now investigating; the AFP is committed to the formal investigation process; the ILC case is now classified 'sensitive'"*.
- telephone discussion with Ms Andrea Humphreys of AFP, confirming that following an AFP senior executive meeting the AFP agreed on 7 December, 2000 that an investigation of the case will proceed in three categories: Roebuck Plains, Cardabia Station; and Mt Tabör (alleged Ministerial bribe).
- telephone discussion 4 or 5 January, 2001 with Ms Andrea Humphreys of AFP confirming that AFP is committed to the investigation in three parts and starting investigations immediately through the WA arm of the AFP.
- a *Herald Sun* article on 12 February, 2001 stated: *"Police are investigating allegations of impropriety involving a major Aboriginal organisation. Senior Australian Federal Police have confirmed the inquiry into serious claims against the Indigenous Land Corporation. We have received certain allegations or complaints concerning the ILC, said an AFP spokeswoman. We are certainly having a look at them"*. Copy of the article is enclosed.

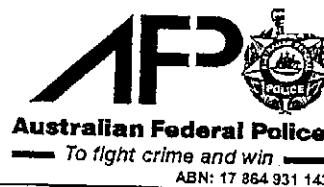
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I thank you for this opportunity to address the Committee yet again

Yours sincerely,



Sharon Firebrace
Chairperson



Our Ref: 685274

619 Murray Street,
 West Perth WA 6005

Telephone: 089-320-3444
 Facsimile: 089-321-3052

17 May 2001

Mr Peter C Grundy
 Committee Secretary
 Parliamentary Joint Committee on Native Title
 and The Aboriginal Torres Strait Islander Land Fund
 Parliament House
 Canberra ACT 2600

Dear Mr Grundy

INQUIRY INTO THE INDIGENOUS LAND CORPORATION (ILC)

Thank you for your letter of 19 April 2001 concerning the Indigenous Land Corporation (ILC).

The AFP Perth Office is currently assessing the matter referred to in your letter. In order to be able to complete our assessment, we are seeking two independent reports. The reports were prepared by Mr Stephen Skehill for the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs and the second report by Mr Andrew Rogers was prepared for the Indigenous Land Council.

After examination of these reports this office will be able to determine whether we will initiate an investigation.

Yours faithfully

V STEVENSON
 Federal Agent
 Perth Office

