

Document 1

Letter from ILC's Chairperson, Dr Dawn Casey, to Senator Mathias Cormann relating to the ILC's acquisition of Ayers Rock Resort, including all attachments, dated 29 October 2014



**CONFIDENTIAL AND PRIVILEGED**

29 October 2014

Senator the Hon Mathias Cormann  
Minister for Finance  
Parliament House  
CANBERRA ACT 2600

Dear Minister

***Indigenous Land Corporation's acquisition of Ayers Rock Resort***

On behalf of the Board of the Indigenous Land Corporation (ILC), I am writing to you in relation to the decision of the previous Board of the ILC in 2010 to acquire the Ayers Rock Resort (ARR). This letter is further to my previous letters to you, the Prime Minister, the Minister for Indigenous Affairs, and the Parliamentary Secretary to the Prime Minister on this issue.

The purpose of this letter is to request that you exercise your powers under Clause 6, Schedule 2 of the *Commonwealth Authorities and Companies Act 1997* (Cth) (CAC Act), as in force at the time, in relation to this transaction.

1. Summary of previous correspondence

As you will recall, I have written to you, the Prime Minister, the Minister for Indigenous Affairs, and the Parliamentary Secretary to the Prime Minister on several occasions in relation to the ILC's acquisition of the ARR.

My previous letters outlined the current Board's significant concerns in relation to the previous Board's corporate governance and due diligence processes in the lead up to the acquisition of the ARR in 2010. In particular, these letters sought to: brief the Government on the findings of independent third party reports in relation to the ILC's corporate governance and due diligence processes and the ARR transaction specifically; brief the Government on the ongoing financial challenges for the ILC as a result of the ARR acquisition including as a result of the substantial write down in the value of the ARR and the significant consequential debt service obligations on the ILC arising from the transaction; and request the Government

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to further investigate the circumstances of the transaction through the establishment of a parliamentary inquiry.

A table summarising this correspondence is at **Attachment A**. Copies of the letters are included for reference at **Attachment B**.

The ILC Board acknowledges with regret the Government's responses to this correspondence and the advice that it will not be further investigating the ARR acquisition through the establishment of a parliamentary inquiry.

### 2. Decision by the former Board of the Indigenous Land Corporation

In 2010 the then Board of the ILC made the decision to acquire the ARR from GPT Funds Management 2 Pty Ltd and Voyages Hotels and Resorts Ltd (together referred to as 'GPT') for \$300 million with an uplift fee of at least \$17 million to be paid in 2016. The majority of the purchase price was provided by vendor finance.

The relevant officers of the ILC at the time were:

- Shirley McPherson (Chairperson);
- David Baffsky (Director);
- William Jeffries (Director);
- Evonne Goolagong-Cawley (Director);
- Max Gorringe (Director);
- Kevin Driscoll (Director);
- Ian Trust (Director); and
- David Galvin (General Manager).

The *Aboriginal and Torres Strait Islander Act 2005* (Cth) (**ATSI Act**) imposes a clear statutory obligation on the Board of the ILC to operate in accordance with 'sound business principles' when making commercial investment decisions.

We understand that the following officers played a significant role in the ARR acquisition:

- Shirley McPherson;
- David Baffsky;
- William Jeffries; and
- David Galvin.

The acquisition by the ILC of the ARR was an extraordinary transaction having regard to the statutory charter of the ILC and its financial position in 2010. Based on an independent review of the acquisition conducted by McGrathNicol, it is clear that the ILC paid too much for the ARR. Even on the most narrow and conservative approach to calculating the loss flowing from the transaction, based on best estimates of the notional valuation in 2010, the ILC estimates its loss associated with the purchase of the ARR calculated at the time of the acquisition in 2010 is at least \$50 million. It is important to note that at the time of the purchase the ILC's net assets were some \$282 million and it had no interest bearing debt.

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A more realistic assessment suggests the losses are in fact much greater. Following the transaction, the ILC: acquired an asset now worth \$225 million (\$75 million below the purchase price); took on borrowings of \$198 million which fall due in 2016; is committed to pay financing costs associated with this loan of around \$11 million per annum; is required to pay an uplift fee of at least \$17 million to GPT in 2016; faces future capex expenditure in excess of \$120 million over the next decade and has already invested over \$50 million in capex since acquisition in 2010 (significantly more than the capex forecast at the time of the acquisition). The ILC has spent \$350 million to date for an asset currently worth \$225 million (a difference of \$125 million) and likely faces ongoing interest and principal repayments of around \$20 million per annum for the foreseeable future, with consequential adverse impacts on our capacity to fulfil our core statutory functions for many years.

### 3. McGrathNicol report

In 2013 the current ILC Board of Directors commissioned McGrathNicol to conduct an independent review of the processes leading up to the final decision to purchase the ARR. This report has been made publicly available by the current Board and we attach a copy of the executive summary of the report for your information (**Attachment C**). A full copy of the report can be found at [www.ilc.gov.au/Publications/Corporate-Documents](http://www.ilc.gov.au/Publications/Corporate-Documents).

The findings of the McGrathNicol report raise a number of serious issues in terms of the previous Board's decision-making and risk management processes, quality of corporate governance and financial issues associated with the purchase of the ARR. These findings are summarised at **Attachment D**. A summary of the findings of the report was also tabled in the Senate by the ILC on 28 February 2014.

### 4. Legal steps

As a result of the findings of the McGrathNicol report in relation to the former ILC Board's corporate governance and due diligence processes that led to the ARR acquisition, the current ILC Board was concerned to ensure that it took all appropriate steps to deal with the information presented to it by the McGrathNicol report, particularly given the statutory requirement on the ILC to operate in accordance with 'sound business principles'.

Former officers appear to have breached their duties, and we have formed the view that the ILC has a cause of action and standing to pursue claims against them.

We strongly encourage the Government to consider any cause of action it may have as a result of the ARR acquisition. In particular, we encourage you to obtain legal advice in relation to the potential exercise of your powers under Clause 6, Schedule 2 of the CAC Act as in operation at the time of the ARR acquisition.

The ILC has commenced the initial steps required in order to proceed with civil litigation, and has engaged the firm Clayton Utz to act for it in relation to this matter. In accordance with the genuine steps requirements under the *Civil Dispute Resolution Act 2011* and the Legal Services Directions requirement to act as a model litigant, our legal advisers have prepared letters to the former officers who would be potential defendants in any litigation indicating

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the ILC will accept an amount in settlement of this matter based on the ILC's conservative estimation as to its loss.

However, while the ILC has a cause of action and standing to pursue this matter through civil litigation, it is the strong view of the ILC Board that given the significant public sector governance and accountability issues, and your powers under the CAC Act, this matter would be most appropriately pursued by you. Accordingly, we propose to defer any action under the *Civil Dispute Resolution Act 2011* (Cth) pending your response to this letter. In the absence of a response by the end of December 2014, we will revisit this issue forthwith.

### 4.1 Financial status

Directors of the ILC have a statutory responsibility to ensure the proper and efficient functioning of the ILC. Section 191F of the ATSI Act requires the ILC to act in accordance with *sound business principles whenever it performs its functions on a commercial basis*.

The purchase of the ARR was a significant and complex commercial transaction yet the relevant Board minutes indicate that one Director advocating the acquisition held the view that *[w]hile the financial viability of the business operations was important, it should not be the overriding consideration*. At least one other Director (appointed for his business expertise) expressed serious reservations regarding the commercial viability of the proposed transaction in the early stage of its consideration but his views (while minuted and recorded) were effectively ignored.

In accordance with Australian Accounting Standards, the value of the assets of the ARR was written down by \$62.25 million based on the then Directors' valuation in the 2012-13 Financial Statements and a further \$19 million (based on a subsequent full speaking valuation) in the 2013-14 Financial Statements to a current value of \$225 million. On top of normal year to year adjustments to the asset's book value, this represents a total markdown in the book value of the ARR of \$81 million in the last two financial years. The loss incurred by the ILC as a result of the mark down in value of the ARR is exacerbated by a number of factors.

Since the acquisition of the ARR:

- The financial performance of the ARR has been significantly below the projected financial performance at the time of the acquisition and is not covering (except to a minimal extent):
  - i. the asset's significant capital expenditure requirements (estimated at in excess of \$120 million over the next decade);
  - ii. financing costs of \$11 million per annum (approximately 20 per cent of the ILC's total annual budget); or
  - iii. any contribution to the reduction of the outstanding principal.

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- The 2013-14 budget and updated forecast for the operations of the ARR indicates that performance will not be at a level to cover all of the financing costs in 2013-14.
- The ILC is required to contribute to the financing costs in 2013-14. In order to meet this contribution, the ILC will be required to reallocate funds from its Land Acquisition and Land Management programs.
- The existing debt now stands at \$198 million and is due on or about May 2016. The ILC will likely be required to reallocate further funds in order to retire debt.

When these factors are taken into account, as mentioned above the ILC's losses are estimated to exceed \$100 million. This is a loss that is unprecedented in the history of Indigenous affairs. The requirement on the ILC to reallocate funds in order to meet these significant financing costs and to retire debt will necessarily result in a reduction in the assistance the ILC is able to provide to Aboriginal and Torres Strait Islander peoples in the performance of its statutory functions.

I wish to emphasise that despite the significant concerns held by the current ILC Board in relation to the processes associated with the ILC's acquisition of the ARR and in particular with the projections used to justify the decision, the financial performance of the ARR since acquisition has been positive and has steadily improved once the debt burden is set to one side. The management and operations at the ARR will continue to be strongly supported by the ILC. The ILC Board is particularly pleased by the terrific achievements in terms of Indigenous employment at the ARR in the last two years and we are committed to seeing these outcomes continue. However, the Board notes that if the rationale for the transaction was solely the achievement of these Indigenous employment outcomes then the notional cost of each job created would be astronomical.

### *4.2 Directors' duties*

Directors of the ILC at the time of the ARR acquisition owed duties of care and diligence under the CAC Act and the common law.

In particular, section 22(1) of the CAC Act required that *[a]n officer of a Commonwealth authority must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:*

*(a) were an officer of a Commonwealth authority in the Commonwealth authority's circumstances; and*

*(b) occupied the office held by, and had the same responsibilities within the Commonwealth authority as, the officer.*

On the basis of the documentation available those officers who played a significant role in the purchase of the ARR appear to have breached their statutory, fiduciary and common law duties.

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In particular, it would appear that there was no documented basis for a rational belief that the decision to proceed with the ARR acquisition was considered by those Board members to be objectively reasonable and appropriate having regard to ILC's circumstances and the significant risks associated with the transaction and the deteriorating financial performance of the asset.

### 4.3 CAC Act – Ministerial powers

It is our understanding that under Clause 6, Schedule 2 of the CAC Act you or any person authorised in writing by you may make an application to the Court seeking a declaration of contravention of section 22(1) of the CAC Act. It is also our understanding that once a declaration has been made you may then seek:

1. a pecuniary penalty order under Clause 3, Schedule 2 (a fine of up to \$200,000);
2. a disqualification order under section 27C (disqualification from managing bodies corporate for the period the Court considers appropriate); or
3. a compensation order.

The ILC Board notes that the 2008 *Review of Operation Sunlight: overhauling budgetary transparency*, undertaken by former Senator Andrew Murray, recommended the creation of a public sector regulator (akin to the Australian Securities and Investments Commission) focused on financial administration and management matters with comprehensive enforcement powers.

The Murray Review highlighted gaps in regulatory oversight, and the need for the Finance portfolio to take a stronger role:

*The lack of a formalised, centralised, statutory authority with enforcement powers has ensured that addressing an alleged contravention remains a matter largely for the agency minister and the relevant agency head. ...The lack of a formalised mechanism whereby independent investigation and inquiry is undertaken potentially leading to enforceable action by way of enforceable undertaking, retraining, reprimand, discipline, or punishment of such officials, has the potential to undermine efforts to realise an effective, transparent and accountable financial and operational framework.<sup>1</sup>*

The then Government's response to the review rejected that recommendation and focused instead on the responsibilities of the Department of Finance.

Given the financial impact on the ILC and its Indigenous stakeholders as a result of the decision of the then Board, and given the clear responsibilities of your Department as the primary regulator of public sector corporations, we request you to exercise your powers under Clause 6, Schedule 2 of the CAC Act and seek a declaration of contravention.

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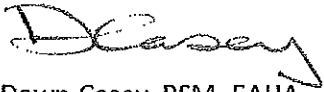
<sup>1</sup> Senator Andrew Murray, *Review of Operation Sunlight: Overhauling budgetary transparency*, June 2008, p 78 available at <[http://www.finance.gov.au/sites/default/files/budget-transparency-report\\_0.pdf](http://www.finance.gov.au/sites/default/files/budget-transparency-report_0.pdf)>.

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Please do not hesitate to contact me if you require further information to assist you in this process. I also reiterate my request of 23 June 2014 for representatives of the ILC Board to meet with you to discuss issues relating to the ILC and the investment and management of the Aboriginal and Torres Strait Islander Land Account. I note your response suggesting the ILC meet with officials of your Department and that these discussions are ongoing. Given the seriousness of the matter outlined in this letter, I would be pleased to meet with you to discuss the issues in more detail.

A copy of this letter has been sent to the Prime Minister, the Minister for Indigenous Affairs, the Attorney-General and the Parliamentary Secretary to the Prime Minister.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'D Casey', with a long horizontal stroke extending to the right.

Dr Dawn Casey, PSM, FAHA  
Chairperson



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**Attachment A**

**Summary of relevant correspondence from ILC Chair in relation to the ARR purchase**

| Date             | Recipient and summary of relevant content  |
|------------------|--|
| 16 October 2013  | <p>Letter from ILC Chair to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs</p> <ul style="list-style-type: none"> <li>• Governance and financial issues inherited by the ILC Board</li> <li>• Complex issues resulting from the acquisition of the ARR and Voyages</li> <li>• ARR's ongoing management challenges.</li> </ul>   |
| 23 October 2013  | <p>Letter from ILC Chair to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs</p> <ul style="list-style-type: none"> <li>• Challenges for ILC arising from the acquisition of the ARR</li> <li>• McGrathNicol Review</li> <li>• Deloitte Governance Review.</li> </ul>   |
| 25 October 2013  | <p>Letter from ILC Chair to Senator the Hon Mathias Cormann, Minister for Finance</p> <ul style="list-style-type: none"> <li>• Previous ILC Board's decision to purchase ARR</li> <li>• Appointments to ILC Board and subsidiaries.</li> </ul>   |
| 14 November 2013 | <p>Letter from ILC Chair to the Hon Tony Abbott MP, Prime Minister</p> <ul style="list-style-type: none"> <li>• Public accountability issues in relation to previous ILC Board's decision to purchase ARR</li> <li>• Request for a public inquiry by the Joint Committee on Public Accounts and Audit be established.</li> </ul>   |
| 18 December 2013 | <p>Letter from ILC Chair to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs; the Hon Tony Abbott MP, Prime Minister; Hon Alan Tudge MP, Parliamentary Secretary to the Prime Minister; Senator the Hon Mathias Cormann, Minister for Finance</p> <ul style="list-style-type: none"> <li>• McGrathNicol Review and release of report</li> <li>• Need for ILC to be transparent in operations</li> <li>• ILC's public statements about ARR</li> <li>• Review of ILC and IBA</li> <li>• Need for Parliamentary Inquiry into ARR acquisition</li> <li>• ILC's commitment to support Indigenous employment at the ARR.</li> </ul> |
| 18 December 2013 | <p>Letter from ILC Chair to the Hon Tony Abbott MP, Prime Minister</p> <ul style="list-style-type: none"> <li>• McGrathNicol report</li> <li>• Need for a Parliamentary Inquiry into the ILC's acquisition of the ARR.</li> </ul>  |

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|                |   |
|----------------|---|
| 5 January 2014 | <p>Letter from ILC Chair to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs; the Hon Tony Abbott MP, Prime Minister; Hon Alan Tudge MP, Parliamentary Secretary to the Prime Minister; Senator the Hon Mathias Cormann, Minister for Finance</p> <ul style="list-style-type: none"><li>• Need for Parliamentary Inquiry into the ILC's acquisition of the ARR.</li><li>• Accountability issues raised by McGrathNicol Report.</li></ul> |
| 29 April 2014  | <p>Letter from ILC Chair to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs</p> <ul style="list-style-type: none"><li>• Request that the Government reconsider the need for a Parliamentary Inquiry into the ILC's acquisition of the Ayers Rock Resort</li><li>• ILC response to Minister's request in relation to an appointment to the board of an ILC subsidiary.</li></ul>   |

Copies of these letters are included at **Attachment B** for reference.

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**Attachment B**

**Copies of letters from ILC Chair in relation to the ARR purchase**

Board-in-Confidence

people land  
opportunity



Australian Government  
Indigenous Land Corporation

16 October 2013

COPY

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

As I indicated to you in our conversation last night, I am writing to follow up on my letter dated 26 September 2013 that provided you with a strategic overview of the ILC and identified some of the operational challenges arising in relation to Ayers Rock Resort (ARR). The letter sought an opportunity to brief you on these issues and also invited you to attend a forthcoming ILC board meeting.

As you mentioned in our conversation, an opportunity to provide you with a comprehensive briefing is unlikely before November. Given this potential delay, and my obligation to keep you informed of significant events, I have decided to send you a more detailed outline of the governance and financial issues inherited by the new ILC Board in October 2011 and the complex issues relating to the acquisition of ARR, its owner Voyages Indigenous Tourism Australia Pty Ltd (Voyages), and ARR's ongoing management challenges.

Your request that the Board defers making any changes to the Voyages Board and maintains the existing appointments raises a number of serious issues. I want to assure you that any consideration of changes to any of our subsidiary boards will take into account the need for stability in the ongoing operations and ensuring the highest level of expertise and appropriate range of skills to manage the challenges inherent in an organisation such as Voyages. The Board and newly established nominations committee are yet to meet, so I am unable to pre-empt their decisions. I will of course ensure they are made aware of your wishes and provide them with a copy of your letter for their consideration.

Nevertheless, as I outlined to you briefly in our conversation, and as you will see from the information outlined below, there are a range of issues relating to the alignment between the ILC and Voyages which cannot be allowed to go unaddressed. The ILC Board takes seriously its statutory responsibility to manage the Corporation's affairs, including those of its subsidiaries, in accordance with the objects and provisions of the Aboriginal and Torres Strait Islander Act 2005 (ATSIA Act), with the highest standards of governance and accountability, and to promote the economic, social and cultural benefits of Indigenous Australians.

#### The acquisition of Ayers Rock Resort

In December 2008 the then ILC Board met in Sydney at the Offices of Grant Samuel to consider presentations from a number of advisers regarding a potential acquisition of a

## Board-in-Confidence

number of GPT Group (GPT) owned hotel assets including ARR, Kings Canyon, El Questro and Wrotham Park resorts. GPT is a major Australian property development firm.

The minutes of that meeting indicate that the then Chair expressed concern about the quantum of borrowings which would be required to fund the purchases. In further discussion:

"Director Driscoll stated that if the fundamental purpose of the acquisition is to create training and employment, he believed this could be achieved without purchasing the properties and that the price of \$282m (excluding \$8 million for Kings Canyon) was excessive given its location... He was also concerned that the price of almost \$80 million for building and infrastructure upgrades might be underestimated..."

Director Baffsky stated that the ILCs prime goal is to create ownership and opportunities for Indigenous Australians. While the financial viability of the business operations was important, it should not be the overriding consideration. He believed that it is a decision for the Indigenous members of the Board, as its significance to Indigenous Australia should be the deciding factor."

After breaking overnight, the Board reconvened and following further discussion the Board agreed that the ILC would not submit an offer for the GPT portfolio of remote properties, but resolved to advise GPT that if the ARR and El Questro Resorts were not sold to another party, it was free to approach ILC with its bottom line offer for the properties.<sup>1</sup>

Two years later, in October 2010 the then ILC Board made a decision to proceed with the acquisition of ARR from GPT at a cost of \$317 million and settlement on ARR occurred in May 2011. Two ILC Directors, Driscoll and Trust, abstained from the decision. As part of the sale agreement, GPT agreed to contribute \$25m in capital expenditure at ARR over five years.

Since the acquisition, ARR has been operated by Voyages, a fully owned ILC subsidiary<sup>2</sup>, under the chairmanship of longstanding ILC Director David Baffsky<sup>3</sup>.

GPT had been attempting to sell its central Australian hotel assets for a considerable period and at the time of the purchase Yulara was the last remaining asset in GPT ownership.

The ILC had been considering the proposed acquisition since 2008 and negotiations for the acquisition had been led by ILC Director David Baffsky<sup>4</sup> and the then ILC CEO David Galvin.

Mssrs Baffsky and Galvin were assisted by a range of consultants in undertaking the required due diligence for what was a large and complex acquisition. The due diligence consultants were lead advisers Grant Samuel and Howarth HTL, and Baker McKenzie and Corrs Chambers Westgarth provided legal advice on the sale.

These primary consultants were directly sourced and thus contracted. We have no records of any tender process being applied in the selection of these consultants. The ILC retains virtually no information on the basis of the decisions to engage these consultants. Ultimately, the ILC spent in excess of \$5m on due diligence for the ARR acquisition. The fees to Grant

<sup>1</sup> Minutes ILC Board Meeting 16 and 17 December 2008.

<sup>2</sup> The Sale Agreement for ARR provides for a local Indigenous organisation, Wana Ungkuntja to be granted 7% equity in Voyages at the end of ten years, or once the outstanding debt arising from the transaction is repaid, whichever occurs sooner.

<sup>3</sup> David Baffsky was appointed a Director of ILC in 1999.

<sup>4</sup> David Baffsky has substantial international experience in hotel development and management as the previous Executive Chair of Accor Asia Pacific between 1993 and 2008, and as continuing Honorary Chair to the present. Accor Asia Pacific is the largest hotel and tourism company in Australia.

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Samuel were based on a percentage of the final sale price. Under the ILC's enabling legislation, the ATSI Act, consultants are approved by the CEO.

The financing arrangements for the acquisition are vital to understanding the current challenges facing the ILC:

1. Initial payments to GPT of a \$16.5m deposit plus \$67.5m on settlement;
2. A vendor funding arrangement for the purchase was entered into totaling \$219m, with \$81m repayable after one year, and \$138m repayable after five years at an interest rate of 6.5% pa;
3. An uplift amount of \$17m (subject to various adjustments) becomes payable to GPT at year 5, and GPT committed to contributing \$25m over five years for capital upgrades to ARR;
4. Voyages took out a loan of \$60m from the ANZ for a term of five years at a variable interest rate to finance the balance of the acquisition cost and essential upgrades; and
5. Some \$40m has been spent by the ILC and Voyages since acquiring ARR on upgrading essential infrastructure and the Sails In the Desert hotel and constructing a new Conference Centre at ARR.

The book value of ARR at 30 June 2012 was \$312m and the outstanding liabilities arising from the transaction amounted to \$215m.

The financial forecasts prepared for the Board as part of the due diligence for the acquisition assumed that ARR would generate sufficient revenue to cover the full cost of operations, including:

- capital expenditure requirements;
- interest payments on the vendor finance arrangements and the ANZ loan; and
- make contributions to the reduction of the overall liabilities arising from the acquisition.

The business case for the purchase noted that it was expected that:

- external borrowings will be extinguished prior to the end of year 10 operations; and
- after the repayment of borrowings, ARR will provide an annual income of approximately \$25 million to the ILC, enabling it to significantly expand the benefits it will be able to deliver to Indigenous Australians beyond the income it receives from the Land Account.

Correspondence to the then Minister for Indigenous Affairs, the Hon Jenny Macklin MP from Shirley McPherson (then ILC Chair) dated 23 September 2010 and to the then Minister for Finance and Deregulation, Senator the Hon Penny Wong assured the Ministers that the financial costings had been undertaken based on 'conservative cash flow projections'<sup>5</sup>.

However somewhat incongruously, in response to further requests from Minister Wong for detailed sensitivity analyses to be undertaken and the preparation of a contingency plan, Shirley McPherson replied in November 2010 (less than two months after deciding to acquire ARR) providing the requested information, but including the following assessment:

<sup>5</sup> Letter to Senator the Hon Penny Wong, Minister for Finance and Deregulation, from ILC Chair Shirley McPherson dated 30 September 2010. Similar comments were provided to Minister Jenny Macklin in a letter dated 23 September 2010.

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"The ILC is acutely aware that the performance at ARR has deteriorated over a ten year period. This has been due to the following:

- occupancy has fallen from 81% in 2000 to 51% in 2009;
- airline capacity into ARR is fundamental to visitation, and this has declined substantially over recent years;
- ARR has had limited access to capital and, consequently, facilities have become tired and require refurbishment – new facilities are required;
- *[five other points were listed].*<sup>6</sup>

Clearly the previous Board were entirely aware of the structural and long term challenges they faced in taking the decision to acquire, and that the challenges were not temporary or short term in nature.

After two years of operation the financial results are not meeting the expectations outlined in the business case which underpinned the then Board's decision to acquire ARR. The airlines have cut back their flight schedules to Yulara significantly constraining visitor numbers and reducing flexibility in lengths of stays. While the franchise agreement with Accor to utilize their international booking system is working well, occupancy levels appear to be in long term decline. The infrastructure is over thirty years old, and will likely require increased levels of capital investment going forward.

Net earnings for ARR are currently running substantially below those forecast by Grant Samuel pre-acquisition. Interest payments on the ARR borrowings are around \$11m per annum, and current ARR operations are unable to meet these liabilities. Further, in accordance with Australian accounting standards, the Voyages Directors have recently determined, on the basis of a desk top analysis, that the fair value of ARR at 30 June 2013 is \$250 million, resulting in an impairment expense of \$62.25 million.

In other words, within two years of acquisition, ARR has lost 20 percent of its value. Or to place it in more stark terms, this is perhaps the largest single evaporation of public monies in the Indigenous policy domain ever.

For our part, the current ILC Board had initiated (in advance of the write down) a full speaking valuation of the asset, and we expect to have that available early in the new year. It is conceivable that a full speaking valuation – based on a detailed assessment of all relevant assumptions – will lead to further write downs in the value of ARR next financial year.

The interim Voyages Directors' valuation of ARR raises serious questions concerning the assumptions used in the valuation of ARR at the time of purchase, and most importantly, the price which was ultimately paid for ARR.

### **The New Board's concerns and actions**

Following the expiry of every ILC Board member's tenure in October 2011<sup>7</sup>, a refresh of the ILC Board occurred.

Minister Macklin replaced Chair Shirley Macpherson (appointed 2001), and Directors Kevin Driscoll (appointed 1998), Max Goringe (appointed 2005), and Evonne Goolagong-Cawley (appointed 2007). The Minister retained Directors Trust (appointed 2005), Baffsky (appointed 1999) and Jeffries (appointed 2004) thus re-establishing staggered tenures for ILC Board

<sup>6</sup> Letter from ILC Chair Shirley McPherson to then Minister for Finance Senator the Hon Penny Wong dated 5 November 2010.

<sup>7</sup> The Hon Mal Brough MP the then Minister for Indigenous Affairs had renewed the whole Board's tenure for four years in October 2007

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Directors. The outgoing Directors were replaced by a new Chair, myself, and Directors Neil Westbury, Olga Havnen and Graham Atkinson. Director Ian Trust was made Deputy Chair.

The new board immediately identified a number of issues related to the governance of the ILC and, in particular, issues around aspects of the acquisition. These included:

- the basis for the ARR acquisition, including the price paid;
- the due diligence undertaken during the acquisition phase;
- the appointment process for and the terms of reference for the primary due diligence advisers;
- the role of the ILC Audit and Risk Committee during acquisition;
- the composition and independence of the ILC Audit and Risk Committee, and the length of time its members had been on the committee
- the compliance of Directors with normal conflict of interest disclosure principles at both Board and Audit Committee levels;
- the size of the acquisition for the ILC balance sheet, and the extent of consideration of the impact on broader ILC operations and capabilities; and
- the strategy for divestment to an Aboriginal or Torres Strait Islander corporation as stipulated in the ATSI Act.

Moreover, Ministers Macklin and Wong had formally expressed concerns regarding the acquisition in writing to the previous ILC Board<sup>8</sup>, and these concerns - while noted and responded to formally by the then Board - were essentially ignored<sup>9</sup>. The then ILC Board provided written assurances to the Ministers that:

1. the acquisition would not affect the ILC's ability to deliver land acquisition and land management programs; and
2. the financial modeling upon which the acquisition was based had taken into account the impact of the global financial crisis on ARR.

The new Board noted that while significant financial performance risks were raised with the previous ILC Board throughout the ARR purchase process, the previous Board appeared to set these issues aside without identifying a viable risk mitigation strategy prior to the decision being taken. Some of the financial performance risks that were raised were:

1. A 26% year on year decline in EBITDA in the 6 months to June 2010 as advised by Howath HTL in its report to the then board in August 2010 (only three months prior to approval of the purchase).
2. ARR's high reliance on airline support and the lack of contractual obligations on the airlines and the potential impact of the global financial crisis.

There appeared to be a network of connections between some Directors and members of the ILC and its audit committee and key directors of firms who were directly associated with or contracted in relation to either the acquisition or the subsequent management of ARR. While there were absences at key points in Board meetings where decisions were being taken in relation to these firms, conflicts or potential conflicts of interest were rarely recorded in the

<sup>8</sup> These concerns were set out in letters to the ILC dated 22 September 2010 and 29 September 2010.

<sup>9</sup> For example, Minister Wong had requested the provision of further information and a deferral of the acquisition under s16 of the CAC Act. Ms McPherson in her reply of 30 September 2010 noted the request, but claimed any 'delay may jeopardise this unique opportunity for Indigenous Australians'. The Board took the decision to acquire the following day, 1 October 2010. On the same day, Ms McPherson wrote to the Minister agreeing to defer implementation for seven days.



## Board-in-Confidence

minutes. This is a matter of continuing relevance in terms of the membership of the Voyages Board and the operation of ARR.

### Other Governance Issues

In December 2010, less than 12 months before all Board members' tenure as ILC Directors came due for renewal, the then Board amended the Voyages constitution to extend the term of Voyages Directors from three to five years. This meant that the existing Voyages Directors would continue their tenure beyond any possible changes to their tenure on the ILC Board.

Moreover, if not renewed as ILC Directors, they automatically became eligible for the remuneration paid to non-ILC Voyages Directors of up to \$75k per year (and substantially more for the Chair). Directors Baffsky, McPherson, Jeffries and then ILC CEO Galvin were all potential beneficiaries of this arrangement. In the event, it only applied to Director McPherson, as Directors Baffsky and Jeffries were reappointed to the ILC Board, and Mr Galvin stepped down from the Voyages Board as part of his termination arrangements with the ILC. Ms McPherson was prevailed upon to step down from the Voyages Board, without ever taking up a remunerated position.

In February 2013, the new Board amended the Voyages Constitution to align the tenure of ILC Directors on the Voyages Board with their tenure as ILC Directors, consistent with generally accepted corporate governance principles.

In light of these significant issues, the new ILC Board took immediate action to put in place more robust governance arrangements with a refresh of the Audit and Risk Management Committee and the appointment of an Independent chair to this Committee.

The outgoing audit committee members – Directors Baffsky and Jeffries – had been in place for 12 and 9 years respectively (noting these positions are remunerated). Notwithstanding that ANAO Guidelines suggest tenure on audit committees be limited to three years with a one plus one year option particularly for external members, one or more of these members refused to accept the Board's decision in relation to the appointment of an independent chair and to refreshing the membership of the Audit Committee and sought external legal advice to question a valid Board decision. This advice cost the ILC in the order of \$20k, and was paid with the then CEO's approval, without reference to the Board.

Director Jeffries sought to have the then Finance Minister terminate a number of the new Board members for alleged conflict of interest because they participated in the decisions which led to their subsequent appointment to the ILC's Audit committee. The Minister for Finance, based on legal advice available to her, rejected these claims outright.

The new Board was also concerned that the previous board had re-appointed without advertisement the longstanding then Chief Executive Officer, David Galvin, in the months prior to the appointment of the new Board. This re-appointment went against advice from a previous Minister (Minister Ruddock) that the position be advertised at the expiry of each term, and in taking a decision to re-appoint the CEO the previous Board ignored Cabinet Handbook obligations to consult with the Minister as it was a significant appointment to an Australian Government statutory body.

The new Board ultimately took action to terminate the CEO's appointment. Under the ATSI Act the CEO is appointed at the pleasure of the Board, and no reasons need to be given for termination. The remuneration arrangements for the CEO, set by the Remuneration Tribunal, take into account the non-permanent nature of the Office of CEO.

Following his termination, Mr Galvin then sought to take up an SES level position within the ILC that had previously been created and approved for the CEO in 2006. This position had been recommended by the ILC Audit and Risk Committee in 2005. The position had been

## Board-in-Confidence

filled without advertisement or open process, and was not reported as part of the ILC's normal staffing establishment. It had been created on the basis of internal legal advice which set aside external AGS advice raising concerns about the proposed course of action<sup>10</sup>. The existence of this arrangement had not been divulged to the new Board by the relevant Directors, and had not been advised to the new Chair and Board members by the then CEO. On its face, this arrangement had the effect of providing a well remunerated safety net to the previous CEO as insurance against future termination or non-re-appointment. Yet the tenure arrangements for the position of CEO are taken into account by the Remuneration Commission in setting the CEO's remuneration. The ILC (and indirectly the taxpayer) was ultimately required to factor the existence of this position into the financial payout made to the then CEO.

In July 2012 the new Board initiated an independent review of the governance arrangements at the ILC. Deloitte were appointed (Deloitte Review) and made recommendations on a number of key findings around conflicts of interest processes, procurement practices and subsidiary management and governance arrangements.

Deloitte undertook a governance maturity assessment of the ILC and found that there were significant gaps between the current and target states arising from the substantially increased governance obligations, which ensued from the incorporation of a complex commercial enterprise (ARR) within the ILC group. Gaps were particularly evident in the following areas:

- the ILC's stakeholder relations;
- financial reporting; and
- the setting of strategic directions

The new Board placed the Deloitte Review on the ILC web site in the interests of transparency and good process, and has initiated action (already well progressed) to implement all recommendations. Deloitte further suggested that the ILC Board establish an unambiguous financial strategy to set clear financial expectations for Voyages in the short and medium term. The ILC Board responded by endorsing an action plan which included the establishment of a review of ARR.

In light of the array of governance shortfalls the new Board had uncovered, I subsequently wrote to Ministers Macklin and Wong recommending the Australian National Audit Office be asked to audit the ARR acquisition process. Minister Macklin responded suggesting instead an 'end to end' review be initiated by the ILC itself. This is currently underway with the appointment of McGrathNicol in August 2013. The scope of the work of this independent review includes not just the purchase process but will include a full speaking valuation of the ARR and will seek to make recommendations in terms of short and longer term strategies for the on-going management of the ARR asset.

### The Backlash

The response to the Board-initiated good governance practices has been a concerted campaign directed against ILC board members including myself. It has included leaks to the

<sup>10</sup> The Australian Government Solicitor advice dated 26 September 2005 indicated the ILC 'may have the power to engage Mr Galvin...if it is satisfied that it is necessary for the performance of the ILC functions. However we consider this option raises issues for the Board's judgement as there may be scope for argument that the appointment would not be strictly necessary and should not be made without a competitive merit based selection process.'

## Board-in-Confidence

media regarding changes to the ILC Audit Committee membership<sup>11</sup>, targeted Freedom of Information requests by third parties<sup>12</sup> against ILC Directors and their communications with other Government agencies, and leaks to the then Opposition of the confidential Board papers and discussions including the selection recommendations relating to three candidates for the position of CEO. As you would be aware, unauthorised disclosure of Board matters is a potential criminal breach of the Commonwealth Authorities and Companies Act 1997, and the publication of staff selection reports is a significant breach of privacy and inconsistent with normal management and privacy principles.

More recently, the Voyages Board have taken a series of perplexing decisions which have not assisted the ILC to address the challenges created by the ARR acquisition.

For example, the Voyages Board, at the instigation of Chair Baffsky, developed a budget based on cost shifting the interest payments on the vendor finance to the ILC. While the ILC has strict legal liability for the loans, and in any case provides an annual letter of comfort to its subsidiaries in relation to their operating deficits, there has been a clear understanding from the very start, backed by actual payments, that Voyages had a responsibility to fund the costs of the vendor finance from within its operating budget.

This was the basis upon which Director Baffsky and the other ILC Directors approved the acquisition of ARR, and is reflected in the correspondence from the then Chair to then Ministers Macklin and Wong. To not do this would create an ongoing pressure on the ILC's normal land management and land acquisition programs. As mentioned above, the previous Chair and Board assured Ministers in the previous Government that this would not occur.

Similarly, the Voyages Chair and Board recently indicated that they would not be cooperating with the McGrathNicol review of ARR pending the provision of legal advice, even though this was an outcome of the Deloitte Review which all ILC Directors (including directors Baffsky and Jeffries) had agreed to implement and was instigated at the then Minister's request. Further, Director Baffsky had seen and endorsed the terms of reference for the review, and the Voyages CEO had committed in writing to cooperate fully with the review.

Access to information held by Voyages, and the knowledge of key individuals such as Director Baffsky will be crucial in reaching a full understanding of why the acquisition proceeded on the basis that it did.

### Conclusion

The ILC Board is committed to developing a sustainable strategy for Voyages and ARR which will best benefit our constituents, including potential recipients of our broader land management, land acquisition, and agricultural and tourism programs. It will be crucial to do so as, unless ARR can be brought back onto a sustainable footing, it will inevitably consume a significant proportion of the ILC's available funding for land management and land acquisition.

The new ILC Board has made a conscious effort to support all reasonable requests from the Voyages Board to bring forward capital expenditure and underwrite Indigenous employment and training costs. For example, the current Board agreed to a request from Voyages to sub-lease the high end Longitude facility in an effort to shore up revenue.

On present trends, and in the absence of a turnaround in the commercial prospects facing ARR, the ARR will be consuming around \$10m per annum in perpetuity merely to cover interest repayments. In such an environment, a 20 year plan to remove the outstanding debts

<sup>11</sup> See for example the article by Joe Kelly in The Australian of 10 July 2012 'Coalition concern at Land Council revamp'.

<sup>12</sup> Who while they appeared to have no direct link to the ILC, nevertheless kept the then Opposition closely informed of the progress of their applications.

## Board-in-Confidence

and liabilities arising from the ARR transaction would add a further \$10m per annum in post onto the ILC. Thus, from an annual budget of around \$50m in total available to the ILC each year, the ARR transaction could consume \$20m per annum, or 40 percent of available funds. Such an outcome is unlikely to be tenable nor acceptable to governments or to the wider Indigenous community.

In working through these challenges, we are committed to protecting to the maximum extent possible the strong training and employment outcomes for Indigenous Australians arising from the acquisition. The National Indigenous Training Academy at ARR has been a success in terms of its outputs. However, the key issue here is the cost of these training programs, and the funds available to support them.

The new ILC board has demonstrated from its very first meetings its absolute commitment to ensuring good governance practices are embedded in the ILC. Governance principles and processes are in place for a reason – to avert and mitigate the risk of adverse outcomes and ultimately to undermine the possibility of corrupt practices which place private interests above the general good.

The new ILC Board and staff are committed to the very highest levels of transparency and accountability, and have done all in their power to address the clear and long standing governance shortcomings identified in this letter, and confirmed in the Deloitte Review.

Yet it is fair to say that members of the present Board and key staff have been subjected to an extraordinary campaign of criticism and attempted intimidation, originating from anonymous sources with close knowledge of the internal dynamics of the ILC aimed at blunting our capacity to drive the fundamental reforms required within the ILC to assure taxpayers that public funds will be used properly going forward.

I therefore seek your support for the Board's initiatives to implement the highest standards of good governance and to address the challenges we inherited from the previous Board. As we discussed, I will follow up with your Office to make arrangements for a meeting with the CEO and myself when Parliament convenes in early November.

Yours sincerely



Dr Dawn Casey PSM FAHA  
Chair



COPY

MINISTER FOR INDIGENOUS AFFAIRS

Dr Dawn Casey PSM FAHA  
Chair  
Indigenous Land Corporation  
PO Box 586  
Curtin ACT 2605

Thank you for your letter of 4 September 2013 in relation to the Indigenous Land Corporation's operations and governance. It was also good to talk with you at the Garna festival and today by phone. I am writing to follow up the issues I raised with you in our most recent conversation.

I would be keen to meet over the next few weeks so that I can be fully briefed on the operations of the ILC and on current issues which the Board will be facing over coming months. It might also be convenient to discuss Indigenous Business Australia during the same meeting. I suggest that our offices arrange a mutually suitable time when I am in Canberra in mid November.

You would know that I have a keen interest in the ILC and that I am a strong supporter of the iconic Land Account. I know that we share a commitment to making sure that this major resource is harnessed for the best possible outcomes for Aboriginal and Torres Strait Islander people. I would be interested in receiving information about the range of investments and initiatives which are being pursued around the country and about your plans over the coming period. I am also interested in hearing your views about how the ILC and IBA can best work collectively to drive economic improvements for indigenous people. I believe there are significant synergies that could be harnessed, and that you are uniquely placed to drive as concurrent chair of both organisations.

As I mentioned today, I am particularly keen to gain a thorough understanding of the status of the ILC's flag ship investment in the Ayer's Rock Resort through your subsidiary, Voyages Indigenous Tourism Australia. In my view, this enterprise is an unprecedented opportunity to drive employment outcomes and bring Aboriginal people into the forefront of the tourism industry. For this reason, it is essential for us to discuss the "serious concerns" you mention in your letter and for me to understand the reasons for the Board's view that a review is warranted. I would note that my focus will be on the forward looking aspect of the exercise in accordance with my determination to achieve better outcomes for Indigenous people across my portfolio.

I am strongly of the view that we must ensure steady operations during the current period of significant change as the new Government begins to implement its agenda. In addition, the ILC will be welcoming two new Board members from 19 October 2013 when the

appointments of Ms Lisa Gay and Ms Alison Page commence. Mr Dillon is also still relatively new to his position of Chief Executive Officer.

In particular, I believe stability is critical in relation to the governance of Voyages given the current nature of the tourism industry and the challenges it brings to operations at the Ayer's Rock Resort.

In light of this, I ask that you give careful consideration to the makeup of the Board of Voyages and to the case for maintaining stability for the time being. In my view, Mr David Baffsky, as chair, has been particularly important to the business. I would urge you to retain a stable leadership going forward so as not to risk any adverse impact on the commercial operations. It would also make sense to retain the status quo given that the ILC Board has embarked on a "comprehensive, independent end-to-end review".

I understand that the Board can determine to keep the existing Directors and Chairman in place notwithstanding changes in the ILC Board membership. I appreciate that this is a matter for the Board but I would strongly encourage you to consider the benefits of allowing Mr Baffsky to continue with his current role at this stage.

My office will be in contact to arrange a meeting. I look forward to discussing these issues further then. Any material which you could provide in the interim on the operations and investment portfolio of the ILC would be appreciated.

Yours sincerely



NIGEL SCULLION  
16 October 2013

CH2013 | 59

Board-In-Confidence

Posted 25/10/13

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Australian Government  
Indigenous Land Corporation

23 October 2013

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

COPY

Dear Minister

I am writing to respond to your letter dated 16 October 2013 and to provide you with a short brief setting out the significant issues considered by the ILC Board at its meeting held today, 23 October 2013.

In your letter you wrote that you are strongly of the view that "we must ensure steady operations during the current period of significant change as the new Government begins to implement its agenda". With this in mind I am pleased to advise the re-appointment of Mr Ian Trust as Deputy Chair to the ILC Board came into effect from 20 October 2013. As you would know, Mr Trust has provided strong leadership and vision to the ILC for a number of years now and I am confident he will continue to provide high level support to me as Chair.

In line with the requirement to advise you of significant issues, please find attached (Attachment A) a short brief setting out those significant matters considered by the ILC Board at its meeting today. You will see that the ILC Board has made a number of new appointments to our various subsidiary boards.

Under the Commonwealth Authorities and Companies Act 1997 directors are required to exercise their powers and discharge their duties with care and diligence, in good faith, in the best interest of the ILC and for a proper purpose. We have given particular attention to your letter, and your request that we 'consider the benefits of allowing Mr Baffsky to continue with his current role at this stage'.

In your letter to me, you make particular reference to your belief that stability is critical in relation to the governance of Voyages given the nature of the tourism industry and the challenges it brings to the operations of Voyages. In considering new appointments to the ILC subsidiaries, particularly the Voyages Board, the ILC Board took into account the need for stability in the ongoing operations and to ensure the highest level of expertise and appropriate range of skills to manage the challenges inherent in an organisation such as Voyages. Given:

1. the Deloitte Review into governance arrangements at the ILC identified the need for much stronger alignment between the ILC and its subsidiary; and
2. the recent operational issues at Voyages and the extraordinary write down of \$62.25 million within two years of its acquisition,

the ILC Board took the decision that a substantial refresh of the Voyages Board was necessary.

In our view, the Voyages Board has over the past year adopted an increasingly isolationist stance towards the ILC, and as mentioned in my letter to you dated 16 October 2013, taken a number of perplexing decisions. Perhaps more importantly, there has been in the ILC Board's view a loss of trust

## Board-In-Confidence

between the members of the ILC Board and the Voyages Board and its Chair in particular, which can be traced back to the:

1. ILC Board's decisions to replace Mr Baffsky as Chair of the ILC's Audit and Risk Management Committee in 2012. Mr Baffsky had been a member of the Committee for over 12 years; and
2. ILC Board's questioning of the probity and commerciality of the decision to acquire Ayers Rock Resort.

We are available to brief you in detail the various actions taken by the Voyages Board which has led us to come to this view.

In these circumstances, the ILC Board has a responsibility to resolve the situation decisively both to protect the value of the asset and the interests of the Australian taxpayer, and to ensure the highest standards of transparency and governance are in place and that stability in the overall operations of the ILC and Voyages is maintained.

The Board noted that a decision to re-appoint Mr Baffsky and Mr Jeffries would dilute the influence of the ILC over its subsidiary, thus increasing the risk of divergent policy approaches. This would not be consistent with good corporate governance.

In your letter dated 16 October 2013, you state that "It is essential for us to discuss the 'serious concerns' you mention in your letter [of 4 September 2013] and for me to understand the reasons for the Board's view that a review is warranted. I would note that my focus will be on the forward looking aspect of the exercise in accordance with my determination to achieve better outcomes for Indigenous people.."

Ayers Rock Resort, and consequently Voyages, is confronting a serious financial crisis, which threatens the overall capacity of the ILC to undertake its statutory functions. My letter to you of 16 October outlined the nature of these challenges in detail.

The Board is undertaking the 'end to end' Review both because the Deloitte Governance Review initiated by the new ILC Board suggested further work on the acquisition was required, and because your predecessor, Minister Macklin, requested we undertake the Review after we had sought to have the ANAO undertake a forensic audit of the acquisition.

While you note that your focus will be on the forward looking aspect of the exercise the options available to the ILC going forward may depend in large measure on the nature of the decisions which led to the present situation. As Directors, we have a fiduciary responsibility to understand how the ILC arrived at the present situation, and which required us to carefully review past actions.

For these reasons, we have instituted the review you refer to and expect to have it finalised early in the new year. We have been receiving provisional progress reports from the firm undertaking the Review and separately from our staff, and are already in a situation where we know that governance and transparency deficiencies played at least a part in the process underpinning the previous Board's decision to acquire Ayers Rock Resort. Given our responsibilities as Directors, and the pertinent knowledge we have already acquired thus far, we cannot defer taking decisive action to protect the interests of the ILC and its constituents. Such a course of action will have the concomitant effect of also minimising any adverse financial impact on the Commonwealth more generally.

I am delighted to advise the Ms Lisa Gay has been appointed to the Voyages Board and has agreed to take on the important and in the current climate, critical role of Chair. Ms Gay brings to the Voyages Board considerable governance and commercial skills from her many years working as General Counsel at Goldman Sachs and will provide the strong and stable leadership to manage the challenges the organisation will face going forward. She will be ably supported by a board with deep governance, commercial and tourism industry experience and I am confident the revitalised board

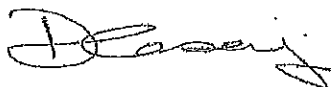


Board-In-Confidence

will be well positioned to meet the challenges ahead. I note in this context that the Board has re-appointed Mr Koos Klein to the Voyages Board.

We look forward to meeting up with you at your earliest convenience.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Dawn Casey', written in black ink.

Dr Dawn Casey PSM FAHA  
Chair

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Australian Government  
Indigenous Land Corporation

COPY

8 January 2014

Senator the Hon Mathias Cormann  
Minister for Finance  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I attach for your information a copy of the letter I sent to Minister Scullion dated 5 January 2014 along with a copy of the correspondence to which my letter refers which I received from Minister Scullion on 20 December 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey', written over a faint, illegible stamp.

Dr Dawn Casey PSM FAHA  
Chair

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Australian Government  
Indigenous Land Corporation

COPY

8 January 2014

The Hon Alan Tudge MP  
Parliamentary Secretary to the Prime Minister  
Parliament House  
CANBERRA ACT 260

Dear Parliamentary Secretary

I attach for your information a copy of the letter I sent to Minister Scullion dated 5 January 2014 along with a copy of the correspondence to which my letter refers which I received from Minister Scullion on 20 December 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey'.

Dr Dawn Casey PSM FAHA  
Chair

people land  
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Australian Government  
Indigenous Land Corporation

COPY

8 January 2014

The Hon Tony Abbott MP  
Prime Minister  
Parliament House  
Canberra ACT 2600

Dear Prime Minister

I attach for your information a copy of the letter I sent to Minister Scullion dated 5 January 2014 along with a copy of the correspondence to which my letter refers which I received from Minister Scullion on 20 December 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey', written over a horizontal line.

Dr Dawn Casey PSM FAHA  
Chair

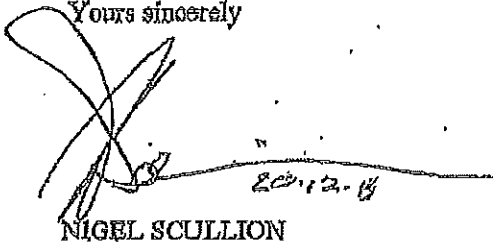
I confirm the Government's view that a Parliamentary inquiry is not required. You have already undertaken and made public a review into the purchase process. I do not believe the review highlights matters that require the considerable time and expense of a Parliamentary inquiry. The conclusions in the report note that the matters you focus on, do not of themselves mean that the acquisition was inappropriate. From my point of view the findings of your review in fact demonstrate that there is no need for such an inquiry.

I also draw your attention to the recent tabling of the ANAO Report into the operations of the ILC. I note that the report makes no significant conclusions in relation to the purchase of the Ayers Rock Resort.

It is regrettable that this is the second occasion in which you have deliberately chosen to disregard a reasonable request by me. You will recall that I wrote to you on 16 October 2013 urging you to consider maintaining the stability of the Board of Voyages Indigenous Tourism Australia in the commercial interest of the Ayers Rock Resort.

I reiterate my disappointment that despite your assurances that you wanted to work closely with me, this does not seem to be occurring. I remain concerned that the continual media commentary is having a negative impact on public perception of the Ayers Rock Resort and the ILC.

Yours sincerely



20.12.13

NIGEL SCULLION

20

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10/12/13



MINISTER FOR INDIGENOUS AFFAIRS

COPY

Dr Dawn Casey PSM FAHA  
 Chair  
 Indigenous Land Corporation  
 PO Box 586  
 CURTIN ACT 2605

*Dawn*  
 Dear Dr Casey

I refer to your letters of 17 and 18 December 2013 regarding the McGrath Nicol Review of the Indigenous Land Corporation's (ILC) acquisition, operations and future prospects of Ayers Rock Resort.

As you are aware, I wrote to you on 29 November 2013 asking that you provide me with a draft of the report, and that we discuss handling and release before it was finalised and made public. I only asked for this in the spirit of working collaboratively with you to ensure that the release did not impact on the public perception of the Ayers Rock Resort and further damage its business prospects.

Can I say that I am extremely disappointed that while, technically, you provided me with a draft of the report late and out of business hours on 17 December 2013, the Board decided to release it publicly on 18 December 2013, leaving no time for me, my office, or the Department of Prime Minister and Cabinet to see the report or to consider its findings. Nor did you attempt to discuss the release and handling with me, as I had requested.

Your letter of 18 December 2013, asserts that the Board chose to act in contravention of my request because it has "...taken the view that that it would not be appropriate or ethical for us to allow the perception to be created of political interference in the ILC's activities." I want to be clear that I strongly reject the assumptions in this statement. I did not ask, nor sought, to interfere in the report's findings or processes. The notion that simply because I requested a reasonable time to consider the findings before the release, is somehow equivalent to me seeking to interfere with the review is completely untrue.

I reiterate that my sole concern was the best interests of the Ayers Rock Resort and the many Aboriginal people who are gainfully employed there and whose lives have been transformed for the better by having real work opportunities there. There is nothing inappropriate about my taking an interest in its findings.

- the failure of the Board to take into account the most recent financial performance of the Resort and to rely on a valuation which was over 17 months old, and which if taken into account would have reduced the fair market value by many millions of dollars raises serious questions which require answers;
- the failure of the then Board to adequately mitigate the risks identified in the due diligence (for example in relation to airline flights into Yulara) raises serious questions which require answers;
- the fact that the financial projections relied upon were not conservative (contrary to assertions made to Ministers subsequently) but projected an immediate and unjustified turnaround in the long term decline in occupancy levels raise serious questions requiring answers;
- the failure of the Board to adequately record the voting intentions of all Directors, and to leave that ambiguity in place when the minutes were subsequently confirmed as accurate and correct raises serious questions which require answers.

Given the comprehensive and independent Review which has been undertaken, which identified numerous administrative process deficiencies underpinning what has been a substantial loss of funds, the present ILC Board is not in a position to provide you or the Parliament with assurances as to the overall probity of the actions taken by our predecessor Board in relation to the acquisition of the Ayers Rock Resort.

In the light of the many accountability concerns identified in an independent report commissioned at the request of your predecessor after we sought to have the Australian National Audit Office look into this issue, I find your statement 'that a Parliamentary Inquiry is not required' impossible to comprehend.

In relation to your comment that 'this is the second occasion in which you have deliberately chosen to disregard a reasonable request by me', I note that the first request was for the Board to re-appoint Mr David Baffsky to the Chair of Voyages after the automatic expiration of that appointment, and that I provided a detailed explanation of our decision in my letter to you dated 23 October 2013.

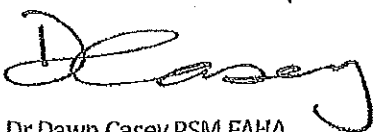
Apart from the fact that Mr Baffsky's re-appointment would not have maintained the stability you sought for reasons which we explained in my letter, the McGrathNicol report now provides ample evidence of the wisdom of our decision in relation to your first request.

Moreover, I wish to make absolutely clear that we did not disregard your requests, but gave each of them serious consideration as a Board, and provided detailed explanations for our reasons for taking the decisions we have.

I reiterate and confirm that we are keen to work closely with the Government in addressing the land acquisition and land management needs of Indigenous Australians. However, this cannot and should not entail abandoning the requirement for the ILC Board to act transparently and independently and in accordance with our statutory responsibilities.

I have provided a copy of your letter and this response to the Prime Minister, the Minister for Finance and the Parliamentary Secretary to the Prime Minister, Mr Tudge MP for their information.

Yours sincerely



Dr Dawn Casey PSM FAHA

CND2013/63

email / Posted  
8/1/14

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Australian Government  
Indigenous Land Corporation

5 January 2014

COPY

The Hon Senator Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT

Dear Minister

I refer to your letter to me dated 20 December 2013 regarding various matters relating to the acquisition of the Ayers Rock Resort by the previous Board of the ILC, and make the following comments in response.

In relation to the issue of perceived political interference, the ILC Board in taking the decisions it did and in writing to you to explain them, made no assumptions whatsoever about your motivations or intentions. We were entirely focused on ensuring that there could be no imputation made in the future by any person that we had somehow neglected our responsibilities to be independent, and had facilitated a situation where political interference might be alleged to have occurred. This risk was exacerbated by the fact that you had requested to be provided with a *draft* of the report prior to its finalisation.

In relation to the issue of a Parliamentary Inquiry into the acquisition, we clearly disagree.

Not only has the acquisition involved an extraordinary loss of public funds intended for Indigenous benefit, but the report undertaken by McGrathNicol now demonstrates that the administrative processes associated with that acquisition were fundamentally flawed. This report expands upon the matters outlined in our letter to you dated 16 October 2013 and which, notwithstanding your response dated 16 December 2013, have not been substantively responded to by you either in writing or at our discussion on 22 November 2013.

To list just a few of the accountability issues raised by the McGrathNicol Report:

- the failure of an ILC Director and the then CEO to comply with its own procurement policies in contracting in excess of \$6m in due diligence consultancies without appropriate tender processes raises serious questions which require answers;
- the audit committee was inherently conflicted in that the Chair of the Committee had been in place for some twelve years and was directly involved in driving the acquisition, and its failure to oversight the acquisition process appropriately raises serious questions which require answers;
- the existence of undeclared potential conflicts of interest between a Director directly involved in negotiating the purchase and a major shareholder in the seller raises questions which require answers;



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Indigenous Land Corporation

18 December 2013

COPY

Senator the Hon Mathias Cormann  
Minister for Finance  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Please find enclosed a letter sent today to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion along with a copy of the McGrathNicol report.

I would be happy to discuss the report further at a time convenient to you.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'D Casey'.

Dr Dawn Casey PSM FAHA  
Chair

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Australian Government  
Indigenous Land Corporation

18 December 2013

COPY

The Hon Alan Tudge MP  
Parliamentary Secretary to the Prime Minister  
Parliament House  
CANBERRA ACT 260

Dear Parliamentary Secretary

Please find enclosed a letter sent today to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion along with a copy of the McGrathNicol report.

I would be happy to discuss the report further at a time convenient to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey', written over a horizontal line.

Dr Dawn Casey PSM FAHA  
Chair

Posted: 18/12/13

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Australian Government  
Indigenous Land Corporation

18 December 2013

COPY

The Hon Tony Abbott MP  
Prime Minister  
Parliament House  
Canberra ACT 2600

Dear Prime Minister

Please find enclosed a letter sent today to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion along with a copy of the McGrathNicol report.

In my letter to you dated 14 November 2013, I outlined the ILC Board's concerns regarding governance and probity at the time of the purchase of Ayers Rock Resort and urged you to consider establishing a Parliamentary Inquiry. While we note the response from the Minister for Indigenous Affairs on your behalf rejecting this request, the ILC Board considers that this McGrathNicol Review reinforces the need for such an Inquiry.

I would be happy to provide you with a full briefing at a time convenient to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey'.

Dr Dawn Casey PSM FAHA  
Chair

I have also considered your correspondence dated 6 December 2013 and 16 December 2013, regarding the Terms of Reference for the review into the IBA and the ILC. I appreciated receiving the comments from the ILC Board on the terms and scope of this review. Thank you for providing feedback.

Having taken the comments you conveyed into consideration I am not satisfied, however, that any change to the Terms of Reference is required as the inquiry is intended as an open one; the findings of which will all be taken into account.

Can I also assure you that the reviewer will seek to meet with key stakeholders, such as yourself and the former Chairs of the IBA and ILC. In addition, it is the intention of the reviewer to meet with the current and former Directors and Chief Executive Officers of IBA and the ILC. A number of other key stakeholders, such as relevant peak bodies, will also be consulted directly.

In addition to targeted consultation, there will also be an open consultation process through a call for written submissions. This will enable any interested party to provide comments on the review and to ensure that a wide range of views are canvassed. Details of how submissions can be made are available online at: <http://ilcibareview.dpnc.gov.au>.

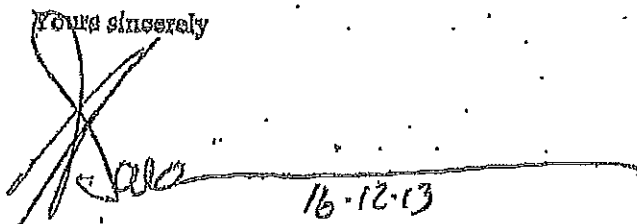
Some of the other issues you raise are matters that the review team can consider, but I do not see a need for these to be specifically addressed in a revised Terms of Reference.

I have also provided a copy of your letters of 6 December 2013 and 16 December 2013 to the review team for their reference.

In the meantime, I anticipate that the ILC will direct its efforts on maximising the financial performance of Ayers Rock Resort, and further increasing employment opportunities for Aboriginal and Torres Strait Islander peoples.

I look forward to working with you on these important issues.

Yours sincerely



16-12-13

NIGEL SCULLION



COPY

## MINISTER FOR INDIGENOUS AFFAIRS

Reference: C13/82858

Dr Dawn Casey PSM FAHA  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

  
Dear Dr Casey

Thank you for your letter dated 14 November 2013 to the Prime Minister, regarding the acquisition of the Ayers Rock Resort. Your letter was referred to me as the Minister for Indigenous Affairs. Thank you also for your letters regarding a range of matters relating to the Indigenous Land Corporation's (ILC) subsidiary, Voyages Indigenous Tourism Australia Pty Ltd (Voyages) and the Ayers Rock Resort in particular.

As you know we covered many of the issues raised in your letters in our discussion of 22 November 2013.

I also note that in your letter to the Prime Minister of 14 November 2013, you assert that you have yet to receive a reply from me to your correspondence about the ILC Board and the purchase of Ayers Rock. Our records show that I have responded to the matters you have raised in my letters to you dated 16 October 2013 and 1 December 2013 respectively.

In relation to your specific request for the Government to establish a Parliamentary Inquiry by the Joint Committee on Public Accounts and Audit to examine the acquisition of Ayers Rock Resort, you would be aware that the Government has decided to commence an independent review of the ILC and Indigenous Business Australia (IBA). This review commenced on 3 December 2013, and I recently announced that Ernst & Young have been engaged to undertake the review and report back to me in February 2014.

In addition, I believe it would be sensible to allow the ILC commissioned 'end to end' review to proceed in relation to the detailed issues you raise in relation to the Ayers Rock Resort investment. As I outlined in my letter of 29 November 2013, I ask that you provide me with a copy of the draft report when it is available and that we have the opportunity to discuss its findings.

we have and which themselves have brought the Resort's continued operations into question.

Second, you have initiated a review of the operations of ILC and IBA, with the stated aim of improving economic development opportunities for Aboriginal and Torres Strait Islander peoples. The material covered by the McGrathNicol report will be essential material in assessing the operations of the ILC in the context of this review, and the risks involved in the pursuit of economic development in Indigenous contexts.

Third, you will be aware that Minister Macklin, in requesting the ILC initiate and undertake this review (in response to our request for an ANAO Inquiry), requested that the report should be made publicly available.

Fourth, and most importantly in the Board's view, the timely and public release of this report is required by our duties and responsibilities as Directors with statutory responsibilities for the effective operation of the ILC. The ILC Board under my Chairmanship has consistently adopted the most rigorous and robust approach to corporate governance, accountability and full transparency in all our operations.

While we note your letters of 29 November 2013 (which primarily deals with the review of ARR) and 16 December 2013 (which primarily deals with the Ernst & Young Review of ILC/IBA) and our meeting of 22 November 2013 which briefly touched on a range of matters, the Board does not believe they have received substantive responses from you to our letters dated 16 October 2013 and 23 October 2013 which raised serious concerns regarding the ARR acquisition. We note your response on behalf of the Prime Minister rejecting our call for a Parliamentary Inquiry and respectfully request this be reconsidered given the serious accountability issues that we have raised. The ILC Board considers that the findings in this McGrathNicol report further support our request for a Parliamentary Inquiry and are in line with our commitment to transparency and public disclosure.

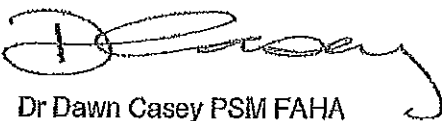
Accordingly, to be totally transparent and in the interests of ensuring the Report is seen to be independent, the ILC Board has today approved the public release of the Report of Component Two forthwith.

I reiterate that the ILC Board is primarily concerned to address the consequences arising from the purchase of ARR for the ILC itself and its core activities. We would be happy to meet with you to discuss the contents of the Report.

The management and operations at ARR will continue to be supported by the ILC. As well, the ILC remains committed to locking in the terrific achievements of the last two years in terms of Indigenous employment at ARR. We have invested over \$9m in to support Indigenous employment at ARR since my appointment in October 2011, and we are totally committed to seeing the outcomes achieved to date continue.

Once the Report of Component One is finalised early next year, I would be keen to meet with you to discuss the potential options available to the ILC to ensure its important statutory functions can continue with minimal disruption.

Yours sincerely



Dr Dawn Casey PSM FAHA  
Chair

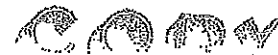
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Australian Government  
Indigenous Land Corporation

18 December 2013



Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I refer to your letters dated 29 November 2013 and 16 December 2013 relating to the review of the acquisition, operations and future prospects of the Ayer Rock Resort and other matters and my recent response providing a copy of the draft Report.

The Review is being undertaken for the ILC by McGrathNicol an independent firm with an international reputation and is in two components. Component One relates to the future prospects and will incorporate a full speaking valuation of the Resort. It is scheduled to be finalised in late February 2014.

Component Two relates to the processes followed with regard to the acquisition of ARR.

In your letter, you requested that we ensure previous ILC Directors and staff are consulted. We have ensured that previous ILC Directors and key staff were given the opportunity to speak with the Review team. Unfortunately, not all have taken up the opportunity, despite a number of approaches. This was one of the reasons we recently wrote to the Prime Minister requesting a Parliamentary Inquiry examine the acquisition of the Ayers Rock Resort.

You also noted in your letter of 29 November 2013 that the public perception of the Ayers Rock Resort needs to be carefully managed if visitor numbers are to increase. You then requested, with this in mind, that the Corporation provide you with the draft report when it is available and that you have an opportunity to discuss the handling and release of the report before it is finalised.

The Board has now met to consider the draft report for Component Two. We have taken the view that it would not be appropriate nor ethical for us to allow the perception to be created of political interference in the ILC's activities.

We acknowledge your concerns regarding managing public perceptions so as to maximise visitation to the Resort. In our view, this concern must be offset against the need for the ILC to be totally transparent. There are a number of reasons why it is important for the McGrathNicol report to be in the public domain.

First, the report essentially deals with the processes undertaken by the ILC in purchasing the Resort, and it does not relate to the operations of the Resort. The ILC has never disparaged the Resort or its operations, and has not been the source of media comments which allege

cooperate, and does not provide those providing information with any protection against threats of legal action.

The ILC Board is committed to resolving the current commercial challenges at the Resort and will be implementing a range of short and longer term strategies with a view to improving the Resort's operations. However, in view of the disastrous outcomes to date from the purchase of the Resort, and the serious concerns of the current ILC Board regarding governance and probity at the time of the purchase, I urge you to consider establishing an inquiry by the Joint Committee on Public Accounts and Audit to examine the purchase.

While we value our independence, you have my assurance that the ILC will continue to ensure its activities are aligned to the maximum extent possible with current Government policy.

Given their responsibility and interest in these issues, I have sent a copy of this letter to the Minister Scullion and to Mr Warren Mundine.

Yours sincerely



Dr Dawn Casey, PSM FAHA  
Chairperson



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Australian Government  
Indigenous Land Corporation

14 November 2013

The Hon Tony Abbott MP  
Prime Minister  
Parliament House  
Canberra ACT 2600

COPY

Dear Prime Minister

I write to you on behalf of the ILC to inform you of a number of serious public accountability issues relating to the decision by the then ILC Board to purchase the Ayers Rock Resort (Resort) in 2010. The Resort is now owned and managed by Voyages Indigenous Tourism Australia Pty Ltd (Voyages), a wholly owned subsidiary of the ILC.

In the two years since the acquisition was finalised, Voyages has lost in excess of \$100m. The audited financial statements for Voyages for the 2012-13 year state that the then Voyages Directors wrote down the value of the Resort by \$62m. This is some 20 percent of the book value of the Resort, and contributed to a loss of \$84m for Voyages for the year, following on a loss of \$25m the previous year. This is an extraordinary and totally indefensible evaporation of public funds intended for the benefit of Indigenous Australians. The ILC Board does not believe such a result should be swept under the carpet.

Following these results, the ILC Board acted and made a number of changes to the membership of the Board of Voyages.

I have written a number of times to Minister Scullion expressing the serious concerns of the ILC Board regarding the poor governance processes which underpinned the purchase of Ayers Rock Resort and have yet to receive a reply.

The acquisition by the ILC in 2010 of the Ayers Rock Resort cost \$317m and was funded by borrowings of \$198m. As a consequence, the write down of \$62m represents 50% of the ILC's current equity in the Resort.

The Directors appointed to the ILC in October 2011 were concerned about a number of aspects of the decision taken by the previous Board and took action to initiate a governance review of the ILC to ensure best practice corporate governance principles had been applied and would be applied in the future.

The review undertaken by Deloitte determined that the ILC needed to institute a range of improved governance approaches, and the Board accepted its recommendations and is making excellent progress in implementing these.

Particular concerns regarding the probity and processes utilised in the lead up to the acquisition of the Resort remained. For example, over \$5m was spent on due diligence consultants. The key consultants were engaged without a tender process. In light of these concerns the ILC Board approached the previous Minister, the Hon Jenny Macklin MP seeking an ANAO audit of the acquisition. Her response was that the ILC should appoint an independent reviewer to undertake a forensic examination of the acquisition, and this review is presently underway. Our concern is that this review does not require individuals to

Board-in-Confidence

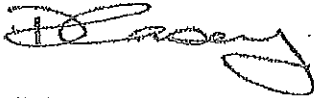
expressed by Minister Scullion in writing regarding stability and the desirability of reappointing Mr Baffsky. I have already written to Minister Scullion addressing his concerns in more detail.

I am pleased to advise the Ms Lisa Gay has been appointed to the Voyages Board and has agreed to take on the role of Chair. Ms Gay brings to the Voyages Board considerable governance and commercial skills from her many years working as Corporate Counsel, head of Human Resources and finally General Counsel at Goldman Sachs and will provide the strong and stable leadership to manage the challenges the organisation will face going forward. She will be ably supported by a Board with deep governance, commercial and tourism industry experience and I am confident will be well positioned to meet the challenges ahead. I attach for your information a copy of the ILC media release announcing the new Voyages Board appointments.

Should your Office require a more detailed brief, I would be happy to do so, or alternatively, please do not hesitate to contact the ILC Chief Executive Officer, Mr Michael Dillon on 62692500

I have provided a copy of this letter to Senator the Hon Nigel Scullion and the Parliamentary Secretary to the Prime Minister, the Hon Alan Tudge MP.

Yours sincerely



Dr Dawn Casey PSM FAHA  
Chair

## Board-in-Confidence

In lengths of stays. While the franchise agreement with Accor to utilize their international booking system is working well, occupancy levels appear to be in long term decline. The infrastructure is over thirty years old, and will likely require increased levels of capital investment going forward.

Net earnings for ARR are currently running substantially below those forecast by Grant Samuel<sup>3</sup> pre-acquisition. Interest payments on the ARR borrowings are around \$11m per annum, and current ARR operations are unable to meet these liabilities. Further, in accordance with Australian accounting standards, the Voyages Directors have recently determined, on the basis of a desk top analysis, that the fair value of ARR at 30 June 2013 is \$250 million, resulting in an impairment expense of \$62.25 million.

In other words, within two years of acquisition, ARR has lost 20 percent of its value. Or to place it in more stark terms, this is perhaps the largest single evaporation of public monies in the Indigenous policy domain ever.

The ILC Board is committed to developing a sustainable strategy for Voyages and ARR which will benefit our constituents, including potential recipients of our broader land management, land acquisition, and agricultural and tourism programs. It will be crucial to do so as, unless ARR can be brought back onto a sustainable footing, it will inevitably consume a significant proportion of the ILC's available funding for land management and land acquisition.

On present trends, and in the absence of a turnaround in the commercial prospects facing ARR, the ARR will be consuming around \$10m per annum in perpetuity merely to cover interest repayments. In such an environment, a 20 year plan to remove the outstanding debts and liabilities arising from the ARR transaction would add a further \$10m per annum impost onto the ILC. Thus, from an annual budget of around \$50m in total available to the ILC each year, the ARR transaction could consume \$20m per annum, or 40 percent of available funds. Such an outcome is unlikely to be tenable nor acceptable to government or to the wider Indigenous community.

The new ILC board has demonstrated from its very first meetings its absolute commitment to ensuring good governance practices are embedded in the ILC. Governance principles and processes are in place for a reason – to avert and mitigate the risk of adverse outcomes and ultimately to undermine the possibility of corrupt practices which place private interests above the general good.

In June 2013, the then Minister Macklin appointed two new Directors, Ms Lisa Gay and Ms Allison Page and re-appointed Mr Ian Trust as Deputy Chair to the ILC Board. These new appointments took effect from 20 October 2013. Mr Baffsky and Mr Jeffries<sup>4</sup>, both long serving members of the ILC Board, were not re-appointed by Minister Macklin and their tenures ceased on 19 October 2013. Their removal from the ILC Board meant that a number of vacancies were created on ILC subsidiaries.

In considering new appointments to the ILC subsidiaries, particularly the Voyages Board, the ILC Board took into account the need for stability in the ongoing operations and to ensuring the highest level of expertise and appropriate range of skills to manage the challenges inherent in an organisation such as Voyages.

Given the Deloitte Review into governance arrangements at the ILC identified the need for stronger alignment between the ILC and its subsidiary, and given recent operational issues at Voyages and clear divergence in approach between the two Boards, and the write down of \$62.25 million, the ILC Board took the decision that a substantial refresh of the Voyages Board was necessary.

This decision was not taken lightly, and took into account Director Responsibilities under relevant legislation such as the CAC Act and the Aboriginal and Torres Strait Islander Act, as well as the views

<sup>3</sup> Grant Samuel was the lead due diligence consultants for the acquisition. They were directly sourced and no records of any tender process being applied exist. The ILC spent in excess of \$5 million on due diligence for the ARR acquisition.

<sup>4</sup> Mr Sam Jeffries was appointed to the ILC Board in 2004.

## Board-in-Confidence

"The ILC is acutely aware that the performance at ARR has deteriorated over a ten year period. This has been due to the following:

- occupancy has fallen from 81% in 2000 to 51% in 2009;
- airline capacity into ARR is fundamental to visitation, and this has declined substantially over recent years;
- ARR has had limited access to capital and, consequently, facilities have become tired and require refurbishment – new facilities are required;
- [five other points were listed]."

Clearly the previous Board were entirely aware of the structural and long term challenges they faced in taking the decision to acquire, and that the challenges were not temporary or short term in nature.

Following the expiry of every ILC Board member's tenure in October 2011, a refresh of the ILC Board occurred. The new Board immediately identified a number of issues related to the governance of the ILC and, in particular, issues around aspects of the acquisition. These included:

- the basis for the ARR acquisition, including the price paid;
- the due diligence undertaken during the acquisition phase;
- the appointment process for and the terms of reference for the primary due diligence advisers;
- the role of the ILC Audit and Risk Committee during acquisition;
- the composition and independence of the ILC Audit and Risk Committee, and the length of time its members had been on the committee ;
- the compliance of Directors with normal conflict of interest disclosure principles at both Board and Audit Committee levels;
- the size of the acquisition for the ILC balance sheet, and the extent of consideration of the impact on broader ILC operations and capabilities; and
- the strategy for divestment to an Aboriginal or Torres Strait Islander corporation as stipulated in the ATSI Act.

The new Board noted that while significant financial performance risks were raised with the previous ILC Board throughout the ARR purchase process, the previous Board appeared to set these issues aside without identifying a viable risk mitigation strategy prior to the decision being taken. Some of the financial performance risks that were raised were:

1. A 26% year on year decline in EBITDA in the 6 months to June 2010 as advised by Horwath HTL in its report to the then board in August 2010 (only three months prior to approval of the purchase).
2. ARR's high reliance on airline support and the lack of contractual obligations on the airlines and the potential impact of the global financial crisis.

After two years of operation the financial results are not meeting the expectations outlined in the business case which underpinned the then Board's decision to acquire ARR. The airlines have cut back their flight schedules to Yulara significantly constraining visitor numbers and reducing flexibility

## Board-in-Confidence

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Australian Government  
Indigenous Land Corporation

25 October 2013

Senator the Hon Mathias Cormann  
Minister for Finance  
Parliament House  
CANBERRA ACT 2600

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Dear Minister

Given your responsibilities under the Commonwealth Authorities and Companies Act 1997 (CAC Act), I am writing to provide you with information relating to a number of matters relating to the Indigenous Land Corporation (ILC) particularly in relation to Ayers Rock Resort (ARR). In particular, I wish to advise you of new appointments to the board of Voyages Indigenous Tourism Australia's (Voyages), a fully owned ILC subsidiary<sup>1</sup>, which manages and operates the Resort.

In October 2010, the then ILC Board made a decision to proceed with the acquisition of ARR from GPT Group at a cost of \$317 million and settlement occurred in May 2011. Two Directors abstained from the decision. The purchase negotiations were conducted by longstanding ILC Director David Baffsky and then ILC CEO David Galvin. Since the acquisition, ARR has been operated by Voyages, under the chairmanship of ILC Director David Baffsky.<sup>2</sup>

The then Minister for Indigenous Affairs, the Hon Jenny Macklin and the then Minister for Finance and Deregulation, Senator the Hon Penny Wong had formally expressed concerns regarding the acquisition in writing to the previous ILC Board, and these concerns - while noted and responded to formally by the then Board - were essentially ignored. The then ILC Board provided written assurances to the Ministers that:

1. the acquisition would not affect the ILC's ability to deliver land acquisition and land management programs; and
2. the financial modelling upon which the acquisition was based had taken into account the impact of the global financial crisis on ARR.

Correspondence to the then Minister Macklin from Shirley McPherson (then ILC Chair) dated 23 September 2010 and to the then Minister Wong (dated 29 September 2010) assured the Ministers that the financial costings had been undertaken based on 'conservative cash flow projections'.

However somewhat incongruously, in response to further requests from Minister Wong for detailed sensitivity analyses to be undertaken and the preparation of a contingency plan, Shirley McPherson replied in November 2010 (less than two months after deciding to acquire ARR) providing the requested information, but including the following assessment:

<sup>1</sup> The Sale Agreement for ARR provides for a local indigenous organisation, Wana Ungkuntja to be granted 7% equity in Voyages at the end of ten years, or once the outstanding debt arising from the transaction is repaid, whichever occurs sooner.

<sup>2</sup> Mr Baffsky was appointed a Director of ILC in 1999. He ceased as an ILC Director on 19 October 2013

## Board-In-Confidence

| Issue   | Description   |
|---|---|
| (NCIE)  | appointment of Dr Dawn Casey, ILC Chairperson to the NCIE Board. The purpose of these appointments is to provide greater alignment between the two organisations. |
| The Mutitjulu Foundation                                | With the cessation of Director Jeffries from the Mutitjulu Foundation Board, the ILC Board appointed Dr Dawn Casey, current ILC Chair to this vacancy.            |
| National Indigenous Pastoral Enterprises Pty Ltd (NIPE) | With the cessation of Director Jeffries from the NIPE Board, the ILC board appointed Mr Graham Atkinson, current ILC Director to the NIPE Board.                  |

### Other matters

| Issue                           | Description  |
|---------------------------------|--|
| Subsidiary Financial Statements | ILC Board noted remaining audit financial statements for the year ended 30 June 2013. Copies will be provided to you by separate letter. |

Board-In-Confidence

Attachment A

Significant Issues considered by the ILC Board  
23 October 2013

| Issue   | Description   |
|---|---|
| Changes to Constitutions                        | Directors resolved that constitutions of ILC subsidiaries would be amended to allow the Indigenous Land Corporation, as the sole Member, to appoint a chairperson and deputy chairperson.   |
| Voyages Indigenous Tourism Australia Ltd (VITA) | <p>The ILC Board agreed to refresh the VITA Board by appointing a number of new Directors while retaining four existing directors. The VITA Board members are:</p> <p><b>Ms Lisa Gay (Chair)</b> has strong commercial and governance experience, is a past General Counsel with Goldman Sachs and the current Chairperson -- ASIC Markets Disciplinary Panel and Flora &amp; Fauna International (Australia).</p> <p><b>Ms Olga Havnan</b> is a current ILC Director, Mutitjulu director and VITA Director.</p> <p><b>Mr Koos Klein</b> is the current VITA Managing Director and has been with the organisation since acquisition.</p> <p><b>Ms Sandra Armstrong</b> is a current Director on the VITA board and is one of the two Wana Ungkuntja representatives.</p> <p><b>Mr Brian William James</b> is a current associate Director on VITA and is the second Wana Ungkuntja representative.</p> <p><b>Mr George Bedwan</b> has extensive hospitality experience and is the current Chief Operating Officer with Transmetro. Metro Hotels manage the Dugong Beach resort on Groote Eylandt on behalf of the Anandiyakwa traditional owners.</p> <p><b>Mr Ian Ward Ambler</b> is a past managing director with Goldman Sachs. Mr Ward-Ambler has held senior roles with Goldman Sachs for almost 18 years. He has a strong commercial and governance background and is Chair and Director of a number of Australian organisations.</p> <p><b>Mr Owen Cole</b> has been active in Indigenous affairs for over 30 years. Mr Cole is based in Alice Springs and has strong links to local Indigenous communities. He is currently Managing Director of Yeperenye and was a member of the first Alice Spring ATSIC Regional Council.</p> <p><b>Mr Sean Cummins</b> is a lawyer turned marketing professional. He is the CEO of CumminsRoss, a Melbourne based advertising agency. Mr Cummins is responsible for some of the most enduring campaigns in Australian advertising and is known globally for the "Best Job in the World" campaign. He is committed to tourism and is a leading strategist in the field.</p> <p><b>Mr Peter Thomas</b> - has strong governance and business management skills with 25 years as a partner with KPMG. Mr Thomas now heads a boutique consulting and advisory firm specialising in areas of business strategy, is on the board of Indigenous Business Australia and is Chairman of the Finance and Investment Committee with IBA.</p> |
| National Centre for Indigenous Excellence Ltd   | With the cessation of Director Jeffries from the NCIE Board the ILC Board appointed Mr Graham Atkinson, a current ILC Board member as his replacement. The ILC Board further approved the   |

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Australian Government  
Indigenous Land Corporation

29 April 2014

COPY

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your letter dated 14 April 2014 regarding comments I made on ABC Radio on 14 April 2014 following the publication of an article in the *Australian* ('Casey to lose position at Indigenous body') on 10 April 2014.

While I appreciate your confirmation that the article was 'mere speculation' and 'not based on any discussions, considerations or indeed future plans' on your part, I note that the journalist explicitly referred to 'senior sources' who alleged I had made public comments that 'undermined the acquisition of Ayers Rock Resort' and was pursuing a 'campaign against government'; according to these sources, this had led a number of senior Ministers to form views regarding my future. The article also said 'the Abbott government' was 'deeply unhappy' about the way I have led Indigenous Business Australia and the Indigenous Land Corporation.

As you would appreciate, from my perspective, the article included purported comments from senior government officials that questioned my integrity and reputation. I believed this required an immediate response.

I note that, if you had thought the reporting was false or inaccurate, it was open to you to either issue a public statement or write to the editor of the *Australian* to correct the inaccuracies. Your Office could also have advised me of the pending article when your comment was sought.

Also of concern was your suggestion during our telephone conversation of Monday 14 April that I had misinformed or misrepresented the situation to Patrick Dodson and Dr Lowitja O'Donoghue. As I assured you on that occasion, I have not spoken with Patrick Dodson since the Indigenous leaders meeting on Monday 24 March. Dr O'Donoghue rang me on seeing the article, and I told her that the article was the first I had heard of my not being reappointed. Any suggestion that I advised people of such standing on what they should say to the media is incorrect.



As you would be aware, I have never criticised the operations or management of the Ayers Rock Resort. The management and staff of the resort have my full and unequivocal support. I have always made a careful distinction between the operation of the resort, and its outstanding Indigenous employment and training outcomes and the process undertaken to purchase it. My concerns regarding Ayers Rock Resort relate entirely to the appropriateness of the price paid by the ILC and the quantum of borrowings taken out by the ILC, and the consequential potential impact on the ILC's capacity to fulfil its statutory functions.

Nor am I pursuing a 'campaign against the government'. Rather I am and have been since my appointment as ILC Chair entirely focused on establishing and maintaining the highest standards of corporate governance within the ILC and its subsidiaries.

I acknowledge some disappointment with your advice to me that the Government's view is that a Parliamentary Inquiry into the acquisition of the Ayer's Rock Resort is unnecessary. The decision of the previous Board to acquire the resort has seen a loss in excess of \$100 million in public funds. At the most recent Senate Estimates hearing, the ILC CEO tabled a list of more than 20 governance and accountability issues identified by McGrathNicol arising from the acquisition of Ayers Rock Resort.

As I stated at our meeting on 22 November 2013, there are a number of questions around the acquisition that require answers. I would ask again that you reconsider the issue of an inquiry to enable the questions identified in my letter of 5 January 2014 to be answered.

In your letter and in our telephone conversation of 14 April you mention my comments on ABC Radio on the appointment of the Voyages Board, and state:

*Aside from the disparaging and incorrect suggestion that you thought this might be some form of pay back, there was no such request for reappointment of Board members made by me.*

Let me first clarify your assertion regarding 'pay back'. My quoted comments did not use the term 'pay back' and were not intended to allege some form of pay back was involved in relation to my IBA appointment.

I do need, however, to correct your statement in relation to the issue of a request to reappoint a previous ILC Board member to the Voyages Board. Your letter of 16 October 2013 states:

*In light of this, I ask that you give careful consideration to the makeup of the Board of Voyages and to the case for maintaining stability for the time being. In my view, Mr David Baffsky, as chair, has been particularly important to the business. I would urge you to retain a stable leadership going forward so as not to risk any adverse impact on the commercial operations. It would also make sense to retain the status quo given that the ILC Board has embarked on a "comprehensive, independent end-to-end review.*

*I understand that the Board can determine to keep the existing Directors and Chairman in place notwithstanding changes in the ILC Board membership. I appreciate that this is a matter for the Board but I would strongly encourage you to consider the benefits of allowing Mr Baffsky to continue with his current role at this stage.*

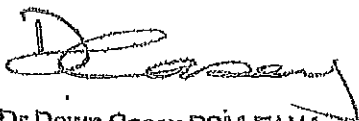
On any reading, this is a clear request to me to reappoint Mr Baffsky. It followed a phone conversation the night before where you similarly requested me to reappoint Mr Baffsky.

As previously advised to you in writing, the Board gave serious consideration to your request, but ultimately decided it was not in the best interests of either Voyages and Ayers Rock Resort or the ILC.

I will of course continue to keep you informed of significant events and any other issues affecting the ILC's operations.

I have provided a copy of this letter and related documents to the Prime Minister for his information.

Yours sincerely



Dr Dawn Casey PSIM FAHA

Chair

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**Attachment C**

**Executive Summary, McGrathNicol Ayers Rock Resort Review**

# Executive summary

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## Area

## Key findings

### Engagement

The ILC engaged McGrathNicol to conduct a review of the financial performance and acquisition of the Ayers Rock Resort ("ARR").

Component 1 of the review is a forward looking assessment of the long term strategies for the ILC as owner of the ARR. Component 2 of the review focuses on the acquisition of the ARR and the establishment of the ILC's wholly owned subsidiary, Voyages Indigenous Tourism Australia Pty Limited ("Voyages").

This report addresses Component 2 only and considers matters pertaining to the adequacy of the due diligence undertaken directly or on behalf of the then ILC Board in relation to the acquisition of the ARR and the establishment of Voyages. Our detailed scope for Component 2 is set out at Appendix 1.

### Introduction

The ARR is located adjacent to the Uluru-Kata Tjuta National Park in the Northern Territory.

In July 2008, GPT Ltd ("GPT") offered for sale a package of Central Australian assets including the ARR. Following an approach from Wana Ungkunyija ("WUJ"), an Aboriginal corporation representing communities around Uluru, and holders of a first right of refusal in respect of the purchase of the ARR, the ILC commenced due diligence into the potential acquisition of the ARR.

Following negotiations spanning from December 2008 to October 2010, the ILC entered into an agreement with GPT to acquire the ARR on 15 October 2010. The acquisition completed on 23 May 2011.

The structure of the transaction under the Sale and Purchase Agreement ("SPA"), including the net purchase price of \$292 million, is set out in the table below:

| SPA purchase price structure                  | \$'000 Value   |
|---|----------------|
| <b>Installments</b>                           |                |
| Deposit                                       | 13,500         |
| Completion Date Payment                       | 67,500         |
| 12 month Installment                          | 81,000         |
| 60 month Installment                          | 138,000        |
| <b>Total Purchase Price</b>                   | <b>300,000</b> |
| Minimum Uplift Payment to GPT                 | 17,000         |
| <b>Total ILC transaction outlays</b>          | <b>317,000</b> |
| Total GPT Capital contribution (over 5 years) | (25,000)       |
| <b>Net Purchase Price</b>                     | <b>292,000</b> |

Source: Sale Purchase Agreement

# Executive summary

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## Area: Key findings

### Value for money

McGrathNicol examined whether the purchase price represented value for money for the ILC. This included consideration of:

- \* The advice and valuations provided by consultants, including considering the following questions in accordance with the engagement scope:
  - Was the advice and valuations provided by consultants realistic?
  - Were the projections regarding profitability and return on investment appropriate and realistic?
  - Were the projections of capital expenditure and maintenance requirements realistic and appropriate?
- \* Whether negotiations of the purchase price were conducted in the best interests of the ILC.

The ILC Board minutes and Board papers generally reflect an intention that, regardless of how beneficial the potential Indigenous employment outcomes could be, the ARR acquisition had to be economically viable and stand up from a financial perspective. Accordingly we have assessed value for money from a purely financial perspective

### Valuations received by the ILC

In this report we have considered three valuations used by the ILC throughout their due diligence:

#### Valuations received by the ILC

| Features      | Colliers  | CBRE   | Grant Samuel   |
|---------------|---|--|--|
| Date          | 1 December 2008   | 26 May 2009  | 1 October 2010   |
| Presentation  | Formal valuation report   | Formal valuation report  | Presentation to ILC Board meeting  |
| Adopted Value | \$290 million   | \$270 million  | \$292 million  |
| Methodologies | <ul style="list-style-type: none"> <li>* \$274 to \$295 million:</li> <li>* Passing Year's Income Capitalised</li> <li>* Third Year's Income Capitalised</li> <li>* 10 Year Discounted Cash Flow</li> </ul> | <ul style="list-style-type: none"> <li>* \$269.5 to \$273.8 million:</li> <li>* Stabilized Income Capitalised</li> <li>* Five Year Discounted Cash Flow</li> <li>* 10 Year Discounted Cash Flow</li> </ul> | <ul style="list-style-type: none"> <li>* \$292 million:</li> <li>* Calculation of Net Present Value of 10 year forecast ARR Cashflows</li> </ul> |

We note the following:

- \* Technical analysis of the models did not identify any material technical weaknesses.
- \* From early 2009 to October 2010, the ILC appeared to place significant reliance on both the CB Richard Ellis Hotels ("CBRE") valuation and the Grant Samuel ("GS") financial model in assessing the \$292 million net purchase price. The Colliers International Consultancy & Valuation Pty Limited ("Colliers International") model did not appear to be critical to the ILC Board's decision making in 2010 to purchase the ARR.
- \* A key risk treatment strategy for the ILC (addressing the risk of paying a purchase price greater than valuation) was to obtain a full speaking valuation. The CBRE valuation was used in this regard.
- \* However, due to the timespan between the date of the CBRE valuation (May 2009) and the date the ARR was acquired (October 2010), it is not unreasonable to assume that CBRE could have reached a different conclusion on value if it had updated its report at the time of purchase.

Key findings

Value for money  
(continued)

Restatement of valuations

In considering the CBRE valuation:

- \* Given the time that passed between the date of the valuation and the purchase date, the ILC had the ability to reconsider the CBRE valuation based on more than 12 months of additional trading results. Importantly, this was in the context of warnings from the ILC's financial due diligence consultant which cautioned that actual trading results had been significantly under forecast, likely leading to an impact on valuation.
- \* It does not appear that any analysis was undertaken to update the operating forecasts underlying the CBRE valuation between May 2009 and October 2010 notwithstanding Horwath HTL's ("Horwath") findings that there was likely to be a "substantial shortfall against forecast 2010". Updating the CBRE valuation operating forecasts in line with the first half 2010 actual results and rebasing future years growth off these results indicates a revised value in the order of \$250 million (from the initial value of \$270 million).

In considering the GS valuation model:

- \* The model rightly identified that occupancy was the key driver for the ARR's revenues. However, the model indicated a strong improvement in occupancy in years after the transaction, stabilising at a level of 67%. The historical trend on occupancy at ARR had seen a reduction to a trend level approximating 63% for the four years prior to the Global Financial Crisis ("GFC"). Adjusting the occupancy levels in the GS model to reflect a 63% occupancy level would suggest a net present value of \$250 million (from the initial value of \$292 million).
- \* Capital expenditure projections underlying the GS model exceeded the projections prepared by the independent due diligence consultant and were conservative in comparison to the capex projections included in the Colliers and CBRE valuations. However, the projections prepared by the independent consultant had initially been estimated at higher amounts and were revised to lower amounts under instructions to reflect essential expenditure only and not upgrading the quality of hotel rooms. It is arguable that the assumed occupancy growth would have required a level of investment beyond that which was "essential" only. Adjustments to the GS model for capital expenditure (to a level that was consistent to the original capital expenditure projections by the independent consultant) resulted in a valuation range of \$273 million to \$278 million (from the initial value of \$292 million).
- \* It does not appear that GS presented the ILC Board with any sensitivity analysis with respect to their Net Present Value ("NPV") calculation prior to entering into the transaction. In November 2010, GS did provide the ILC with two sensitivity scenarios. However, this did not extend to highlighting the impact on the calculation of the NPV. The NPV calculation would have been reduced to between \$237 million and \$274 million based on the sensitivity scenarios.

The impact of the above is summarised as follows:

Restatement of valuations

| Valuation | Description  | Original Value | Adjusted Value        |
|-----------|--|----------------|-----------------------|
| CBRE      | Adjustment of EBITDA to reflect adjusted 2010 budget based on first half 2010 actuals.       | \$270 million  | \$250 million         |
|           | Adjusting operating projections for stabilised occupancy beyond year 5 at 63%.               | \$292 million  | \$250 million         |
| GS Model  | Assuming higher levels of capital expenditure to support optimistic operating projections.   | \$292 million  | \$273 - \$278 million |
|           | Determining the impact on the GS valuation model based on GS sensitivity analysis scenarios. | \$292 million  | \$237 - \$274 million |
| Net Price | The net price paid for the ARR under the SPA.  |                | \$292 million         |

Source: CBRE Valuation and GS financial model, McGrathNicol analysis.

Value for money  
(continued)

Negotiations

- \* GS provided advice to the ILC in respect of the negotiation of the transaction price. Negotiations with GPT for the purchase of the ARR extended from late 2008 to September 2010. Whilst it appears that the ILC may have been the only interested purchaser of the ARR, and that GPT was a motivated seller, GPT was not prepared to sell at any price, anecdotally seeking a headline sale price of \$300 million. Despite some Board opposition, the ILC appears to have been a motivated purchaser. Documentation indicates that the ILC considered valuation advice and attempted to negotiate the transaction price with GPT.
- \* The ILC agreed to provide WU with 7% equity in the ARR upon the earlier of the repayment of all loans and ILC monies (including the \$100,000 legal costs reimbursed to WU, and the \$200,000 paid to WU on settlement of the ARR in consideration of WU's first right of refusal) or ten years, in return for WU not exercising its first right of refusal with GPT to purchase the ARR assets. WU had no capacity to purchase the ARR on its own and there appeared to be no other parties interested in purchasing the ARR. Accordingly, the first right of refusal was of little or no value. The equity provided to WU is significant, and appears to have been granted in order to obtain the support of an organisation with links to the local Indigenous community. This relationship is difficult to value and there is limited documented evidence of the negotiations.

Overall conclusions on value for money

- \* The scope of our review does not include any consideration of non-financial factors that may impact on value for money and which may have been considered by the ILC (e.g. Indigenous employment).
- \* In forming our conclusion we have sought to consider what the ILC and its advisors would have known at the time, rather than the use of hindsight.
- \* Based on our review of the advice and valuations provided to the ILC by consultants, including projections regarding profitability, return on investment and capital expenditure, and the negotiations related to the transaction, McGrathNicol concluded that:
  - documentation supports that the ILC considered valuation advice provided by consultants and attempted to negotiate the transaction price with GPT;
  - the transaction price was consistent with the NPV suggested by the GS financial model; however
  - the transaction price was higher than the value suggested by CBRE;
  - the CBRE valuation was not updated to reflect changes to trading performance, which may have resulted in reduced valuation conclusions; and
  - It is arguable that some of the assumptions used in the GS financial model were ambitious.
- \* Ultimately, the assessment of value is subjective and it is possible that the ILC Board considered these matters and had good reason to assess that the price was appropriate; but we believe it would have been appropriate to document the assessment of downside risk.

## Executive summary

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### Key findings

#### Establishment of Voyages

McGrathNicol examined whether the establishment of Voyages, including Directors' appointments and setting of remuneration, was in accordance with normal practice:

- \* In establishing the Voyages entity for the purposes of the ARR transaction, it appears that the ILC has acted in accordance with the Aboriginal and Torres Strait Islander Act 2005 ("ATSIA Act").
- \* The Board Briefing Paper of April 2011 states that "the ILC is fortunate to have Directors of the calibre and experience of those recommended for appointment". McGrathNicol does not disagree with this assertion. While the appointed directors may have been well known to the ILC, and their competency was not in question, the ILC failed to follow internal policies in documenting a transparent process.
- \* McGrathNicol considers it inappropriate that the original Voyages Constitution did not require that the Voyages Board be controlled by a majority of directors common to the ILC. This gave rise to an inability to control the subsidiary and ensure compliance with the Commonwealth Authorities and Companies Act 1997 ("CAC Act"). We are advised that the Voyages Constitution has since been rectified to address a number of these issues.
- \* The Directors' fee pool of circa \$1.5 million for three years was approved based on advice received from Deloitte, referenced to market conditions. We regard this approach to determining remuneration to be reasonable.

#### Board decision making

McGrathNicol examined whether a transparent audit trail was established to record ILC Board decisions, and whether the advice provided by consultants was followed by the Board:

- \* The ILC Board were provided with board papers in advance of the key meeting of 1 October 2010, including the "Strategic Land Acquisition Proposal" ("SLA Proposal"). This document set out the costs and benefits of the transaction, and how risks would be managed. This document was accompanied by due diligence reports and advice from consultants, with key consultants present at the 1 October 2010 Board meeting.
- \* The Board minutes provide a summary of the due diligence work undertaken, although they do not clearly set out the findings of this work, and relevance to the decision to pursue the acquisition. Accordingly, McGrathNicol is unable to confirm the extent to which consultants' advice was deliberated on by the Board.
- \* The ILC Board ultimately resolved the transaction was in the ILC's best interests. However, the reasoning for this conclusion was not adequately documented.
- \* The Board minutes only record clear support for the acquisition by three of the seven directors, with two directors abstaining from voting. While we understand that it was not the practice of the ILC Board to record the vote of each member, given the magnitude of the acquisition, it would have been appropriate to fully record the Board deliberations and include Board member views.

#### Conflicts of interest

McGrathNicol examined whether appropriate recording of conflicts of interest were made as part of the acquisition process:

- \* The ILC did not maintain a conflict of interest register for the ARR transaction, instead relying on employees and directors to declare conflicts as they arose. This is considered a shortcoming in the ILC's governance framework.
- \* From searches of publicly available information, we have noted an indirect (but undeclared) link between the ARR vendor and an ILC Director but due to its remoteness it appears unlikely it represents a conflict of interest.
- \* Voyages appointed Accor as the ARR's hotel service provider. ILC Director David Baffsky ("Director Baffsky") was Hotel Australia's Accor ("Accor") Honorary Chairman. This potential conflict of interest was managed appropriately by the ILC through the exclusion of Director Baffsky from the selection process.
- \* GS's advisory fee was based on a percentage of the purchase price of the ARR. Whilst commonplace in the financial services sector, a fee arrangement of this nature does not incentivise an advisor to seek the lowest possible transaction price or advise against the transaction. We make no finding that GS acted improperly in this respect. However, we consider that it may have been prudent for ILC to consider alternative fee structures.



## Executive summary

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Area

Key findings

**ANZ cash advance facility and the GPT vendor finance facility**

McGrathNicol examined whether the loan arrangements negotiated with the Australia and New Zealand Banking Group Ltd ("ANZ") and GPT were appropriate and undertaken at arm's length:

- \* The ILC obtained a five year \$60 million cash advance facility from ANZ to fund capital expenditure for the ARR, and to assist with making part payment of the purchase price.
- \* The loan arrangements with the ANZ resulted from a competitive process in which other banks were invited to participate. The terms and conditions of the facility are consistent with those that would reasonably be expected by a bank providing a secured credit facility. The interest rate margin of 0.80% p.a. above the Bank Bill Rate is considered to be competitive when compared to the prevailing market conditions at the time of the transaction, and with offers made to the ILC by other banks.
- \* It appears that the GPT vendor financing structure was entered into by the ILC due to difficulties in sourcing bank financing to fund the ARR purchase. The GPT facility applies a coupon rate of a 6.5% p.a. However, there is an effective interest rate of 8.5% p.a. due to a guaranteed valuation uplift payment of at least \$17 million due to GPT after five years.
- \* We do not consider that the effective interest rate of 8.5% was excessive given GPT's subordinated security position (behind the ANZ), and the prevailing market interest rates at the time of the transaction. We have identified no evidence to suggest that the ILC accepted an arrangement that was uncompetitive or disadvantageous.

**Borrowing limits**

McGrathNicol examined whether the borrowings to facilitate the ARR purchase fell within the monetary limits prescribed by the ATSI Act:

- \* The ATSI Act sets out that the ILC is subject to a borrowing and guarantee limit. Given the substantial borrowings required to complete the ARR purchase, the ILC sought legal advice in April 2011 on whether its borrowings (including those required to purchase the ARR) were within the limits prescribed by the ATSI Act. In addition, in May 2011, the ILC engaged the Australian National Audit Office ("ANAO") to undertake a review of the borrowing limits.
- \* The advice from the ILC's lawyers and the ANAO indicate that the ILC's total borrowings did not exceed the limits set out in the ATSI Act.
- \* The advice to the ILC was provided in April 2011 and May 2011, more than five months after the ARR purchase agreement and ANZ loan facility were entered into. It would have been prudent to seek this advice prior to entering into the contract to purchase the ARR.

**Risk management**

McGrathNicol examined whether the risk strategies adopted to mitigate the risks identified at the time of the ARR purchase were appropriate:

- \* With the assistance of its consultants, the ILC prepared a comprehensive risk management plan specific to the ARR acquisition. Key transactional and operational risks were identified and assessed in accordance with an appropriate risk management framework. Furthermore, for risks identified as Extreme, High or Moderate, risk treatment strategies were documented.
- \* Prior to the 1 October 2010 Board meeting, the ILC Board was provided with an extract of the risk assessment. This document included risk treatment strategies to mitigate risks identified as Extreme and High risk. This risk assessment extract was deficient in that a number of the Extreme or High acquisition risks presented for Board consideration did not appear to have been adequately considered. For example, the risk treatment strategy to mitigate the risk that the purchase price was too high was identified as the CBRE valuation. As noted above, this valuation was 17 months old at the time of the transaction.
- \* The Board minutes and papers do not evidence discussion of the risk assessment. Accordingly, documentation does not support that the risks set out in the SLA Proposal Risk Assessment were considered and accepted by the Board as part of its decision to acquire the ARR.

Key findings

Engagement of advisors and consultants

McGrathNicol examined whether the ILC Board were consistent with the ILC's purchasing guidelines and generally accepted governance procedures:

- \* At the time of the transaction, the ILC's procurement policies aligned with the key principles of the (then) Commonwealth Procurement Guidelines ("CPGs") and were consistent with generally accepted governance practices for an agency such as the ILC.
- \* Documentation does not support that the procurement of the ILC's key advisor (GS) was undertaken in accordance with the ILC's policies. GS did not appear to have been engaged through a competitive tender process or a process where multiple quotations were sought. We further note that the contract between the ILC and GS (i.e. counter-signed engagement letter initiated by GS) did not meet the ILC's policy requirements (albeit it is consistent with our understanding of market practice for engagement of this nature in the private sector).
- \* In respect of the engagement of other key consultants, documentation does not generally support that competitive tender or quotation processes were used by the ILC (or GS on the ILC's behalf) in making procurement decisions. Accordingly, the documentation does not indicate that the ILC's procurement activities were conducted in accordance with its policies.

Engagement with the Australian Government

McGrathNicol examined whether the ILC's engagement with key Australian Government stakeholders in respect of the acquisition of the ARR was appropriate:

- \* The ATSI Act and the CAC Act set out the legislative requirements that the ILC was required to adhere to in its decision to acquire the ARR.
- \* From our review of relevant legislation and correspondence between the ILC and the Australian Government, it appears that the ILC met its requirements under the ATSI Act to keep the Minister for Families, Housing, Community Services and Indigenous Affairs ("FaHCSIA") informed of the transaction. The CAC Act did not require Ministerial approval to enter into the transaction.
- \* Notwithstanding this, a number of issues regarding the transaction and perceived financial and operational risks were raised by Australian Government representatives in the lead up to the ILC entering into the transaction. Documentation indicates that the Department of FaHCSIA, the Department of Finance and Deregulation ("DoFD") and their respective Ministers raised concerns regarding the purchase of the ARR in strongly worded letters to the ILC.
- \* At the time of entering into the transaction to purchase the ARR, some of the concerns raised by the Minister for DoFD had not been responded to on 8 October 2010. The Minister requested further sensitivity analysis be undertaken in the event the transaction proceeded. The ILC Board proceeded with the transaction in the absence of this further analysis, providing a response including some analysis on 5 November 2010 (within 28 days as requested by the Minister, but after entering into the transaction).

Capital expenditure forecasts

McGrathNicol examined whether projections of the capital refurbishment and maintenance requirements over the immediate, medium and longer term were realistic and appropriate:

- \* Planned Property Management ("PPM") were engaged to prepare capex projections in late 2008, and provided revised projections based on instructions to focus on essential capex rather than improve standards of accommodation to higher levels. The GS valuation model capex projections in the short to medium term exceed the projections prepared by the physical due diligence consultant.
- \* It appears that the PPM capex projections reflected essential capex only, which arguably may not have been at levels that would support the forecast growth in operating projections outlined in the GS Model. Accordingly, it may be considered that a higher amount of capex would be needed in the short to medium term (first 5 years post-acquisition) in order to assist in achieving the operating projections underlying the GS financial model.
- \* Capex projections over the long term were included in the GS financial model based on 5.5% of revenue projections in years six to 10. In comparison to the capex projections in the Colliers and CBRE valuations, the long term capex projections included in the GS financial model appear conservative.

## Appropriateness of the transaction

McGrathNicol examined whether it was appropriate for the ILC to enter into the purchase of the ARR. This included consideration of whether the ILC obtained sufficient advice to confirm that it was legally able to enter into the transaction and whether it was reasonable for the ILC to consider that the acquisition would not have an impact on the ILC's existing operations:

### Legal capacity of the ILC to enter into the transaction

- \* External legal advice obtained by the ILC supports that the acquisition and management of the ARR (with a long term view to transfer ownership) is permitted in accordance with the ATSI Act and the CAC Act.

- \* However, the expectation of the ILC at the time of the acquisition appears to be that the ARR operating business (i.e. the going concern) would be leased back after the transfer of the land, potentially for a 99 year term. This would result in the ILC becoming the long term operators of the ARR. The legal advice obtained by the ILC does not appear to consider whether a long term lease back arrangement is consistent with the ILC's functions and objectives.

### Impact of the ARR transaction on the ILC's existing operations

- \* The ARR's net \$292 million purchase price was funded by a mixture of debt funding and the ILC's cash reserves. Prior to the transaction being entered into, the Ministers for FaHCSIA and DoFD expressed concerns that the acquisition would have an impact on the ILC's existing operations and future investment opportunities.

- \* The ILC strongly countered these concerns in letters to the Ministers and their respective Departments. In the Strategic Land Acquisition Proposal ("SLA Proposal") presented to the Board on 1 October 2010, it is stated that "the ILC has been careful to ensure that all due diligence, planning and financial forecasts for the acquisition and operation of ARR provided for the ILC maintaining its current and future planned operations".

- \* Given the significant scale of the acquisition in the context of the ILC's existing operations and balance sheet, and the inherent challenges and risks involved in acquiring a large and complex tourism business, McGrathNicol considers that it was ambitious to assert to key stakeholders that a purchase of this materiality would not have a significant impact on the ILC's operations and land acquisitions in the future. It is clear that an ongoing and active management of the post-acquisition implementation would be required, regardless of the success of the acquisition.

### Overall conclusions on the appropriateness of the acquisition of the ARR

- \* Clear and strong warning signs were being expressed by the Minister for DoFD and the Minister for FaHCSIA, cautioning the ILC about the ARR purchase.

- \* Significant risks were identified by the ILC's consultants in respect of the transaction. Whilst risk treatment activities were identified, these do not appear to have been sufficiently progressed by the ILC to manage the risks to an acceptable level.

- \* The scale of the transaction was extraordinarily large in light of the ILC's ordinary business operations. The transaction absorbed the ILC's existing cash reserves and all but exhausted the ILC's borrowing limits under the ATSI Act.

- \* In the light of these matters we believe the ILC was deficient in documenting the appropriate deliberation and assessment required to demonstrate sound business principles. This does not of itself mean that the acquisition was inappropriate. However, a transaction of this scale, requiring such significant borrowings, opens the ILC up to the charge that it did not adequately protect itself against downside risk.

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### Attachment D

#### McGrathNicol Ayers Rock Resort Review

#### Summary of findings

- The CBRE valuation of the ARR relied on by the Board was 17 months old and was not updated to reflect changes to trading performance. McGrathNicol calculated that had the valuation been updated, the value of the ARR would have been in the order of \$250m (p26).
- The price paid exceeded the key pre-sale valuation by CBRE by \$22m (p24). The Grant Samuel financial modelling presented to the Board was not a full speaking valuation (p27).
- In relation to the engagement of Grant Samuel who were the key due diligence consultants: the fee negotiated with Grant Samuel was 1 per cent of the total purchase price; there is no evidence of any tender process for the engagement; and the contract of engagement was not consistent with normal ILC contracts, or normal good practice for a Commonwealth entity (pp58-59).
- While the ILC Board's risk assessment framework was appropriate, the assessment process and the identified mitigation strategies do not appear to have been realistic or implemented effectively (p52).
- A number of concerns raised by Ministers throughout the acquisition process were either not responded to in a timely manner or were addressed subsequent to the acquisition being finalised (pp54-55).
- The capex projections used in the modelling presented to the Board was limited to 'essential capital only', yet occupancy levels were projected to grow notwithstanding a long term decline in visitation. McGrathNicol found that these occupancy projections appear to be 'overly optimistic' (p32).
- The due diligence consultants were requested to reduce their capex projections from \$77m over 5 years down to \$53m to cover only 'essential requirements' (p34).
- Capex based on essential requirements may not be consistent with the increased occupancy used in the Grant Samuel financial model (p34).
- The capex projections included in the Grant Samuel financial model 'appear conservative' compared to the levels assumed to be required by the two previous valuations (p35).
- Although presented to the Board (and subsequently to Ministers) as conservative, the operating forecasts underlying the Grant Samuel financial model appear to be optimistic (pp29-30).

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- Adjusting the Grant Samuel financial model to reflect stabilised occupancy at 63 per cent (down from 67 per cent) results in decreased net cash flows and reduces the calculated Net Present Value (NPV) of the Ayers Rock Resort from \$292m to \$250m (p32).
- Grant Samuel did not present the Board with sensitivity analyses of its financial modelling prior to the transaction (p37).
- McGrathNicol demonstrated that had sensitivity analyses been presented to the Board, and utilising a number of realistic lower profit or occupancy scenarios identified by Grant Samuel themselves in November 2010, the NPV calculation would reduce to between \$237m and \$274m (p37).
- Key risks identified prior to the transaction which were not adequately or appropriately addressed included:
  - Risk i.* The purchase price for ARR is not consistent with its value (p50).
  - Risk ii.* The decision to acquire is not supported by the sector or by the Government (p50).
  - Risk iii.* The remoteness of ARR means their visitor levels are heavily dependent upon external parties (including QANTAS and Virgin) (p50).
  - Risk iv.* Deferral of capital expenditure [by GPT] during recent years indicated that this [capex] expenditure will be required in the short/medium term to maintain standards at an appropriate level (p51).
  - Risk v.* Significant slump in visitor numbers as a result of further downturn in world economic conditions [adversely] impacts earnings (p51).
- The majority of due diligence consultants, costing an excess of \$6m, appear not to have been engaged in accordance with ILC purchasing guidelines (p56).
- The minutes of the relevant Board decisions fail to indicate the views/votes of all Directors, and there may have been only 4 Directors out of 7 supporting the decision to acquire Ayers Rock Resort (p62).
- The ILC Audit Committee appeared to have had 'almost no involvement in the transaction to purchase ARR' and in McGrathNicol's view, the ARMC 'should have given some consideration as to the risk management practises in place within the ILC for this specific transaction' (p64).
- 'Given the significant scale of the acquisition, even where the ILC Board considered that the ARR acquisition could be self funding, it was unrealistic to assert to key Government stakeholders [ie Ministers] that a purchase of this materiality would not have a significant impact on its other operations and financial investments in the future'(p67).

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- An indirect and remote connection between a Director and a substantial shareholder in GPT was not disclosed. The ILC at the time had no conflict of interest register, and no process to require Directors and staff to actively declare potential conflicts, or attest that there are no conflicts (p69) (the ILC was subject to the *Commonwealth Authorities and Companies Act 1997* and the ILC Directors were subject to section 27F of the Act).
- The establishment of Voyages, and subsequent changes to the Voyages Constitution just prior to the expiry of ILC Directors' terms, opened up the possibility that ILC Directors would continue in remunerated positions on the Voyages Board, even if their appointment to the ILC Board expired (p74).
- Voyages Directors were not selected in a transparent way (p76).

Document 2

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, dated 12 January 2015



12 January 2015

The Hon Tony Abbott  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

As you know, in May 2011, the Indigenous Land Corporation (ILC) purchased the Ayers Rock Resort in the Northern Territory for \$300m. This purchase involved the ILC entering into significant debt through a vendor finance arrangement which matures on May 2016 and a facility with a major bank which matures in May 2017.

The ILC are currently working towards refinancing \$198m of debt by May 2016. This is going to be an extremely challenging task given the current valuation of the asset and will likely lead to further adverse financial impact on the ILC, diverting significant funds away from core ILC programmes.

To assist in refinancing and paying down this debt the ILC has engaged financial advisers to assist us in devising the most effective refinancing strategy. One significant option is to widen the investment parameters of the Land Account and transfer the management of it to the Future Fund Agency, in order for the Land Account to generate additional revenue.

Interestingly, independent of the work being undertaken by the ILC, officers of your Department suggested this course of action at a Consultative Forum meeting early in 2014.

Accordingly, the ILC has been liaising with your Department regarding this matter for some time now. The Department had proposed that external consultants be engaged by your Department to undertake detailed consideration of the proposal.

However, the Minister for Indigenous Affairs advised in his correspondence dated 30 October 2014 that he had asked that work in relation to the proposal to change the investment parameters of the Land Account does not progress until after the *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014* has been considered by Parliament.



As advised in my correspondence to the Minister dated 12 November 2014 (to which there is as yet no response), the ILC Board considers that commencing work on the legislative and regulatory mechanisms required to allow the broadening of the investment parameters of the Land Account would not affect or be affected by parliamentary consideration of the Bill.

At present the Land Account is limited to investments in approved bank deposits and government bonds. It has been asserted by Finance Department officers that the reason for the current 'conservative' investment parameters is to ensure that the balance of the Account does not fall. The reality however is that adhering over a long term to extremely narrow investment parameters focussed primarily on avoiding short term losses will inevitably lead to abnormally low returns for Indigenous interests in even the most positive market environments.

Over the past 4 years, the Land Account has averaged a return of around 4.7 percent per annum. Were the investment parameters to be broadened to include a wider range of approved investments, and the Land Account to be managed by the Future Fund within a long term horizon, it would be expected that the performance of the Account would substantially exceed current investment returns. I note for example that the Future Fund has averaged returns of 7.3 percent per annum since 2006. Every one percent improvement in returns to the Land Account translates into \$20m per annum in increased revenue to the ILC and ultimately Indigenous interests.

Such an outcome would make a substantial contribution to addressing the current debt refinancing challenges faced by the ILC. For example, were arrangements to be revised, and returns increase by say 2.5 percent per annum on average, this would increase returns to Indigenous interests by \$500m over ten years. This would more than cover the current debt challenges we face.

For the reasons outlined above, the ILC Board is of the firm opinion that there should be no further delay in work commencing on a proposal to adjust the investment parameters of the Land Account.

Accordingly, it is extremely important that consideration of the proposal to change the investment parameters of the Land Account occur in parallel with work being undertaken to refinance the debt. A successful outcome will see a greater probability of the ILC successfully refinancing the Ayers Rock Resort debt and at a lower cost, with a potential reduction of the adverse impact on ILC programmes.

The Board is concerned the Minister's decision to delay the progress of proposal will effectively constrain further the ILC's capacity to deliver benefits to Indigenous citizens. We consider there would be merit in revisiting the Minister's decision so as to give the forthcoming commercial negotiations in relation to refinancing ILC debt the best chance of success.

I have provided a copy of this letter to the Minister for Indigenous Affairs.

Yours sincerely



Dr Dawn Casey, PSM, FAHA  
Chairperson

Document 3

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment,  
dated 26 February 2015

people land  
opportunity



**Australian Government**  
**Indigenous Land Corporation**

26 February 2015

The Hon Tony Abbott MP  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

**Re: Copy of letter to Senator Cormann**

For your information, please find enclosed a copy of my letter to Senator Cormann dated 26 February 2015.

If you have any queries regarding the letter please contact me on 02 6269 2500 or via email [ilcchair@ilc.gov.au](mailto:ilcchair@ilc.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Dawn Casey', with a small 'per' written to the left.

Dr Dawn Casey, PSM, FAHA  
Chairperson

Enc

CONFIDENTIAL AND PRIVILEGED

26 February 2015

Senator the Hon Matthias Cormann  
Minister for Finance  
Parliament House  
CANBERRA 2600

Dear Minister

I refer to your correspondence dated 23 February 2015 in response to my letters dated 29 October 2014, 12 January 2015 and 3 February 2015 related to your regulatory responsibilities for Commonwealth statutory corporations.

As I mentioned in that correspondence, it is the considered view of the Board of the Indigenous Land Corporation (ILC) that the former ILC Directors and officers who supported the decision to acquire the Ayers Rock Resort (ARR) in 2010 have, *prima facie*, breached their duties under relevant statutory provisions and at common law.

We requested you to take appropriate action as the Minister responsible for the *Commonwealth Authorities and Companies Act 1997* (CAC Act) in our letter dated 12 January 2015. In response to your welcome decision to initiate an investigation, we suggested in our letter dated 3 February 2015 that your decision to delegate this investigation to the Minister for Indigenous Affairs was inappropriate for a number of reasons.

The ILC Board is now very concerned at your advice that you have reversed your decision to initiate an investigation, and propose not to take action under Clause 6, Schedule 2 of the CAC Act despite the extensively demonstrated shortcomings in the corporate governance processes adopted by the former Board, and the substantial losses which have been accrued by the ILC as a result of the ARR transaction.

The ILC Board's concern is due to a number of factors which are set out below.

First, as raised in our earlier correspondence, we request that you confirm that Minister for Indigenous Affairs had no involvement in discussions leading up to the ARR transaction with former officers of the ILC. As we noted in our previous correspondence to you, the ILC Board is concerned that a potential and perhaps actual conflict of interest may be present in the Minister's decision not to further investigate the circumstances of the ARR transaction.

Second, it is misleading to suggest that there 'have been several *independent* reviews, by various parties into the purchase of ARR'. The only independent review that has been undertaken is that by McGrathNicol. There have been other reviews undertaken by Aegis Consulting that, according to evidence given by the Department of Prime Minister and Cabinet before the Senate Finance and Public Administration Committee last year, we understand were commissioned by former ILC Director Mr David Baffsky. The Aegis report(s) have never been made available to the ILC, despite written requests to both Mr Baffsky and the Government. Based on press reports in *The Australian* it appears the report(s) were designed to discredit the current ILC Board's efforts to bring accountability in relation to the huge financial loss incurred by the ILC as a result of the ARR transaction.

We understand that you examined and rejected the allegations in the Aegis report(s) and decided to take no action at the time. As Mr Baffsky was the prime driver of the Ayers Rock Resort transaction the Aegis report cannot be taken to be an independent report. Mr Baffsky personally took carriage of many of the key due diligence and financing discussions associated with the transaction, was the then Chair of the ILC Audit Committee with responsibility to oversight the ILC's financial probity, was one of the former ILC Directors appointed for his business acumen and expertise, and has been found by McGrathNicol to have had and not disclosed an actual conflict of interest related to the transaction. Moreover, the fact that the Aegis report(s) are not available publicly and therefore have not been subject to any independent public scrutiny suggests that they ought not be relied upon by you or your Department as justification for not investigating the actions of the former Directors and officers.

Third, the statement from the McGrathNicol Report quoted in your letter, namely, that 'there is no evidence to suggest that the (former) ILC Board have acted contrary to their CAC Act duties' does not of itself, categorically demonstrate that further investigation is not warranted. The purpose of the McGrathNicol review was not to make an assessment of whether Directors' duties had been breached, nor did McGrathNicol have the appropriate investigatory powers to be able to make a determination that no breach had occurred. McGrathNicol did not look beyond the written record to assess whether the former Directors had turned their mind to every element required by their statutory duties. Put simply, legal advice about directors' duties under the CAC Act and common law was not sought from McGrathNicol and thus their report is not legal advice. McGrathNicol did, however, identify significant shortcomings in the former Board's corporate governance and decision-making processes in the lead up to the ARR transaction. Given these findings, it is the strong view of the ILC that this transaction requires a further independent and forensic investigation, initiated by the Government, to determine whether breaches of legal duties occurred.

Fourth, the ILC Board is concerned you have decided to take no further action on the basis that no 'new' information has been raised in relation to these issues. The purpose of an investigation would be to unearth and synthesise information which might otherwise not be put into the light of day. There is a reason why former Senator Murray entitled his review of public sector regulation 'Operation Sunlight'. The ILC Board urges you to look to the serious issues identified in the McGrathNicol report and the quantum of funds lost as a result of the ARR transaction as the basis and justification for undertaking a further forensic investigation as to what transpired.

As I noted in my previous letter to you, the ILC Board noted with concern that Minister Scullion has recently appointed one of the former Directors involved in the transaction to a significant and remunerated term on another statutory corporation, and to a significant COAG-related policy advisory council. That this appointment could occur while these issues remain unresolved reflects poorly on the quality and integrity of public administration in Australia. As we firmly believe the former Directors involved in the ARR transaction *prima facie* breached their legal duties, we are concerned that there is the potential that this appointment or the appointment of any of the other former Directors involved in the transaction to public office could further damage the quality and integrity of public sector administration in Australia.

Finally, given the huge loss of public funds as a result of the ARR transaction and given the potential conflict of interest mentioned above, the ILC Board is particularly concerned that the Minister for Indigenous Affairs is on the public record opposing a further investigation. We are concerned that this too may erode the community's confidence in public sector accountability at the federal level, particularly in the context of the two most recent significant legislation on this point: Public Governance, Performance and Accountability Act 2013 and Public Interest Disclosure Act 2013. The ILC Board urges you to exercise your regulatory duties independently from the views of the Minister for Indigenous Affairs.

We respectfully suggest that you reconsider your decision to reverse course in relation to the matters we have raised. Prior to determining not to exercise your regulatory powers under the CAC Act, we again urge you to initiate an independent investigation into the actions of the former ILC Directors and officers who supported the ARR acquisition by a respected and independent ex-Judge or Senior Counsel. Good policy and good government demand it.

I have provided a copy of this letter to the Prime Minister and the Attorney-General.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dawn Casey', written in a cursive style.

Dr Dawn Casey PSM FAHA  
Chairperson

Document 4

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment,  
dated 23 March 2015

people land  
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**Australian Government**  
**Indigenous Land Corporation**

23 March 2015

The Hon Tony Abbott MP  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600


Dear Prime Minister

**Re: Copy of letter to Senator Scullion**

For your information, please find enclosed a copy of my letter to Senator Scullion dated 20 March 2015.

If you have any queries regarding the letter, please contact me on 02 6269 2500 or via email [ilcchair@ilc.gov.au](mailto:ilcchair@ilc.gov.au).

Yours sincerely

*per.* 

Dr Dawn Casey PSM, FAHA  
Chairperson

Enc





20 March 2015

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I refer to your letter dated 17 February 2015 and received by the Indigenous Land Corporation (ILC) on 27 February. The ILC acknowledged receipt in a letter to your Chief of Staff Mr Kevin Donnellan on 2 March 2015 and requested that in future delivery of your correspondence would be expedited if sent by email.

In relation to your request to be advised of any information in relation to the actions of former Directors in our possession relevant to any proposed legal action not previously communicated to the Government, the volume of correspondence between the ILC and the Government on this matter is extensive. Given the nature of your request, we will need to review our previous correspondence and briefings to you against the extensive and complex records currently in our possession in order to ascertain what further information is required to be provided.

We are giving your request priority and expect to be in a position to respond more fully within 4 weeks.

I should also advise that while we are well advanced in preparing to initiate legal action, we have not made a decision to do so at this stage. I confirm that we will advise you in the event we make such a decision.

I have provided a copy of this response to the Prime Minister and Minister for Finance for their information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Casey'.

Dr Dawn Casey, PSM, FAHA  
Chairperson

Document 5

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment,  
dated 23 March 2015

people land  
opportunity



**Australian Government**  
**Indigenous Land Corporation**

23 March 2015

The Hon Tony Abbott MP  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

**Re: Copy of letter to Senator Scullion**

For your information, please find enclosed a copy of my letter to Senator Scullion dated 20 March 2015.

If you have any queries regarding the letter, please contact me on 02 6269 2500 or via email [ilcchair@ilc.gov.au](mailto:ilcchair@ilc.gov.au).

Yours sincerely

*pei* 

Dr Dawn Casey PSM, FAHA  
Chairperson

Enc



20 March 2015

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

On behalf of the Board of the Indigenous Land Corporation (ILC), I write to you regarding your comments made to NITV News on 4 March 2015 in relation to the ILC Board's request that the Government conduct an investigation into the former ILC Board's purchase of the Ayers Rock Resort (ARR) in 2010-11. There are a number of misconceptions in your comments that we wish to clarify.

In particular, in relation to the ILC Board's request that the Government conduct an investigation into the ARR transaction, you stated that "*...there's not going to be another investigation, there's been three significant inquiries into this.*" It is our strong view that it is misleading to suggest that there have been three significant inquiries into the ARR transaction.

The only independent and publicly available review of the transaction itself, undertaken by McGrathNicol, identified a large number of corporate governance and due diligence failings, including use of out of date forecasts and a failure to declare actual conflicts of interest. Given these findings and as we have previously noted, it is essential that a further investigation examine in detail whether former ILC Directors and officers complied with their legal duties.

In relation to the ANAO inquiry referred to in your letter to Minister Cormann dated 3 February 2015, the ANAO undertook a Performance Audit 'The Indigenous Land Corporation's Administration of the Land Acquisition Program' in 2013-14. The audit did not examine the ILC's files in relation to the transaction as it was an audit of our whole Land Acquisition program. Notwithstanding that, it was critical of the outcome in relation to the ARR (page 70):

*3.50 ... In recent years the ILC has made several higher-risk and more complex acquisitions, including ARR. The ILC has undertaken a range of investigations and due-diligence activities*

*in respect of its strategic projects, although these have not necessarily reduced the risks involved in their purchase – particularly evident in the reported underperformance of the ARR acquisition. The ILC board commissioned several reviews during 2012 and 2013 of matters relating to the ARR acquisition. In this context, existing program management arrangements would benefit from review to consider the need for additional strengthening.*

This is hardly a ringing endorsement of what transpired, nor does it suggest that the ANAO considers it has formed a final view on the merits of the processes and decision rationales applied by the then Board in pursuing the transaction.

In relation to the Aegis reports mentioned in your letter to Minister Cormann, the ILC Board understands, according to evidence given by the Department of Prime Minister and Cabinet before the Senate Finance and Public Administration Committee last year that the review(s) undertaken by Aegis Consulting were commissioned by former ILC Director Mr David Baffsky. These report(s) were compiled without the knowledge of, or consultation with, ILC staff and Directors, and this involved no examination of ILC files or records. Moreover, the report(s) have never been made available to the ILC, despite written requests to both Mr Baffsky and the Government. Based on press reports in *The Australian* it appears the report(s) were designed to discredit the current ILC Board's efforts to bring accountability in relation to the huge financial loss incurred by the ILC as a result of the ARR transaction. We understand that the Minister for Finance examined and rejected the allegations in the Aegis report(s) after taking legal advice.

Further, as Mr Baffsky was the prime driver of the ARR transaction the Aegis report(s) cannot be taken to be an independent or 'significant' report. As you know, Mr Baffsky personally took carriage of many of the key due diligence and financing discussions associated with the transaction, was the Chair of the ILC Audit Committee with responsibility to oversight the ILC's financial probity, and has been found by McGrathNicol to have had and not disclosed an actual conflict of interest related to the transaction. Moreover, the fact that the Aegis report(s) are not available publicly nor subject to any independent public scrutiny suggests that they ought not be relied upon by you or your Department as justification for not investigating the actions of the former Directors.

In your comments to NITV News on 4 March 2015, you further stated *"And frankly I wish the ILC would just really focus on having the myriad of properties, many of them languishing across Australia, with not much leadership, rather than continuing to pursue a target that I'm not sure if anybody really remembers what it is."* The ILC Board emphasises that its highest priority is ensuring the ILC complies with its statutory obligations, in particular the fulfillment of the ILC's statutory remit to acquire and manage land to assist Aboriginal and Torres Strait Islander peoples achieve economic, social, cultural and environmental benefits.

The ILC Board notes with disappointment your views that Indigenous owned properties are 'languishing' with 'not much leadership'. The reality is that most Indigenous owned properties face significant challenges. The ILC continues to be a leading funder and supporter of extension services for Indigenous landholders including business planning and capability development through our significant and longstanding Indigenous Pastoral Program and Indigenous Landholder Services programs in the NT and WA respectively. In addition, along with other Indigenous organisations such as NAILSMA and the various Land Councils, we have been at the forefront of exploring and supporting innovative land use approaches including through support for and the operation of ranger programs, wildlife management and carbon farming on Aboriginal owned land across northern Australia. To date, we have not cut our funding support for these activities.

As you are aware from our previous correspondence to you, the ILC has been placed in extremely difficult financial circumstances as a result of the former ILC Board's decision to purchase the ARR. A significant portion (in excess of one third) of the ILC's annual budget is required just to service the debt associated with that transaction. The ILC Board acknowledges it is the case that these liabilities are adversely affecting the capacity of the ILC to plan and deliver its statutory land acquisition and management functions and will do so into the future, to the detriment of Aboriginal and Torres Strait Islander peoples across regional and remote Australia.

Notwithstanding these challenges, the ILC continues to focus the bulk of its available resources on assisting Indigenous landowners to manage their land. We continue to deliver a wide array of benefits through our operations, including supporting enterprises which employ over 1,000 Indigenous people.

The ILC Board assures you that the only target being pursued is to recover the significant loss incurred by the ILC as a result of the ARR transaction, and to ensure accountability for any wrongdoing associated with that transaction. Our focus on the consequences of the transaction is mandated by the *Aboriginal and Torres Strait Islander Act 2005* which requires the ILC to operate on sound business principles when undertaking commercial activities, and thus take appropriate action to recover funds in circumstances where Directors and officers appear not to have complied with their duty of care to the Corporation and indeed Aboriginal landholders. This is necessary so that the ILC can properly continue its important task of assisting Aboriginal and Torres Strait Islander peoples achieve economic, social, cultural and environmental benefits through its land acquisition and management programs.

In the light of the advice provided above, I would ask that you reconsider your decision to oppose an investigation of the actions of the former Directors in deciding to acquire the Ayers Rock Resort.

In addition consistent with previous advice to you the Board requests that you:

- support the Stronger Land Account Bill recently introduced in the Senate by the Greens which is aimed at strengthening and protecting the Land Account; and
- reverse your decision to defer work by your Department to consider shifting the management of the Land Account to the future fund and broaden the current investment parameters.

As we have previously mentioned the ILC Board reiterates its invitation to you to attend a meeting of the Board. Our forthcoming meetings are scheduled for 22 April on Bruny Island, Tasmania; 24 June Yulara Northern Territory; and 26 August in Sydney.

Should you require any further advice or assistance in relation to this matter, please contact the ILC CEO Michael Dillon on (02) 6269 2500.

A copy of this letter has been provided to the Prime Minister and the Minister for Finance.

Yours sincerely



Dr Dawn Casey, PSM, FAHA  
Chairperson

Document 6

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachments,  
dated 2 March 2015





2, March 2015

Hon Tony Abbott MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

IN-CONFIDENCE

Dear Prime Minister

On behalf of the Board of the Indigenous Land Corporation (ILC), I write to you regarding recent correspondence from the Minister for Indigenous Affairs concerning the purchase of the Ayers Rock Resort (ARR) by the ILC in 2010/2011. Minister Scullion's letter (**Attachment A**), dated 17 February 2015, received by the ILC on 27 February 2015, requested the provision of information to him in accordance with section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). We have initiated the relevant internal processes required to meet Minister Scullion's request.

Ensuring the ILC complies with its statutory obligations and adopts the highest standards of corporate governance is the highest priority of the ILC Board.

One element of the information requested by the Minister is any relevant legal advice related to potential legal action by the ILC against the former ILC Directors and officers who approved the acquisition of the ARR. The ILC has significant concerns regarding the probity of this element of the Minister's request for reasons set out below, and we therefore seek your guidance on how we might proceed.

First, as raised in previous correspondence with the Minister for Finance (which was copied to you), the ILC Board considers that Minister Scullion has an actual or potential conflict of interest in relation to the former Directors and officers of the ILC who approved the transaction and who are the potential respondents in litigation. We previously suggested Minister Cormann seek an assurance from Minister Scullion that he does not have such a conflict, and that he was not privy to discussions or the decision-making process in relation to the acquisition of the ARR in the period leading up to the ILC Board's decision to acquire the ARR in 2010.

Our concern derives from clear evidence in the Hansard of a close relationship between Minister Scullion and former ILC Directors and officers involved<sup>1</sup>, Minister Scullion's subsequent request to the ILC Chair to appoint one of the Directors, Mr David Baffsky, to the Chair of Voyages beyond the expiry of his term as an ILC Director (**Attachment B**), and his

<sup>1</sup> Senator Nigel Scullion, Community Affairs Legislation Committee, 07 June 2013, Estimates, Cross-portfolio Indigenous Matters, Indigenous Land Corporation

recent decisions to appoint another of the former Directors, Ms Shirley McPherson, to the board of a statutory corporation and to a COAG related expert panel (Attachment C). Correspondence between Senators Cormann and Scullion on this issue tabled in the Senate on 27 February 2015 indicates that Senator Cormann did not formally seek such an assurance, and we have no reason to believe that he has done so.

Second, the ILC Board is concerned that the provision of our legal advice to the Minister is not necessary for a proper consideration of the matter currently before him. The Minister's request for the ILC's legal advice has been received in the context of the ILC Board's request to Minister Scullion that he initiate an investigation into the circumstances of the ARR transaction. Indeed, the purpose of the independent investigation which we seek would be to make an independent assessment of the probity of the decisions taken by the relevant former ILC Directors and officers against their statutory and common law obligations. We note that while Minister Cormann wrote to the ILC agreeing an investigation was required, at Minister Scullion's request that investigation has not been initiated.

We further note that the request for information outlined in Minister Scullion's letter to the ILC dated 17 February 2015 is based on advice from Minister Cormann in his letter to Minister Scullion dated 12 February 2015. We note that Minister Cormann did not request the ILC's legal advice, nor suggest that the Minister Scullion do so. Minister Scullion's reasons for requesting our legal advice are therefore not clear. The ILC has suggested that the Government seek its own legal advice in relation to this matter. As you know for a minister to formally request the provision of commissioned legal advice from an independent statutory corporation is highly unusual and, we suggest, may well be unprecedented.

We have extremely serious reservations regarding the probity of the request by Minister Scullion, particularly in the absence of:

- any formal assurance that Minister Scullion was not involved in the discussions and consideration of the ARR transaction prior to the then ILC Board approving the purchase in October 2010; and
- any formal assurance that he has not been in contact with any of the former ILC Directors and officers, particularly in the last four months since the ILC's correspondence to Minister Cormann (copied to you and the Attorney-General and dated 29 October 2014) outlining our concerns.

In these circumstances, we face a serious dilemma as we are legally obliged to comply with what to us appears to be an inappropriate and unjustified exercise of ministerial power that may put at risk the ILC's legal position in relation to this matter. It is fundamental in our system of government that ministerial powers are exercised in the public interest, and not in the private interest of either the Minister or his or her associates. We have grave concerns that this is not the case in this instance.

For the reasons set out above, we seek your assistance and guidance as to how we should proceed.

Were you to categorically confirm that there is a public interest and no private interest for the legal advice to be provided to Minister Scullion, based on an assurance from the Minister that he was not involved in discussions or considerations relating to the acquisition of the ARR in 2010, and that he has not been in contact with the former ILC Directors and officers over the past four months, we would be significantly reassured.

I would appreciate an early response as the Minister's request requires us to comply 'as soon as possible'.

Should your Office require any further advice or assistance in relation to this matter, please contact the ILC CEO Michael Dillon on (02) 6269 2500.

I along with members of the ILC Board would be more than happy to meet with you should you wish to discuss these matters.

Yours sincerely



Dr Dawn Casey, PSM, FAHA  
Chairperson



MINISTER FOR INDIGENOUS AFFAIRS



Reference: C14/89536

Dr Dawn Casey, PSM, FAHA  
 Chairperson  
 Indigenous Land Corporation  
 PO Box 586  
 CURTIN ACT 2605

Dear Dr Casey

Thank you for your letter of 29 October 2014 on behalf of the Board of the Indigenous Land Corporation (ILC), advising of the Board's consideration of legal action to recover the ILC's loss arising from the purchase of the Ayers Rock Resort (ARR) by the former ILC Board, and of your request to the Minister for Finance to exercise his powers under the *Commonwealth Authorities and Companies Act 1997* (CAC Act), as in force at that time, in relation to this purchase.

Your letter indicates that the ILC Board has formed a view that the ILC has a cause of action and standing to pursue the recovery of loss arising from the ARR purchase through civil litigation.

I note that your letter of 29 October 2014 does not raise new facts, further to those investigated by previous reviews of the ARR purchase. It is unclear to me whether the Board is in possession of further relevant information that has not been to date disclosed to Government.

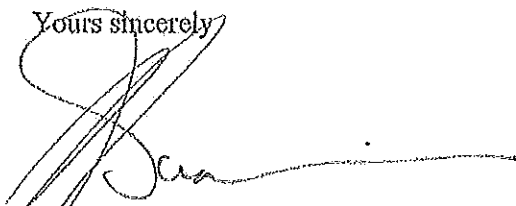
Therefore, as required under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), I would ask that you provide to me as soon as possible any additional information not previously provided that would support the basis of any legal action the ILC proposes to take, including any relevant legal advice the Board may have obtained in this regard. I intend to share any information you may provide with the Minister for Finance as the minister responsible for the former CAC Act and now PGPA Act.

I would also ask, under section 19 of the PGPA Act, that you notify me as soon as practicable once the ILC Board makes a decision to initiate any legal action.

My position has been, and remains, that the ILC and Government as a whole is best served by working collaboratively to make the resort a success, and build on the positive recent financial performance and Indigenous employment outcomes of the AAR.

I look forward to your advice. I have provided a copy of this letter to the Minister for Finance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', written over the typed name below.

NIGEL SCULLION

17/11 February 2015



MINISTER FOR INDIGENOUS AFFAIRS

Dr Dawn Casey PSM FAHA  
Chair  
Indigenous Land Corporation  
PO Box 586  
Curtin ACT 2605

Thank you for your letter of 4 September 2013 in relation to the Indigenous Land Corporation's operations and governance. It was also good to talk with you at the Garma festival and today by phone. I am writing to follow up the issues I raised with you in our most recent conversation.

I would be keen to meet over the next few weeks so that I can be fully briefed on the operations of the ILC and on current issues which the Board will be facing over coming months. It might also be convenient to discuss Indigenous Business Australia during the same meeting. I suggest that our offices arrange a mutually suitable time when I am in Canberra in mid November.

You would know that I have a keen interest in the ILC and that I am a strong supporter of the iconic Land Account. I know that we share a commitment to making sure that this major resource is harnessed for the best possible outcomes for Aboriginal and Torres Strait Islander people. I would be interested in receiving information about the range of investments and initiatives which are being pursued around the country and about your plans over the coming period. I am also interested in hearing your views about how the ILC and IBA can best work collectively to drive economic improvements for indigenous people. I believe there are significant synergies that could be harnessed, and that you are uniquely placed to drive as concurrent chair of both organisations.

As I mentioned today, I am particularly keen to gain a thorough understanding of the status of the ILC's flag ship investment in the Ayer's Rock Resort through your subsidiary, Voyages Indigenous Tourism Australia. In my view, this enterprise is an unprecedented opportunity to drive employment outcomes and bring Aboriginal people into the forefront of the tourism industry. For this reason, it is essential for us to discuss the "serious concerns" you mention in your letter and for me to understand the reasons for the Board's view that a review is warranted. I would note that my focus will be on the forward looking aspect of the exercise in accordance with my determination to achieve better outcomes for Indigenous people across my portfolio.

I am strongly of the view that we must ensure steady operations during the current period of significant change as the new Government begins to implement its agenda. In addition, the ILC will be welcoming two new Board members from 19 October 2013 when the

appointments of Ms Lisa Gay and Ms Alison Page commence. Mr Dillon is also still relatively new to his position of Chief Executive Officer.

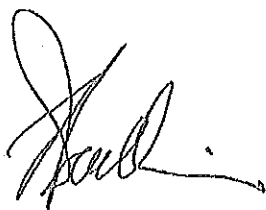
In particular, I believe stability is critical in relation to the governance of Voyages given the current nature of the tourism industry and the challenges it brings to operations at the Ayer's Rock Resort.

In light of this, I ask that you give careful consideration to the makeup of the Board of Voyages and to the case for maintaining stability for the time being. In my view, Mr David Baffsky, as chair, has been particularly important to the business. I would urge you to retain a stable leadership going forward so as not to risk any adverse impact on the commercial operations. It would also make sense to retain the status quo given that the ILC Board has embarked on a "comprehensive, independent end-to-end review".

I understand that the Board can determine to keep the existing Directors and Chairman in place notwithstanding changes in the ILC Board membership. I appreciate that this is a matter for the Board but I would strongly encourage you to consider the benefits of allowing Mr Baffsky to continue with his current role at this stage.

My office will be in contact to arrange a meeting. I look forward to discussing these issues further then. Any material which you could provide in the interim on the operations and investment portfolio of the ILC would be appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a stylized flourish at the end.

NIGEL SCULLION  
16 October 2013



Australian Government  
(1)

[indigenous.gov.au](http://indigenous.gov.au) (/)

Connecting Aboriginal and Torres Strait Islander people with Australian Government policies and programmes.

## Minister Scullion: Edward Fry appointed as new Chair of IBA

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[Announcements \(/taxonomy/term/2\)](#) | [Jobs, Land and Economy \(/jobs-land-and-economy\)](#)

1 Dec 2014

Mr Edward Fry, an Indigenous Australian with extensive experience working in the resource sector, has been appointed Chair of Indigenous Business Australia (IBA) for a three-year period, effective from Monday 1 December 2014.

Minister for Indigenous Affairs, Nigel Scullion, said Mr Fry's commercial experience make him well qualified to head up the IBA. "Further to his extensive experience working in the Australian resource sector, Mr Fry also has extensive experience in financial and human relations management as well as Indigenous training and employment," Minister Scullion said.

"Mr Fry is also a specialist in Indigenous and Native Title issues."

Minister Scullion also announced the appointments of Ms Shirley McPherson, Mr Glen Brennan and Mr Richard Allert as Directors of IBA for three-year terms, effective from Monday, 1 December 2014.

"Ms McPherson is a former Chair of the Indigenous Land Corporation and has extensive small business development expertise. Mr Allert, a former Chairman of the Coles Group Limited has extensive board experience across a broad range of businesses, including commerce and finance. Mr Brennan has extensive banking experience specialising in microfinance loans for Indigenous communities," Minister Scullion said.

The IBA is an Australian Government commercially-focused organisation that promotes and encourages self-management, self-sufficiency and economic independence for Indigenous people.

Minister Scullion thanked IBA Deputy Chair, Mr Anthony Ashby, for his work acting as Chair since June 2014.

Minister Scullion also thanked departing Directors, Mrs Judy Hardy and Ms Gall Reynolds-Adamson for their work with IBA.

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### Find out more

Visit (<http://minister.indigenous.gov.au/media/2014-11-04/jobs-east-west-260-indigenous-job-seekers>) Minister Scullion's website (<http://minister.indigenous.gov.au/media/2014-11-29/edward-fry-appointed-new-chair-iba>) to access this media release.

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(/)

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## Minister Scullion: Expert Group Appointed to Indigenous Land Inquiry

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[Announcements \(/taxonomy/term/2\)](#) | [Jobs, Land and Economy \(/jobs-land-and-economy\)](#)

20 Feb 2015

Minister for Indigenous Affairs, Nigel Scullion, who is leading a Council of Australian Governments (COAG) investigation into Indigenous land administration and use, has invited an Expert Indigenous Working Group to guide the work of the inquiry.

Minister Scullion said the group will work with the Commonwealth, state and territory governments on the investigation and ensure that policy directions and proposals are developed with the involvement of Indigenous stakeholders.

"The Expert Indigenous Working Group will be chaired by Mr Wayne Bergmann who brings with him a wealth of experience in native title and economic development," Minister Scullion said.

"The Group will also include Mr Brian Wyatt, Ms Valerie Cooms, Mr Murrandoo Yanner, Ms Shirley McPherson, Mr Djawa Yunupingu and Mr Craig Cromellin.

"Together they will be drawing on their expertise and knowledge throughout this investigation of Indigenous land administration and use.

"I also welcome ideas from all Indigenous stakeholders to support this work and the Group will also meet with Indigenous stakeholders as part of their consultations."

Minister Scullion said the investigation will focus all governments' attention on getting the settings right to support Indigenous land owners and native title holders to leverage their land assets for economic development as part of the mainstream economy.

"Indigenous land and native title is a foundation for Indigenous economic development," he said.

"This investigation will consider what action is needed to ensure the land administration system assists Indigenous land owners and native title holders to use land to pursue their social, cultural and economic aspirations."

"I have asked the Working Group to focus on opportunities to improve land administration under existing legislative arrangements and I maintain my commitment to not change the Northern Territory Land Rights Act unless supported by the Land Councils."

The investigation terms of reference for the investigation, and information about the Expert Indigenous Working Group, can be found at <https://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/coag-land-investigation> (<https://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/coag-land-investigation>).

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### Find out more

Visit Minister Scullion's website to access this [media release \(http://minister.indigenous.gov.au/media/2015-02-20/expert-group-appointed-indigenous-land-inquiry\)](http://minister.indigenous.gov.au/media/2015-02-20/expert-group-appointed-indigenous-land-inquiry).

Document 7

Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, dated 14 April 2015

people land  
opportunity



Australian Government  
Indigenous Land Corporation

14 April 2015

The Hon Tony Abbot MP  
Prime Minister of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I refer to my letter to you dated 2 March 2015 regarding the Minister for Indigenous Affairs' request for the ILC's legal advice in relation to the actions of certain former Directors of the Ayers Rock Resort (ARR). I attach a copy of that correspondence for your convenience.

The ILC is still compiling its more general response to the Minister's request, and this work is nearing completion. We have kept Minister Scullion informed regarding our progress.

You will recall my letter to you expressed concern that there appeared to be a close and continuing relationship between the Minister and the former Directors, and sought formal confirmation that the Minister had not been involved in discussions with former Directors and staff of the ILC regarding the ARR acquisition prior to the purchase, nor in relation to more recent events.

I note that when asked about this in a media interview, the Minister stated: 'I knew an awful lot of people in an awful lot of places and that was my job, but I had absolutely no conflict of interest in this whatsoever. It's a moot point anyway; there's not going to be another investigation, there's been three significant inquiries into this.' This answer while categorically denying a conflict of interest, provides very little assurance to us that Minister Scullion has been independent of the transaction and has not been in contact with the former officers of the ILC.


In recent weeks, one of the former Directors, Mr David Baffsky AO, wrote on 9 March 2015 to the Senate Community Affairs Legislation Committee referring specifically to the Minister's request in his letter to me dated 17 February 2015 and most significantly, to the fact that the ILC has not yet responded. Mr Baffsky states: '...and I note that despite the Minister for Indigenous Affairs requesting the so called "large information now available", no such information has currently been made available.'

The text quoted above from Mr Baffsky's letter appears to be a reference to my earlier letter to Minister Scullion dated 20 March 2015 where I stated that in relation to the information requested by Minister Scullion, 'the volume of correspondence between the ILC and the Government on this matter is extensive. Given the nature of our request, we will need to review our previous correspondence and briefings to you against the extensive and complex records currently in our possession in order to ascertain what further information is required to be provided'.

The information provided to the Committee mentioned above could only have come from within the Prime Minister and Cabinet portfolio. It reinforces and exacerbates the serious concerns expressed in our letter to you dated 2 March 2015 that any information and in particular legal advice we provide to Minister Scullion may not remain confidential, and may also be used to the ILC's disadvantage..

Given that we are well advanced in finalising the more general aspects of the Minister's request, and that it is now over six weeks since we wrote to you, I would appreciate an indication from your Office of when I might expect to receive a response or acknowledgment to my letter. I propose to withhold the provision of any legal advice to Minister Scullion until I have received your response.

Yours sincerely

A handwritten signature in cursive script that reads "D Casey".

Dr Dawn Casey, PSM, FAHA  
Chairperson

Enc.

Document 8

Letter from Senator Nigel Scullion to the ILC's Chairperson, Dr Dawn Casey, 27 March 2015



MINISTER FOR INDIGENOUS AFFAIRS



Reference: C15/4456

Dr Dawn Casey PSM FAHA  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Dr ~~Casey~~ <sup>McN</sup>

Thank you for providing me a copy of your 12 January 2015 letter to the Prime Minister, the Hon Tony Abbott MP, about debt refinancing and the investment parameters of the Aboriginal and Torres Strait Islander Land Account. The Prime Minister has asked me to reply on his behalf. I apologise for the delay in responding.

I am advised that debt refinancing will be an item of discussion at the next Ayers Rock Resort quarterly meeting between the ILC and officials from the Department of Finance and the Department of the Prime Minister and Cabinet.

With regard to the investment parameters of the Land Account, the Government remains of the view that this work should be taken forward once the Aboriginal and Torres Strait Islander (Stronger Land Account) Bill 2014 has been considered by Parliament.

In the meantime, I understand that the Land Account Consultative Forum meeting of 16 December 2014 agreed changes to the investment strategy aimed at increasing the investment return to the Land Account.

Yours sincerely

NIGEL SCULLION

*RJM* March 2015

Document 9

ILC Board Minutes from meeting number 122 held on 22 October 2008



ILC BOARD MEETING No 122

Wednesday, 22 October 2008

Boardroom  
ILC Office  
CANBERRA

MINUTES

**ATTENDED BY THE BOARD:**

Ms Shirley McPherson      Chairperson  
Mr Sam Jeffries            Deputy Chairperson  
Mr David Baffsky AO  
Ms Evonne Goolagong-Cawley MBE AO  
Mr Ian Trust

**Apologies:**

Mr Kevin Driscoll CBE  
Mr Max Gorringe

*The following attended all or part of the meeting:*

Mr David Galvin            General Manager    *by videoconference*  
Ms Sue Andrews            Board Secretariat

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.



One page redacted under s 22(1)(b) of the FoI Act

Redacted under s 22(1)(b) of the Fof Act.

Strategic Acquisition

Director Baffsky advised that, following the Board's agreement in principle to go forward with negotiations on the purchase of the Ayers Rock Resort and other associated properties for sale by GPT, an agreement between the ILC and Wana Ungkuntja (which has the right of last refusal) had been finalised. This is an exclusive agreement to work with the ILC on the basis that the ILC will discuss with Wana Ungkuntja the way in which it participates in the operation of the business, rather than ownership of the properties. It was also noted that Wana Ungkuntja would not be an appropriate body to which to divest the property. Instead, the ILC would divest the property to Indigenous people that were recognised as traditional owners of the area. The General Manager noted that Kata Tjuta National Park had already been divested to the Indigenous traditional owners and was leased back by Parks Australia on a 100-year lease. A similar granting and lease-back could be an appropriate arrangement for the Ayers Rock Resort.

Director Baffsky stated that the ILC bid has been shortlisted. He further advised that Grant Samuel, one of Australia's leading property specialists in advising in corporate real estate and property finance advice in Australia, had submitted a proposal of \$70,000 per month with a completion fee of 1.5% of the total consideration paid or payable in respect of the transaction. Dir Baffsky stated that he had negotiated the 1.5% fee down to 1% and had discussed the fee with Mr Ian Ferrier, independent member of the Audit and Risk Management Committee. Director Baffsky stated that he and Mr Ferrier, both of whom have extensive experience in these matters, believed that Grant Samuel's fee is within

industry guidelines for such an acquisition and therefore recommended it to the Board for approval. Director Baffsky advised that there would be other costs relating to the due diligence pertaining to accounting, legal and property condition advice and that the General Manager, in agreement with the Chairperson, should be authorised to engage the various specialists/consultants.

**That the Board:**

- *Notes that the ILC has progressed to the second round of the purchase process regarding Ayers Rock, Alice Springs, Kings Canyon, El Questro and Wrotham Park Resorts.*
- *Notes and approves that Grant Samuel's fee for progressing the due diligence regarding the above properties will be \$70,000 per month, for a maximum of three months, and rebatable against the completion fee, as below.*
- *Notes, in the event that the ILC completes the acquisition of part or all of the Voyages Hotels and Resorts portfolio, either on its own or as a member of a consortium, the completion fee of one per cent of the total consideration paid or payable in respect of the transaction.*
- *Notes that out of pocket expenses (including travel and accommodation costs) will also be reimbursed by the ILC to Grant Samuel, with prior approval of the ILC to be obtained for any of these expenses.*
- *Authorises the General Manager to sign the agreement with Grant Samuel on the above terms and to engage other specialists/consultants for the due diligence, as required.*

**Moved:** Director Baffsky

**Seconded:** Director Goolagong-Cawley

**Carried**

As the final bids for the acquisition are due in six weeks, Directors agreed to hold a Board meeting by teleconference to consider final approval of the ILC's bid.

Redacted under s 22(1)(b) of the FoI Act

10 pages redacted under s 22(1)(b) of the Fof Act

Document 10

ILC Board Minutes from meeting number 123 held on 16 and 17 December 2008



**ILC BOARD MEETING No 123**

**Tuesday, 16 December 2008**  
Office of Grant Samuel  
Governor Macquarie Tower  
SYDNEY

**Wednesday, 17 December 2008**  
Executive Boardroom  
Sofitel Sydney Wentworth  
SYDNEY

**MINUTES**

**ATTENDED BY THE BOARD:**

Ms Shirley McPherson      Chairperson  
Mr Sam Jeffries              Deputy Chairperson  
Mr David Baffsky AO  
Ms Evonne Goolagong-Cawley MBE AO  
Mr Ian Trust  
Mr Kevin Driscoll CBE  
Mr Max Corringe

*The following attended all or part of the meeting:*

Mr David Galvin              General Manager  
Ms Sue Andrews              Board Secretariat

A copy of the Agenda is attached.

**Tuesday, 16 December 2008**

**7. STRATEGIC LAND ACQUISITION—AYERS ROCK, ALICE SPRINGS,  
KINGS CANYON, EL QUESTRO AND WROTHAM PARK RESORTS**

The following made presentations to the Board:

Mr Ross Grant                      Grant Samuel  
Mr Simon Barlow                  Hotel management expert  
Mr Bob Teague                      BeachFame  
Mr Vaso Zographou                Horwath HTL  
Mr Ben McLaughlin                Baker & McKenzie  
Mr Peter Calov                      Corrs Chambers Westgarth

The General Manager stated that the ILC has commitments over the next two years of approximately \$240 million. He advised that when he and the Chairperson met Minister Macklin on 25 September 2008, they had raised the issue of allowing forward payments to the ILC from the Land Account to finance this acquisition, but the Minister stated that she is not in favour of that approach as she believed it would take resources away from other good projects around Australia. However, if the cost of the purchase could be borrowed she would support the project.

The Chairperson stated that she believed that, in the current global economic climate and with issues surrounding ILC funding from the Land Account yet to be resolved, it is the wrong time to borrow such a large amount of money for this project.

The Deputy Chair agreed that the acquisition would be a great opportunity for Indigenous people in the way of training and employment benefits. However, he stated that he was concerned about sourcing the funding without taking away from existing and potential projects, which are substantial. Directors Trust and Gorringe also agreed that it would be an iconic investment, but were concerned that other projects would suffer.

Director Goolagong-Cawley stated that she believed it would be a very attractive proposition for Indigenous people from all around Australia.

Director Driscoll stated that if the fundamental purpose of the acquisition is to create training and employment, he believed this could be achieved without purchasing the properties. Fundamentally, Director Driscoll stated he believed that the price of \$282 million (excluding \$8 million for Kings Canyon) was excessive given its location and particularly as it was not returning anything like a 15% net profit on the purchase price that he would expect in a remote area. He was also concerned that the price of almost \$80 million for building and infrastructure upgrades might be underestimated, given his experience in undertaking repairs to buildings. He stated that when the purchase price was added to the cost of repairs, the return of the Ayers Rock Resort was even less attractive.

Director Baffsky stated that the ILC's prime goal is to create ownership and opportunities for Indigenous Australians. While the financial viability of the business operations was important, it should not be the overriding consideration. He believed that it is a decision for the Indigenous members of the Board, as its significance to Indigenous Australia should be the deciding factor.

It was agreed to defer a decision on the proposal until the following morning. Therefore, the Chairperson declared the formal meeting closed at 6.00 pm and Indigenous Directors then discussed the proposal.

Wednesday, 17 December 2008

Discussion resumed after Directors reflected on the issues overnight.

The Chairperson advised the meeting of the outcome of discussions by Indigenous Directors the previous day. She stated that all Indigenous Directors agreed that the opportunity to purchase Ayers Rock, as freehold land, has merit. However, the Indigenous Directors believed that it may be more difficult than outlined in the ILC briefing paper to attract Indigenous people Australia-wide to take up training and employment opportunities at Ayers Rock. However, they acknowledged that there was significant potential for Indigenous employment at Ayers Rock Resort and it also played a significant role in the promotion of Indigenous Australians to the world. Therefore, the Indigenous Directors recommended that the ILC not submit a bid for the acquisition of the entire portfolio. However, GPT should be advised that, should the properties fail to sell, the ILC would be interested in negotiating the acquisition of the Ayers Rock and El Questro Resorts only.

Director Baffsky stated that he respected the manner in which the Indigenous Directors came to the decision and declared his support.

***Consequently, it was agreed that the ILC would not submit an offer for the entire portfolio of properties. Instead, it would advise GPT that, if the Ayers Rock and El Questro Resorts were not sold to another party, it was free to approach the ILC with its bottom line offer for the properties.***

The General Manager undertook to instruct Grant Samuel to write to GPT/Jones Lang LaSalle advising them of the ILC's decision. He further undertook to inform Wana Ungkunyitja representatives that the ILC has decided not to proceed with a bid.

The Board noted its appreciation of the assistance of Grant Samuel and the honesty of the company's reports. Directors also asked the General Manager to convey their thanks to Wendy Telfer and Anne Bland for their work on the proposal over recent weeks.

Redacted under s 22(1)(b) of the FoI Act.



Nine pages redacted under s 22(1)(b) of the FoI Act

Document 11

ILC Board Minutes from meeting number 124 held on 19 January 2009



**ILC BOARD MEETING No 124**

**Monday, 19 January 2009**

**TELECONFERENCE**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                       |                    |
|-----------------------|--------------------|
| Ms Shirley McPherson  | Chairperson        |
| Mr Sam Jeffries       | Deputy Chairperson |
| Mr David Baffsky AO   |                    |
| Mr Kevin Driscoll CBE |                    |
| Mr Max Gorringe       |                    |

**Apologies:**

Ms Evonne Goolagong-Cawley MBE AO  
Mr Ian Trust

The following attended all or part of the meeting:

|                 |                   |
|-----------------|-------------------|
| Mr David Galvin | General Manager   |
| Ms Sue Andrews  | Board Secretariat |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the Fol Act.

## 2. STRATEGIC ACQUISITION—AYERS ROCK RESORT

The Chairperson reminded Directors of the decision taken at the Board's December 2008 meeting, that is, that the ILC is not interested in making a bid for the entire portfolio, but expressed an interest in purchasing Ayers Rock Resort and El Questro. Director Baffsky and the General Manager were authorised to continue negotiations on that basis, on the proviso that the ILC would be able to access funding through the Land Account, not borrowings.

The General Manager updated Directors on negotiations from that point. He stated that GPT had come back with a bottom line offer for Ayers Rock Resort of \$270 million. He further stated that GPT had agreed to an exclusive 30-day negotiating period to allow the ILC to secure funding.

Director Baffsky stated that the 30-day period would also be used to finalise due diligence in relation to the refurbishment and infrastructure upgrades and to re-negotiate the purchase price, if possible. He confirmed that the required letter from Grant Samuel, on behalf of the ILC, to the selling agent continues the dialogue in the terminology of negotiations over the last three months and assured Directors that it did not commit the ILC to an amount, conditions or timeframe.

In response to a query from Director Driscoll about an additional amount of \$80 million for refurbishment of the Resort that was included in the December submission, Director Baffsky pointed out that the figure related to capital expenditure over three years. Director Driscoll stated that he does not believe the Resort will be a commercial success. He proposed that a letter simply requesting a period of 30 days in which to secure funding be sent.

Director Gorringer agreed with this approach.

The Deputy Chairperson stated that he is supportive of continuing negotiations on the basis that the 30-day period did not commit the ILC. Both he and the Chairperson were concerned to have the issues surrounding the Land Account resolved as soon as possible.

***That the ILC instruct Grant Samuel to write to the selling agent, Jones Lang La Salle, in the terms proposed.***

***Moved: Director Jeffries***

***Seconded: Director Baffsky***

***Against: Directors Driscoll and Gorringer***

***The Chairperson cast her vote for the motion***

***Carried***

The Chairperson stated that she had voted in favour of the motion on the understanding that the letter in no way commits the ILC, but simply allows an additional 30 days for the ILC to secure funding from the Land Account and to

conduct the further due diligence. If the ILC is not able to access funds from the Land Account for this purchase, the ILC will not go ahead with the purchase.

The General Manager undertook to provide an update to the Board's meeting on 18 February.

Director Baffsky stated that he understood GPT is to sell El Questro to another party. He stated that the ILC should hold discussions with that party in order to investigate possible cooperation between Home Valley Station and El Questro to reduce costs.

Redacted under s 22(1)(b) of the FoI Act.

One page redacted under s 22(1)(b) of the Fof Act

Document 12

ILC Board Minutes from meeting number 125 held on 18 February 2009



**ILC BOARD MEETING No 125**

**Wednesday, 18 February 2009**

**Clontarf Aboriginal College  
PERTH**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                    |
|-----------------------------------|--------------------|
| Ms Shirley McPherson              | Chairperson        |
| Mr Sam Jeffries                   | Deputy Chairperson |
| Mr David Baffsky AO               |                    |
| Mr Kevin Driscoll CBE             |                    |
| Ms Evonne Goolagong-Cawley MBE AO |                    |
| Mr Max Gorringer                  |                    |
| Mr Ian Trust                      |                    |

*The following attended all or part of the meeting:*

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Ms Sue Andrews    | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.



Four pages redacted under s 22(1)(b) of the FoI Act

**7. LAND ACQUISITION**

**(a) CENTRAL AUSTRALIAN RESORTS—PROJECT UPDATE**

The General Manager advised that further due diligence had confirmed a reduction of the refurbishment costs for the resorts to \$59 million over five years. He stated that an estimated \$2 million in environmental concerns had been identified, but the ILC is seeking a guarantee from GPT that it will assume responsibility for the resolution of those issues and that the ILC's maximum exposure will be \$250,000.

A paper canvassing an investment by the Land Account into the ILC to allow the ILC to purchase Ayers Rock Resort had been forwarded to the Prime Minister's Office. The Minister for Finance and Deregulation would need to pass a Regulation to allow such an investment, on advice from the Minister for Families, Housing, Community Services and Indigenous Affairs. Directors noted that the 30-day exclusivity period expires on 27 February 2009.

***Report noted.***

Redacted under s 22(1)(b) of the FoI Act.

Six pages redacted under s 22(1)(b) of the Fof Act

**Document 13**

**ILC Board Minutes from meeting number 126 held on 15 April 2009**



**ILC BOARD MEETING No 126**

**Wednesday, 15 April 2009**

**Murrayfield Station  
Bruny Island  
TASMANIA**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                       |                     |
|-----------------------|---------------------|
| Ms Shirley McPherson  | Chairperson         |
| Mr Sam Jeffries       | Deputy Chairperson  |
| Mr David Baffsky AO   |                     |
| Mr Kevin Driscoll CBE | <i>by telephone</i> |

**Apologies:**

Ms Evonne Goolagong-Cawley MBE AO  
Mr Max Gorringe  
Mr Ian Trust

*The following attended all or part of the meeting:*

|                 |                   |
|-----------------|-------------------|
| Mr David Galvin | General Manager   |
| Ms Sue Andrews  | Board Secretariat |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

One page redacted under s 22(1)(b) of the Fof Act

Redacted under s 22(1)(b) of the Fol Act.

**7. LAND ACQUISITION**  
**(b) AYERS ROCK RESORT, NT—UPDATE**

It was agreed to defer discussion of this item until all Board Directors are available. The Board Secretariat is to canvass Directors' availability for a face-to-face meeting in Sydney on Thursday, 23 April 2009.

Redacted under s 22(1)(b) of the Fol Act.

Five pages redacted under s 22(1)(b) of the Fol Act



Document 14

ILC Board Minutes from meeting number 127 held on 23 April 2009



**ILC BOARD MEETING No 127**

**Thursday, 23 April 2009**

**Boardroom  
Accor Asia Pacific Office  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                     |
|-----------------------------------|---------------------|
| Ms Shirley McPherson              | Chairperson         |
| Mr Sam Jeffries                   | Deputy Chairperson  |
| Mr David Baffsky AO               |                     |
| Mr Kevin Driscoll CBE             |                     |
| Ms Evonne Goolagong-Cawley MBE AO |                     |
| Mr Max Gorringe                   | <i>by telephone</i> |
| Mr Ian Trust                      | <i>by telephone</i> |

*The following attended all or part of the meeting:*

|                 |                   |
|-----------------|-------------------|
| Mr David Galvin | General Manager   |
| Ms Sue Andrews  | Board Secretariat |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

**2. LAND ACQUISITION—AYERS ROCK RESORT, NT**

The Chairperson noted that she had made the decision at the Board's last meeting that all Board Members should be present to discuss this item. She reminded Directors that the decision made at the Board's February 2009 meeting was to proceed with the acquisition of the property, subject to the required funds being available from the Land Account and if this was not possible, the ILC would not seek to borrow funds from a commercial source.

The General Manager advised that, since the Board's February meeting, the due diligence team has progressed matters, with a contract of sale being agreed, except for issues relating to environmental management risks. He stated that he believed GPT would relax its stand on these issues should the ILC commit to the purchase.

The Chairperson and General Manager attended a meeting with Minister Macklin and the FaHCSIA Secretary and Chief Financial Officer on 23 March 2009. FaHCSIA's advice to the Minister at that meeting was that, because of the complications with the Land Account and advice from the Department of Finance and Deregulation, FaHCSIA could not recommend that the ILC be allowed to borrow from the Land Account. This advice was also provided in writing by the Secretary of FaHCSIA setting out the reasons for the decision.

The General Manager stated that Grant Samuel had conducted preliminary discussions with four major banks with regard to the provision of funds to the ILC. He advised that NAB has agreed to provide a \$200 million facility, subject to conditions including the enactment of the provision of a minimum of \$45 million per year funding to the ILC. The Chairperson noted that it was unlikely that the amendments to the Act would be enacted until 2010. The General Manager also advised that it may be possible for the ILC to utilise \$100 million of its own funds as a down payment, with the purchase price settled in, say, 12-18 months. This would enable the ILC to gain access to the property and its profits. However, the ILC's Chief Operating Officer needed to undertake a further cash flow analysis on this approach.

The General Manager stated that the issue of an ILC bond could be another avenue to raise the purchase price. Director Baffsky stated that the international and domestic bond markets have been tested and have received a very positive response.

Director Driscoll expressed concern that the cashflow projections are a complete reversal of the figures over the last ten years. The General Manager stated that the new projections were based on a lower purchase price and thus less interest needed to be paid.

The General Manager stated that the acquisition provided a significant opportunity to boost Indigenous employment through the establishment of a national Indigenous tourism training academy and the commitment from potential operators to guarantee sustainable employment for 100 Indigenous people each year within their networks. Director Baffsky noted that the ILC's policies and objectives place the greatest emphasis on Indigenous training and employment and stated that he believed the employment outcomes rather than the financial return should be the prime consideration.

The Chairperson stated that the Board must now decide whether to proceed.

Director **Trust** stated that he believed there is still an issue about getting Indigenous people to go to Ayers Rock Resort. He believed that getting people off welfare must be the ultimate aim for the ILC. However, he is concerned that the significant investment in this property would not allow the ILC to diversify.

Director **Gorringe** agreed with Director Trust insofar as the diversification of investments and believed that the ILC's other projects would suffer. He also stated that he believed Mossman Gorge could be developed as a hospitality training academy if the ARR project did not go ahead.

Director **Baffsky** stated that he believed the significant amount of total ILC investments, as well as recurrent funding, did not put other ILC programs at risk. He also pointed out the significant number of nation-wide employment opportunities that would be generated through the ARR management arrangements, should the acquisition go ahead.

Director **Goolagong Cawley** supported the views stated by Director Baffsky and stated that she believed it was most important to secure training and employment for young Indigenous people.

Director **Driscoll** expressed concern as to whether Indigenous people could be attracted to training and employment at the resort, as well as concerns with regard to the validity of the cashflow projections.

Director **Jeffries** supported the acquisition. He stated that although he had reservations about the level of investment required, he believed it was a great opportunity to influence the high end of the Australian economy on behalf of all Indigenous people. He believed that if the ILC were successful in achieving the proposed training and sustainable employment, the social benefits would be invaluable.

The Chairperson expressed concern about the effect that the decision may have on the outcomes in relation to the legislative changes concerning the Land Account. The General Manager stated he understood from Mr Mike Dillon the Minister's view is that the ILC can borrow funds, so long as it is not to the detriment of other projects around Australia.

***That the Board agrees to attempt to acquire the Ayers Rock Resort on terms and conditions acceptable to the ILC.***

***Moved: Director Jeffries***

***Seconded: Director Baffsky***

**For:**  
***Goolagong Cawley***  
***Baffsky***  
***Jeffries***  
***Driscoll***

**Against:**  
***Trust***  
***Gorringe***

***Motion carried***

In response to a query from Director Driscoll, the Chairperson assured all Directors that they would be kept fully informed on the progress of negotiations.

Director Baffsky suggested that the Chairman of the Investment Committee, Mr Ian Ferrier, be asked to work with the General Manager and his team in putting together a recommendation to the Board as to the best way to go forward in terms of securing the necessary funding.

***That the Board agreed to offer the following to GPT for the acquisition of the Ayers Rock Resort:***

- ***One payment of \$200 million now; or***
- ***One payment of \$100 million now and a further payment of \$120 million in 12-18 months;***

***subject to bank financing or a bond issue.***

***Moved: Director Jeffries***

***Seconded: Director Baffsky***

***Carried***

Redacted under s 22(1)(b) of the Fol Act.

Two pages redacted under s 22(1)(b) of the FoI Act

Document 15

ILC Board Minutes from meeting number 128 held on 17 June 2009



**ILC BOARD MEETING No 128**

**Wednesday, 17 June 2009**

**Pullman Reef Hotel  
35-41 Wharf Street  
CAIRNS**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                    |
|-----------------------------------|--------------------|
| Ms Shirley McPherson              | Chairperson        |
| Mr Sam Jeffries                   | Deputy Chairperson |
| Mr David Baffsky AO               |                    |
| Mr Kevin Driscoll CBE             |                    |
| Ms Evonne Goolagong Cawley MBE AO |                    |
| Mr Max Gorringer                  |                    |
| Mr Ian Trust                      |                    |

*The following ILC staff attended all or part of the meeting:*

|                     |                               |
|---------------------|-------------------------------|
| Mr David Galvin     | General Manager               |
| Mrs Jodie Lindsay   | Chief Operating Officer       |
| Mr Garry Cook       | Director, Business Operations |
| Mr Michael Shanahan | Business Enterprise Officer   |
| Ms Sue Andrews      | Board Secretariat             |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.



Redacted under s 22(1)(b) of the Fof Act.

### 3. ACTIONS ARISING

In response to a query from Director Driscoll, the General Manager advised that little progress had been made since the last Board meeting with regard to the acquisition of the Ayers Rock Resort, as the banks that were approached are still settling their terms and conditions. Director Baffsky stated that an updated valuation had been received and the first five months trading of 2009 indicated that trading is ahead of the ILC's forecast. The General Manager undertook to circulate the five-month trading figures for the Resort to all Directors.

Item 1—*Strategic Planning Discussions*—Directors agreed to postpone the planning meeting until October, when all Directors are available to attend. Director Baffsky stated that independent advice may be needed as to the ILC's statutory responsibilities, particularly in relation to the divestment of the properties on which the ILC operates businesses, in preparation for the Board's discussions. The General Manager undertook to liaise with Director Baffsky and the ILC's General Counsel regarding the options pertaining to the divestment of Roebuck Plains Station. Directors were asked to provide to the General Manager a list of issues they wished to discuss at the strategic planning meeting.

Item 2—*Management of Mossman Gorge Tourist Operations (Rydges)*—Director Baffsky stated that he is to meet with Rydges the following week.

Item 3—*Management of Mossman Gorge Tourist Operations (Delaware North)*—The General Manager stated that he had been advised by Delaware North that it is not interested in taking on the management of the tourist operations at Mossman Gorge.

Item 4—*Draft Letter to the Prime Minister re the Land Account*—The Chairperson undertook to follow up as to whether the letter from the Minister to the Prime Minister has been sent.

Eight pages redacted under s 22(1)(b) of the FoI Act

**Document 16**

**ILC Board Minutes from meeting number 129 held on 26 August 2009**



**ILC BOARD MEETING No 129**

**Wednesday, 26 August 2009**

**Boardroom  
ILC Head Office  
ADELAIDE**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |  |
|-----------------------------------|--|
| Ms Shirley McPherson              | Chairperson                              |
| Mr Sam Jeffries                   | Deputy Chairperson <i>(by telephone)</i> |
| Mr Kevin Driscoll CBE             | <i>(by videoconference)</i>              |
| Ms Evonne Goolagong Cawley MBE AO |  |
| Mr Max Gorringe                   |  |
| Mr Ian Trust                      | <i>(by videoconference)</i>              |

**Apologies:**

Mr David Baffsky AO

The following attended all or part of the meeting:

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Mr Paul Hayes     | General Counsel         |
| Ms Sue Andrews    | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Seven pages redacted under s 22(1)(b) of the FoI Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION**  
**(f) RED ROCK PROJECT—DUE DILIGENCE**

The General Manager updated the meeting on progress to date.

Director Driscoll advised the Board that he was aware of the conditions on which the banks were prepared to loan money to the ILC regarding the purchase of the Ayers Rock Resort and had decided that he was not prepared to support the proposed purchase of the Ayers Rock proposition. He stated that he did not believe the ILC should borrow such a large amount of money, as the trend in visitors and revenue had continued downwards over the last several years. He also believed that the cost of repairs and restoration of the hotels would be much greater than anticipated. He was disappointed Board members had not visited the resorts prior to entering into discussions and before price structures were considered.

It was agreed to defer discussion of this item until such time as all Directors are available to participate.

Redacted under s 22(1)(b) of the Fof Act.

Four pages redacted under s 22(1)(b) of the FoI Act

**Document 17**

**ILC Board Minutes from meeting number 130 held on 28 October 2009**





**ILC BOARD MEETING No 130**

**Wednesday, 28 October 2009**

**Boardroom  
ILC Eastern Divisional Office  
BRISBANE**

**MINUTES**

**ATTENDED BY THE BOARD:**

Ms Shirley McPherson      Chairperson  
Mr Sam Jeffries            Deputy Chairperson  
Mr David Baffsky AO  
Ms Evonne Goolagong Cawley MBE AO  
Mr Max Gorringe  
Mr Ian Trust

**Apologies:**

Mr Kevin Driscoll CBE

The following attended all or part of the meeting:

Mr David Galvin            General Manager  
Mrs Jodie Lindsay        Chief Operating Officer  
Ms Sue Andrews          Board Secretariat

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Three pages redacted under s 22(1)(b) of the FoI Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION – RED ROCK PROJECT: DUE DILIGENCE**

The Chairperson noted that this item had been deferred at the Board's August meeting as not all Directors were in attendance. As Director Driscoll is not in attendance today, she asked that the item again be deferred. The General Manager stated that an update on ARR's current position will be provided to the Board's December 2009 meeting.

Redacted under s 22(1)(b) of the Fof Act.

Five pages redacted under s 22(1)(b) of the FoI Act

Document 18

ILC Board Minutes from meeting number 131 held on 16 December 2009



**ILC BOARD MEETING No 131**

**Wednesday, 16 December 2009**

**Sofitel Sydney Wentworth  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                     |
|-----------------------------------|---------------------|
| Ms Shirley McPherson              | Chairperson         |
| Mr Sam Jeffries                   | Deputy Chairperson  |
| Mr David Baffsky AO               |                     |
| Mr Kevin Driscoll CBE             |                     |
| Ms Evonne Goolagong Cawley MBE AO |                     |
| Mr Max Gorringe                   |                     |
| Mr Ian Trust                      | <i>by telephone</i> |

The following attended all or part of the meeting:

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Ms Carmel Jones   | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Three pages redacted under s 22(1)(b) of the Fof Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION**  
**(b) RED ROCK PROJECT—DUE DILIGENCE**

The General Manager advised that Grant Samuel had not been able to ascertain the updated financial figures from GPT. Consequently, discussion was postponed until the Board's February 2010 meeting when, hopefully, the financial results for 2009 will be forthcoming.

Redacted under s 22(1)(b) of the Fof Act.



Four pages redacted under s 22(1)(b) of the Fol Act

**Document 19**

**ILC Board Minutes from meeting number 132 held on 18 February 2010**



**ILC BOARD MEETING No 132**

**Thursday, 18 February 2010**

**ILC Western Divisional Office  
PERTH**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                           |
|-----------------------------------|---------------------------|
| Ms Shirley McPherson              | Chairperson               |
| Mr Sam Jeffries                   | Deputy Chairperson        |
| Mr David Baffsky AO               |                           |
| Mr Kevin Driscoll CBE             | <i>by videoconference</i> |
| Ms Evonne Goolagong Cawley MBE AO |                           |
| Mr Ian Trust                      |                           |

**Apology:**

Mr Max Gorringe

The following attended all or part of the meeting:

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Ms Sue Andrews    | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Three pages redacted under s 22(1)(b) of the Fof Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION—AYERS ROCK RESORT, NT**

The Chairperson stated that this matter will again be deferred because of the absence of Director Gorringe. She asked that all Directors who are available to do so inspect the property prior to the Board's April meeting when a final decision will be made as to whether the Board will proceed, or not, with the possible acquisition.

Director Baffsky advised that Grant Samuel, at no cost to the ILC, is working on a proposal that might resolve the funding issue. He further advised that he and the General Manager are working on a paper on employment issues, which will be circulated to Directors when finalised.

Directors noted the 2009 financial results for the Ayers Rock Resort.

Redacted under s 22(1)(b) of the Fof Act.

Four pages redacted under s 22(1)(b) of the FoI Act

Document 20

ILC Board Minutes from meeting number 133 held on 15 April 2010



**ILC BOARD MEETING No 133**

**Thursday, 15 April 2010**

**Eora Campus  
National Centre of Indigenous Excellence  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                    |
|-----------------------------------|--------------------|
| Ms Shirley McPherson              | Chairperson        |
| Mr Sam Jeffries                   | Deputy Chairperson |
| Mr David Baffsky AO               |                    |
| Mr Kevin Driscoll CBE             |                    |
| Ms Evonne Goolagong Cawley MBE AO |                    |
| Mr Max Gorringe                   |                    |
| Mr Ian Trust                      |                    |

The following attended all or part of the meeting:

|                 |                   |
|-----------------|-------------------|
| Mr David Galvin | General Manager   |
| Ms Sue Andrews  | Board Secretariat |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.



One page redacted under s 22(1)(b) of the FoI Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND MANAGEMENT**  
**(c) AYERS ROCK RESORT, NT**

The Chairperson noted that a recent inspection of the property was undertaken by Directors Jeffries, Goolagong-Cawley and Gorringer, all of whom believed that the project presented many opportunities for Indigenous involvement.

Director Baffsky briefed the meeting on revised financing arrangements proposed by GPT.

Directors agreed to defer further discussion until a full briefing is provided on both the financing proposal. The General Manager undertook to work with the Chief Operating Officer, Mr Ian Ferrier and Mr Ross Grant (Grant Samuel) to review the finance proposal and to bring a paper to the Board as soon as possible.

Seven pages redacted under s 22(1)(b) of the FoI Act

**Document 21**

**ILC Board Minutes from meeting number 134 held on 16 June 2010**



**ILC BOARD MEETING No 134**

**Wednesday, 16 June 2010**

Training Facility  
Roebuck Plains Station  
BROOME, WA

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                              |
|-----------------------------------|------------------------------|
| Ms Shirley McPherson              | Chairperson                  |
| Mr Sam Jeffries                   | Deputy Chairperson           |
| Mr David Baffsky AO               | (from 10.15 am)              |
| Mr Kevin Driscoll CBE             | (by telephone until 2.40 pm) |
| Ms Evonne Goolagong Cawley MBE AO |                              |
| Mr Ian Trust                      |                              |

**Apology:**

Mr Max Gorringe

The following attended all or part of the meeting:

|                   |  |
|-------------------|--|
| Mr David Galvin   | General Manager                        |
| Mrs Jodie Lindsay | Chief Operating Officer                |
| Mr Garry Cook     | Director, Business Operations          |
| Ms Sue Andrews    | Board Secretariat                      |
| Ms Carmel Jones   | Executive Assistant to the Chairperson |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Four pages redacted under s 22(1)(b) of the Fof Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION**  
**(a) AYERS ROCK RESORT, NT**

The Chairperson stated that she had requested that all Directors be present to discuss this item. However, she noted that Director Gorringer, at short notice, had indicated that he could not attend either in person or by telephone and Directors agreed that a decision must be made at this meeting.

Mrs Lindsay briefed the meeting on the current proposal and discussion ensued.

Directors Jeffries, Baffsky and Goolagong-Cawley expressed their support for the proposal. Director Trust stated that he was supportive but had concerns about the number of people willing to move to the Resort for training. Director Driscoll stated that he was concerned that checks and balances are put in place.

The General Manager reminded Directors that Wana Ungkunyitja Pty Ltd still has the first right of refusal on the purchase of the Resort.

***That the Board approves to progress negotiations with GPT to purchase Ayers Rock Resort, subject to:***

- *finance being secured*
- *the Land Account legislation being passed*
- *further due diligence*
- *acceptable legal documentation*

***Moved: Director Jeffries***

***Seconded: Director Goolagong Cawley***

***Directors Trust and Driscoll abstained***

***Carried***

Five pages redacted under s 22(1)(b) of the FoI Act



**Document 22**

**ILC Board Minutes from meeting number 135 held on 25 August 2010**



**Australian Government**  
**Indigenous Land Corporation**

## ILC BOARD MEETING No 135

Wednesday, 25 August 2010

Boardroom  
ILC Head Office  
ADELAIDE

### MINUTES

#### ATTENDED BY THE BOARD:

|                                   |                      |
|-----------------------------------|----------------------|
| Ms Shirley McPherson              | Chairperson          |
| Mr Sam Jeffries                   | Deputy Chairperson   |
| Mr Kevin Driscoll CBE             | (by videoconference) |
| Ms Evonne Goolagong Cawley MBE AO |                      |
| Mr Max Gorringe                   |                      |
| Mr Ian Trust                      | (until 12.30 pm)     |

#### Apology:

Mr David Baffsky AO

The following attended all or part of the meeting:

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Ms Sue Andrews    | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the Fol Act.

Two pages redacted under s 22(1)(b) of the FoI Act

Redacted under s 22(1)(b) of the Fof Act.

**7. LAND ACQUISITION**  
**(c) AYERS ROCK RESORT, NT—UPDATE**

Mrs Lindsay circulated a paper containing a summary of the possible acquisition of the Resort and continuing due diligence activities. Mr Galvin updated the Board on the status of negotiations. Included in the handout was a letter from the General Manager to Minister Macklin in relation to the requirements under the CAC Act. Responses were received from Dr Harmer, as well as Ms Donna Moody, of FaHCSIA requesting the ILC to await the outcome of a review of the ILC's borrowing powers before progressing the acquisition. ***Directors agreed to advise the Secretary of FaHCSIA that it had considered the request and decided to proceed.***

Director Driscoll congratulated Mrs Lindsay on the excellent report. In response to a query from Director Driscoll, Mrs Lindsay undertook to provide information with regard to the cost of essential services at the Resort.

Directors noted that a detailed paper on the acquisition proposal will be presented to the Board at either its October 2010 meeting or at an earlier date, if necessary.

The General Manager reminded participants that the matter of the possible acquisition of ARR is *commercial-in-confidence* and should not be divulged to anyone outside the ILC Board and executive. He informed Directors that negotiations were continuing with Wana Ungkunyitja (WU) regarding its participation in the ARR business if the ILC is successful in the acquisition. He

advised that it had become obvious that since the ILC had agreed to work with WU on the acquisition of ARR in late 2008, WU's Right of First Refusal had no monetary value. It was well known that the ILC was unable to find finance for the purchase of ARR and thus negotiations with GPT had been in a hiatus for approximately 12 months. During that time there were no other bidders for the Resort, which demonstrated that the Right of First Refusal was no deterrent in stopping other bidders.

Consequently, the General Manager, in consultation with the Chairperson and Director Baffsky, had offered WU 3% of the company, together with one board director. ***The Board agreed that this offer was appropriate.***

The General Manager stated that, in the event the Board decides to go ahead with the purchase, certain administrative processes need to be put in place, such as the establishment of a wholly-owned subsidiary. He also indicated the need to appoint a General Manager of the subsidiary and advised that Mr Koos Klein, who has been working as a consultant during the due diligence phase, would be an excellent candidate. The Board agreed that, if the current negotiations proceed to a purchase, a formal interview process would be conducted.

***That the Board resolves to establish a company to be known as ILC Tourism Pty Limited as a wholly-owned subsidiary of the ILC to be used to facilitate the potential acquisition, ownership and operation of the Ayers Rock Resort. Further, that the Board appoints David Baffsky, David Galvin and Paul Hayes as the initial officeholders of ILC Tourism Pty Limited.***

***Moved: Director Jeffries***

***Seconded: Director Goolagong Cawley***

***Carried***

***Board Decision No 274 refers***

Redacted under s 22(1)(b) of the Fol Act.

Six pages redacted under s 22(1)(b) of the FoI Act

Document 23

ILC Board Minutes from meeting number 136 held on 1 October 2010



**Australian Government**  
**Indigenous Land Corporation**

## ILC BOARD MEETING No 136

**Friday, 1 October 2010**

**Office of Grant Samuel  
Governor Macquarie Tower  
SYDNEY**

### MINUTES

#### **ATTENDED BY THE BOARD:**

|                                   |                            |
|-----------------------------------|----------------------------|
| Ms Shirley McPherson              | Chairperson                |
| Mr Sam Jeffries                   | Deputy Chairperson         |
| Mr David Baffsky AO               |                            |
| Mr Kevin Driscoll CBE             | <i>(until 11.30 am)</i>    |
| Ms Evonne Goolagong Cawley MBE AO |                            |
| Mr Max Gorringe                   | <i>(by teleconference)</i> |
| Mr Ian Trust                      | <i>(by teleconference)</i> |

The following attended all or part of the meeting:

|                   |  |
|-------------------|--|
| Mr David Galvin   | General Manager                                    |
| Mrs Jodie Lindsay | Chief Operating Officer <i>(by teleconference)</i> |
| Mr Paul Hayes     | General Counsel                                    |
| Ms Sue Andrews    | Board Secretariat                                  |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.



## 2. LAND ACQUISITION—AYERS ROCK RESORT, NT

A number of consultants who had worked on the due diligence of the proposal joined the meeting and the following made presentations to the Board:

|                    |                         |
|--------------------|-------------------------|
| Mr Ross Grant      | Grant Samuel            |
| Ms Marlene Poynder | Marketing expert        |
| Mr John Smith      | Horwath HTL             |
| Mr Vaso Zographou  | Horwath HTL             |
| Mr Koos Klein      | Hotel management expert |
| Mr Ben McLaughlin  | Baker & McKenzie        |

The presentations and discussions, which took place over a period of approximately two hours, were interactive and frank with Directors asking questions and the consultants providing answers. They also had their due diligence reports on hand if any Director needed to see them or the consultants needed to refer to back to those reports.

### **The consultants left the meeting.**

The General Manager circulated a letter received from the Minister for Finance and Deregulation, Senator Penny Wong, late on 29 September 2010, together with the ILC's response of the following day. He stated that on 30 September he had met with officers of the Department of Finance, all of whom were impressed by the ILC's timely response to the Minister's letter and by the comprehensive due diligence undertaken by the ILC.

The Chairperson stated that she had spoken to Minister Macklin who advised her priority in the next three years is Indigenous economic development. As such, the purchase of Ayers Rock Resort (ARR) falls directly in line with this priority. The General Manager stated that following the Deputy Chairperson's discussions with Dr Jeff Harmer, Secretary of FaHCSIA, Dr Harmer confirmed that he was supportive of the proposal and advised that he will convey that message to FaHCSIA officers as well as Minister Macklin.

The Chairperson invited the General Counsel to provide comment to the Board on the legal issues raised by the Minister for Finance and Deregulation.

The General Counsel advised that the ILC Board, in exercising the functions of the ILC, is governed by two principal regulatory frameworks. The first regulatory framework is provided by Part 4A of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* (the ATSI Act). The second regulatory framework is provided by the *Commonwealth Authorities and Companies Act 1997 (Cth)* (the CATSI Act).

The ATSI Act is the enabling legislation of the ILC and sets out the functions and purposes of the ILC. All ILC Directors must be careful to ensure that, in exercising the functions of the ILC and in making any decisions, the ILC stays within the statutory brief of the ATSI Act. In other words, the ILC cannot step beyond its

functions and powers as set out in the ATSI Act to exercise land acquisition and land management functions. The Act goes on to provide a number of sections that further regulate how those functions are to be performed. In the event that the ILC Board determines that it is appropriate to proceed with the acquisition of ARR, the ILC Board must ensure that it is satisfied that the proposal is within the functions and powers of the ILC.

The CAC Act is an Act that is of general application to many Commonwealth statutory bodies, including the ILC. The principal provisions of the Act impose duties and obligations on ILC Directors and senior employees. The duties and obligations mirror many of the duties and obligations that bind company directors pursuant to the Corporations Law and some common law duties that bind all directors.

The General Counsel then noted that Senator Wong's letter touched on general compliance with duties under the CAC Act and mentioned specifically the duty to act with care and diligence, the duty to act in good faith and in the best interests of the ILC and the duty to act for proper purposes.

The General Counsel noted that a number of these expressions were drawn from Sections 22 and 23 of the CAC Act and he read out those specific provisions and explained the implication of those provisions for ILC Directors in their deliberations on the acquisition of ARR. He explained that the ILC Board jointly, and Directors individually, must be satisfied that they are acting in good faith, which means for the proper purposes of the ILC and without any ulterior purposes and they genuinely hold the view that any decision to proceed is soundly based. The ILC Board jointly, and Directors individually, must be of the view that any decision to proceed would be in the best interests of the ILC corporately and this would include determining that the decision will not unduly prejudice the ILC's normal functions and programs. The General Counsel explained that the decision must also be made for a proper purpose and this is a corollary of the requirement to ensure that the decision complies with the functions and powers as set out in the ATSI Act. In other words, the decision should not be made for an improper purpose or a purpose unrelated to the proper exercise of the functions of the ILC.

The General Counsel explained there are other relevant provisions of the CAC Act that deal with issues such as conflict of interest and Directors must also satisfy themselves on those issues even though such issues have not been highlighted by the Minister.

The General Counsel noted Section 27D of the CAC Act, which entitles Directors to rely on professional or expert advice including such advice provided by third party advisers. The General Counsel noted that the complexity of this transaction has meant that the ILC and its Directors have relied upon extensive advice prepared by independent, competent professional advisers. However, Directors do have an obligation to examine that advice and provide themselves with a level of satisfaction that that advice is sound given all the circumstances of the transaction. Provided the Directors act in good faith and make their own independent

assessment of that professional advice, then it is entirely proper that the ILC Board jointly, and Directors individually, rely on such advice. The General Counsel noted that at this Board meeting a number of those professional advisers have made themselves available to provide presentations on their advice and their conclusions and make themselves available for questioning. He noted that a number of Directors had, during the course of the meeting, raised a number of issues with the various advisers.

In conclusion, the General Counsel also pointed out that the ILC has procured independent advice from two legal firms—Baker & McKenzie and Corrs Chambers Westgarth—to confirm the ILC Board's view that the ILC is acting within its statutory powers and that there is no aspect of the transaction that suggests the ILC Board or the Directors have acted in breach of the CAC Act. However, at the end of the day ultimate responsibility rests with the ILC Board, and Directors individually, to reach their own independent view that they have adequately, properly and reasonably discharged their duties and obligations under the CAC Act. Any decision to proceed with the purchase of ARR must be based on this judgement.

**Director Driscoll stated that he had to leave the meeting and wished to have recorded in the Minutes that he will abstain from voting on any resolution in relation to the acquisition of ARR.**

**Director Driscoll left the meeting at 11.30 am.**

The General Manager briefed Directors on recent discussions he and the General Counsel had held with Wana Ungkunyitja (WU), the outcome of which was that it was agreed to seek the approval of the Boards of the ILC and WU for an offer to WU of 7% equity in the operating company, as well as two directors on the operating company board with only one vote. It was also agreed to continue the exclusivity treatment of Anangu Tours at ARR, with the ILC assisting in its promotion. The General Manager stated that the involvement of WU is vital to the proposed training and employment program at ARR and believed that the ILC will be able to work with WU very strongly from the outset.

***That, in consideration of WU either foregoing or not exercising its Right of First Refusal, the Board resolves that:***

- (a) The ILC will reimburse up to \$100,000 of legal and consultant fees and costs incurred by WU since August 2008, to be verified by detailed accounts***
- (b) The ILC will make a \$200,000 up front payment to WU on settlement of ARR***
- (c) WU to be granted a 7% equity interest in ILC Tourism after all loans and ILC monies have been repaid in approximately ten years***
- (d) WU are offered two Director positions on the ILC Tourism Board, but with only one vote***

*Moved: Director Jeffries  
Seconded: Director Goolagong Cawley  
Abstained: Directors Trust and Driscoll  
Carried*

*Land Acquisition Decision No 368 refers*

The General Counsel read the proposed Acquisition Decisions, which was drafted by Baker & McKenzie, including resolutions by the ILC Board and ILC Tourism Pty Limited (ILC Tourism). It was noted that the ILC Tourism resolution is subject to the ILC proceeding to implement the acquisition decision.

*That the Board resolves to implement the decisions, as drafted by Baker & McKenzie, that approve the acquisition of Ayers Rock Resort (see attached). Further, that the implementation of these resolutions is subject to the Chairperson having regard to any valid, substantive issues that might be raised within the next seven days by the Minister for Finance and Deregulation, Senator Penny Wong, regarding Directors' duties under the CAC Act.*

*Moved: Director Jeffries  
Seconded: Director Goolagong Cawley  
Abstained: Directors Trust and Driscoll  
Carried*

*Land Acquisition Decision No 369 refers  
Land Management Decision No 160 refers*

Redacted under s 22(1)(b) of the FoI Act.

Two pages redacted under s 22(1)(b) of the FoI Act

Document 24

ILC Board Minutes from meeting number 137 held on 20 October 2010



**ILC BOARD MEETING No 137**

**Wednesday, 20 October 2010**

**Boardroom  
ILC Eastern Divisional Office  
BRISBANE**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                    |
|-----------------------------------|--------------------|
| Ms Shirley McPherson              | Chairperson        |
| Mr Sam Jeffries                   | Deputy Chairperson |
| Mr Kevin Driscoll CBE             | (by telephone)     |
| Mr David Baffsky AO               |                    |
| Ms Evonne Goolagong Cawley MBE AO |                    |
| Mr Max Gorringe                   |                    |
| Mr Ian Trust                      |                    |

The following attended all or part of the meeting:

|                   |  |
|-------------------|--|
| Mr David Galvin   | General Manager                        |
| Mrs Jodie Lindsay | Chief Operating Officer                |
| Mr Paul Hayes     | General Counsel                        |
| Mr Michael O'Ryan | Director, Policy & Program Development |
| Ms Sue Andrews    | Board Secretariat                      |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Seven pages redacted under s 22(1)(b) of the FoI Act



Redacted under s 22(1)(b) of the Fof Act.

(b) Ayers Rock Resort, NT—Verbal Update

Redacted under s 22(1)(b) of the Fof Act.

One page redacted under s 22(1)(b) of the Fof Act

Document 25

ILC Board Minutes from meeting number 138 held on 16 December 2010



**ILC BOARD MEETING No 138**

**Thursday, 16 December 2010**

**Sofitel Sydney Wentworth  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                      |                    |
|----------------------|--------------------|
| Ms Shirley McPherson | Chairperson        |
| Mr Sam Jeffries      | Deputy Chairperson |
| Mr David Baffsky AO  |                    |
| Mr Max Gorringe      |                    |
| Mr Ian Trust         |                    |

**Apologies:**

Mr Kevin Driscoll CBE  
Ms Evonne Goolagong Cawley MBE AO

The following attended all or part of the meeting:

|                   |                                     |
|-------------------|-------------------------------------|
| Mr David Galvin   | General Manager                     |
| Mrs Jodie Lindsay | Chief Operating Officer             |
| Mr Bob Harvey     | Director, Major Employment Projects |
| Mr Koos Klein     | ARR Project Team                    |
| Ms Sue Andrews    | Board Secretariat                   |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Redacted under s 22(1)(b) of the FoI Act.

**7. PURCHASE OF AYERS ROCK RESORT, NT**  
**(d) APPOINTMENT—MR KOOS KLEIN**

The General Manager summarised Mr Klein's experience in the tourism and hospitality industry and outlined the work he had undertaken on the purchase of the Ayers Rock Resort. Director Baffsky spoke in support of Mr Klein, stating that he had worked with him previously and found him to be an outstanding operator, loyal and well-respected.

All Directors indicated their support of the recommendation that the Directors of ILC Tourism Pty Ltd engage Mr Koos Klein on a term contract, of a minimum of three years, to lead the purchase and operation of Ayers Rock Resort and negotiate an appropriate remuneration package.

Mr Klein joined the meeting. Director Baffsky advised Mr Klein of the Board's decision on his appointment and welcomed him to the ILC.

**7. PURCHASE OF AYERS ROCK RESORT, NT**  
**(a) TRANSITION BUDGET**

Mrs Lindsay joined the meeting and outlined the process since signing the contract to purchase the Resort in October. She advised that an experienced team has been established to manage the transition.

*That the Board approves a transition budget for the purchase of Ayers Rock Resort, being total expenses of \$3 million.*

*Moved: Director Baffsky*

*Seconded: Director Jeffries*

*Carried*

Director Baffsky recommended that an inventory of Indigenous art, both at the Resort and in the Sydney office of Voyages, be undertaken as soon as possible.

**7. PURCHASE OF AYERS ROCK RESORT, NT  
(b) PROPOSED CHANGE OF COMPANY NAME**

Directors agreed to change the company name to Voyages Indigenous Tourism Australia Pty Ltd.

**7. PURCHASE OF AYERS ROCK RESORT, NT  
(c) GRANT OF POWER OF ATTORNEY**

*That the Board:*

- *Grants the power of attorney in the form presented and in accordance with the decision sheet provided with the brief*
- *Authorises the Chairperson and any ILC Director to affix the ILC common seal to the power of attorney and to any relevant land titles office forms to facilitate any necessary registration*

*Moved: Director Baffsky*

*Seconded: Director Gorringe*

*Carried*

*Board Decision No 278 refers*

**7. PURCHASE OF AYERS ROCK RESORT, NT  
(e) PRESENTATION—TRAINING AND EMPLOYMENT STRATEGY**

Mr Harvey joined the meeting and circulated a hard copy of his presentation. Directors provided various suggestions, eg:

- Information should be included on the ILC's contribution to the wider tourism and hospitality industry where a percentage of graduates are not employed directly at ARR but find employment elsewhere in Australia or internationally.
- The Tourism scholarship at Bond University should include a period of employment at ARR.
- Include mining as well as tourism and hospitality.

- Ensure that the training academy and facilities at ARR, while having linkages to NCIE, is a distinct entity that is operated as part of ARR.
- Mr Klein recommended that department supervisors, who have limited or no experience working with trainees, would also require training prior to the commencement of the training program.

The Board thanked Mr Harvey for his presentation.

Mr Harvey, Mr Klein and the General Manager left the meeting.

Redacted under s 22(1)(b) of the Fol Act.

Six pages redacted under s 22(1)(b) of the FoI Act



Document 26

ILC Board Minutes from meeting number 139 held on 23 February 2011



**ILC BOARD MEETING No 139**

**Wednesday, 23 February 2011**

**ILC Western Divisional Office  
PERTH**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                            |
|-----------------------------------|----------------------------|
| Ms Shirley McPherson              | Chairperson                |
| Mr Sam Jeffries                   | Deputy Chairperson         |
| Mr Kevin Driscoll CBE             | <i>via videoconference</i> |
| Ms Evonne Goolagong Cawley MBE AO |                            |
| Mr Max Gorringe                   |                            |
| Mr Ian Trust                      |                            |

**Apologies:**

Mr David Baffsky AO

The following attended all or part of the meeting:

|                 |                   |
|-----------------|-------------------|
| Mr David Galvin | General Manager   |
| Ms Sue Andrews  | Board Secretariat |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

Four pages redacted under s 22(1)(b) of the Fol Act

Redacted under s 22(1)(b) of the Fol Act.

**7. LAND ACQUISITION**  
**(d) AYERS ROCK RESORT, NT—UPDATE**

The General Manager stated that the information detailed in the briefing paper will be provided to the Department of Finance and Deregulation.

***Report noted***

Redacted under s 22(1)(b) of the Fol Act.

Six pages redacted under s 22(1)(b) of the FoI Act

Document 27

ILC Board Minutes from meeting number 140 held on 20 April 2011



**ILC BOARD MEETING No 140**

**Wednesday, 20 April 2011**

**Black Theatre Building  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                                   |                    |
|-----------------------------------|--------------------|
| Ms Shirley McPherson              | Chairperson        |
| Mr Sam Jeffries                   | Deputy Chairperson |
| Mr David Baffsky AO               |                    |
| Mr Kevin Driscoll CBE             |                    |
| Ms Evonne Goolagong Cawley MBE AO |                    |
| Mr Max Gorringe                   |                    |
| Mr Ian Trust                      |                    |

The following attended all or part of the meeting:

|                   |                         |
|-------------------|-------------------------|
| Mr David Galvin   | General Manager         |
| Mrs Jodie Lindsay | Chief Operating Officer |
| Ms Sue Andrews    | Board Secretariat       |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the Fol Act.

Two pages redacted under s 22(1)(b) of the FoI Act



Redacted under s 22(1)(b) of the FoI Act.

- 7. LAND ACQUISITION
- (b) AYERS ROCK RESORT, NT
- (i) ILC TOURISM PTY LIMITED BOARD OF DIRECTORS

Directors agreed that paragraph 5 of the decision sheet should include the words, "As an interim measure pending the establishment of the Ayers Rock Resort operating company, ...".

*That, subject to the Ayers Rock Resort sales agreement proceeding, the Board appoints Shirley McPherson, Sam Jeffries, Geoff Dixon, Richard Longes, Peter Barge and Ronald Morony as Directors of ILC Tourism Pty Ltd for a period of five years, and approves a three-year directors' fee pool of \$1,477,500.*

*Moved: Director Gorringe*

*Seconded: Director Goolagong-Cawley*

*Abstained: Chairperson and Director Jeffries*

*Carried*

*Board Decision No 293 refers*

- 7. LAND ACQUISITION
- (b) AYERS ROCK RESORT, NT
- (ii) PROJECT UPDATE

Mrs Lindsay briefed the meeting on the current status of the acquisition process.

*That the Board notes the contents of the briefing paper, particularly in relation to the airport runway. Further, that the Board approves the proposed extension of the transition budget to 31 May 2011 and an increase of that budget by \$500,000 to \$3.5 million to take account of the delay in settlement and approves the proposal to adopt the GPT Voyages budget for the interim period from completion through to 31 August 2011.*

*Moved: Director Baffsky*

*Seconded: Director Gorringe*

*Carried*

Mrs Lindsay advised the Board that ANZ had agreed not to take the Voyages leased premises in Sydney as security under its Facilities Agreement with the ILC, and that this now necessitated an amendment to the documentation approved and executed by the Board on 1 October 2010. She circulated draft Minutes, prepared by Bakers and cleared by the ILC General Counsel, and stated that she and General Counsel verify that the documents are identical to those previously approved with the exception of the mortgage security on the lease.

Further, the draft Minutes ratify the agreement between the ILC and ILC Tourism Pty Limited, also included in the documentation approved on 1 October 2010, whereby the ILC will transfer the assets (ARR) to ILCT immediately following completion of the acquisition transaction in order to secure stamp duty exemption.

*That the Board endorses the Minutes as presented and agrees to the resolutions contained therein.*

*Moved: Director Baffsky*

*Seconded: Director Jeffries*

*Carried*

7. LAND ACQUISITION

(b) AYERS ROCK RESORT, NT

(iii) INTERIM INDIGENOUS EMPLOYMENT AND TRAINING STRATEGY  
2011/12 TO 2012/13

*That the Board approves up to \$3 million (GST exclusive) for the implementation of an interim Indigenous Employment and Training Strategy for two years 2001/12 and 2012/13, and approves up to \$250,000 for minor repairs and fit-out at Nyangatjatjara College.*

*Moved: Director Jeffries*

*Seconded: Director Trust*

*Carried*

*Board Decision No 294 refers*

Five pages redacted under s 22(1)(b) of the Fof Act

Document 28

ILC Board Minutes from meeting number 144 held on 20 December 2011

Board in confidence



**ILC BOARD MEETING No 144**

**Australian Government**  
**Indigenous Land Corporation**

**Tuesday, 20 December 2011**

**Eora Campus  
National Centre of Indigenous Excellence  
SYDNEY**

**MINUTES**

**ATTENDED BY THE BOARD:**

|                        |              |
|------------------------|--------------|
| Dr Dawn Casey PSM FAHA | Chair        |
| Mr Ian Trust           | Deputy Chair |
| Mr Graham Atkinson     |              |
| Mr David Baffsky AO    |              |
| Ms Olga Havnen         |              |
| Mr Sam Jeffries        |              |
| Mr Neil Westbury PSM   |              |

**The following staff attended all or part of the meeting:**

|                   |  |
|-------------------|--|
| Mr David Galvin   | Chief Executive Officer                  |
| Mrs Jodie Lindsay | Chief Operating Officer                  |
| Mr Paul Hayes     | General Counsel                          |
| Mr Mike O’Ryan    | Director, Policy and Program Development |
| Ms Sue Andrews    | Board Secretariat                        |

A copy of the Agenda is attached.

Redacted under s 22(1)(b) of the FoI Act.

One page redacted under s 22(1)(b) of the Fof Act

Redacted under s 22(1)(b) of the FoI Act.

**6. FINANCE AND CORPORATE REPORTS**  
**(c) AYERS ROCK RESORT—MONTHLY OPERATING REPORT**

Director Havnen requested an analysis of the cost per trainee, job categories, gender and age and further information on the capacity to track and monitor the outcomes of the employment and training program at ARR.

Director Westbury noted that, following a request by Directors at yesterday's Board induction session, electronic documentation of the business case and due diligence undertaken in respect to the purchase of ARR had been provided to Directors. He requested that the Minutes record his view that the fundamental test for the project (apart from its commercial viability) would be whether the unprecedented ILC financial investment and risk involved would secure a commensurate return in terms of Indigenous training, employment and regional economic development outcomes. He also noted his interest in ascertaining the rationale and risks involved from the due diligence documentation that was used to support proceeding with the ARR purchase without a joint venture partner.

**Report noted.**

Redacted under s 22(1)(b) of the FoI Act.

Nine pages redacted under s 22(1)(b) of the FoI Act