

27 May 2015

Hon Tony Abbott MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

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Dear Prime Minister

As advised in previous correspondence to you dated 23 March 2015 and 14 April 2015, the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, wrote to me on 17 February 2015 regarding the Indigenous Land Corporation (ILC) Board's consideration of legal action in relation to the former ILC Board's acquisition of Ayers Rock Resort (ARR). In that letter he requested the ILC Board provide him with '...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'.

Following receipt of the Minister's request, the ILC has undertaken a detailed review of our previous correspondence and briefings to Ministers on this matter against the extensive and complex records in our possession. On behalf of the ILC Board I now provide you with our advice.

I am writing directly to you as Minister Scullion appears to have a direct and unaddressed conflict of interest in these matters, as noted in my letter of 14 April 2015 and as further detailed below. The ILC asks again for your advice as to how this potential conflict of interest will be dealt with.

**Background**

In October 2010, the then ILC Board resolved<sup>1</sup> to purchase ARR for \$317 million. This decision has left the ILC in very difficult financial circumstances, and continues to cause severe detriment to the performance of the ILC's core functions. This situation adversely impacts Indigenous interests across the country. In the absence of a sustained improvement in ARR revenue,

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<sup>1</sup> The Board Minutes record the meeting was attended by S McPherson, S Jeffries, D Baffsky, K Driscoll, E Goolagong-Cawley, M Gorringer (by telephone), I Trust (by telephone). Staff in attendance included D Galvin (General Manager) and P Hayes (General Counsel). The Minutes also recorded the decision being moved by S Jeffries and seconded by E Goolagong-Cawley while Directors Trust and Driscoll abstained. We do not know how the remainder of the Board voted but understand Director Gorringer may have voted against the decision.

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servicing the associated debt and principal potentially reduces the available funds for the ILC's core functions by over 40 per cent each year.

Upon appointment of a substantially new ILC Board in 2011, the new Board set about reviewing the ILC's corporate governance processes and making changes to strengthen them where appropriate. As part of this exercise, a review conducted by Deloitte uncovered numerous concerns.

Following this review, it became increasingly apparent that the processes surrounding the purchase of Ayers Rock Resort were flawed.<sup>2</sup> The ILC Board then commissioned a high-level review into the ARR transaction. This review, undertaken by McGrathNicol, identified numerous shortcomings in the processes underpinning the transaction.

As a consequence, the current Board has, over a period of more than 18 months, expressed its concern to the Government, and has consistently requested an independent inquiry into the transaction aimed at identifying what occurred, who was responsible, and how it was allowed to happen. Despite the serious public accountability issues and potential breaches of civil and perhaps even criminal law that have been raised, all requests for this focused investigation have to date been refused.

### ***New information***

The ILC Board has already provided Ministers with extensive and detailed information supporting the case that a number of former Directors and the former General Manager of the ILC *prima facie* breached their duties under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and the *Aboriginal and Torres Strait Islander Act 2005* (ATSIA Act) as officers of the ILC in relation to the decision to acquire ARR. This information derives from both detailed investigation of the transaction by McGrathNicol and legal advice to the ILC by a Senior Counsel.

Following correspondence from the ILC dated 29 October 2014, the Minister for Finance (who has regulatory responsibilities—akin to the Australian Securities and Investments Commission—for public sector corporations) agreed that an investigation was warranted<sup>3</sup>, but attempted to delegate this responsibility to the Minister for Indigenous Affairs. The Minister for Indigenous Affairs refused to initiate an investigation, claiming the matter had already been investigated numerous times.<sup>4</sup> Minister Cormann apparently acceded to Minister Scullion's decision.

As a consequence, to date the Minister for Finance and the Minister for Indigenous Affairs have declined to initiate an investigation.

The provision of new information in accordance with Minister Scullion's request is in no way an acknowledgment that the information already provided is in any way deficient or inadequate to

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<sup>2</sup> Email from N Westbury (current ILC Director) to D Galvin (former ILC GM), 6 March 2012

<sup>3</sup> Letter from Minister for Finance to D Casey (ILC Chair), 19 December 2014

<sup>4</sup> Letter from Minister for Indigenous Affairs to D Casey (ILC Chair), 17 February 2015

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justify further regulatory investigation and action, and we suggest that the information presented below is read in conjunction with our previous correspondence.<sup>5</sup>

The Board now provides the following new information:

**Attachment One** lists the key source documents not previously provided in our correspondence, as well as a table of findings from McGrathNicol's review of the transaction, which provide the context against which the new information must be read.

I note that the key justification put forward by Minister Scullion for not undertaking an investigation following recommendations by both the ILC and Minister Cormann is that there have purportedly been four independent investigations of the ARR transaction.<sup>6</sup> It is important to note that, of these four reviews, only the published McGrathNicol review had access to the source documents listed in this attachment. Moreover, the McGrathNicol review did not have the power to compel evidence from key persons involved in the transaction. Thus, the findings of this review, while of serious concern in themselves, were general in nature (focused on the overall transaction and not potential breaches of legislation), and are not necessarily framed in a way to underpin regulatory oversight and action.

**Attachment Two** outlines a particularly concerning element of the ARR purchase price negotiations. In spite of the strong concerns expressed by certain ILC Directors and due diligence advisers that the purchase price was already too high, the former ILC Board, without any explanation, agreed late in the process to a \$30 million increase in the price. Given the difficulties the former Board was facing in financing the transaction, it seems that this sudden increase was linked to the provision of vendor financing to allow the transaction to proceed. As the ILC had already requested, and been denied, access to the Land Account and had been unable to raise commercial finance<sup>7</sup> due to the substantial risks and commercial unviability of the transaction<sup>8</sup>, a decision to increase the purchase price by \$30 million in exchange for short-term vendor financing, with seemingly no clear plan as to how this would eventually be repaid, would appear to comprise a potential breach of directors' duties and section 191F of the ATSI Act.

<sup>5</sup> Refer to previous correspondence from D Casey, dated: 16 October 2013 (to Minister Scullion); 23 October 2013 (to Minister Scullion); 25 October 2013 (to Minister Scullion); 14 November 2013 (to the Prime Minister); 5 January 2014 (to Minister Scullion); 20 March 2014 (to Minister Scullion); 8 May 2014 (to Minister Scullion); 2 October 2014 (to Minister Scullion); 29 October 2014 (to Minister Cormann); 29 October 2014 (to the Prime Minister); 21 December 2014 (to the Prime Minister); 12 January 2015 (to the Prime Minister); 3 February 2015 (to Minister Cormann); 26 February 2015 (to the Prime Minister); 2 March 2015 (to the Prime Minister); 20 March 2015 (to Minister Scullion); 14 April 2015 (to the Prime Minister).

<sup>6</sup> Reviews have been conducted by McGrathNicol, Aegis Consulting (commissioned by former ILC Director David Baffsky, the key negotiator and driver of the transaction), and KPMG in relation to the ILC's borrowing powers, and the Australian National Audit Office into the ILC's Land Acquisition Program. Of these reports, only the McGrathNicol and ANAO reviews are publicly available. The ILC does have access to the KPMG report, but was not authorised to provide this to McGrathNicol by FaHCSIA. Former Director Baffsky tabled part of the Aegis Consulting report at Senate Estimates. The other half has not been made available to the ILC despite requests to Mr Baffsky and the Minister for Indigenous Affairs.

<sup>7</sup> Which of itself should have been sufficient for the Board to reconsider proceeding with the transaction.

<sup>8</sup> For example, refer to the letter from R Jenkins (Grant Samuel) to D Galvin (ILC GM), 5 August 2009.

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**Attachment Three** raises significant concerns surrounding the engagement of Grant Samuel as lead due diligence adviser to the transaction. Not only did the fee structure incentivise Grant Samuel to act otherwise than in the ILC's best interests, other terms had the effect of almost completely shielding Grant Samuel from any adverse consequences of its actions. In this instance, the ILC's established competitive procurement and contract review processes were bypassed, and the former Board's decision was seemingly made without ever viewing the terms of the proposed agreement or having any information beyond the proposed fee structure. The behaviour of the former ILC Board and General Manager in relation to this engagement raises serious questions as to the propriety of the arrangement with Grant Samuel. It is possible that this arrangement was designed to facilitate the provision of highly optimistic revenue forecasts, and thus ensure that the ARR transaction appeared attractive and would proceed at any cost. At the very least, the actions of Directors in approving these terms of engagement potentially comprise a breach of directors' duties and the ATSI Act.

**Attachment Four** outlines a concern that there may have been an approach by the former ILC Directors to the then Shadow Minister for Indigenous Affairs, Senator Nigel Scullion, seeking his support to draw down funds from the Land Account in the event there was a change of government following the 2010 election. Given the strong grounds upon which former Minister Macklin had refused a similar request, and the former Board's knowledge of the significant financial risks the acquisition presented, such action would arguably comprise a breach of the Directors' duties to act in the best interests of the ILC or to act for a proper purpose. As raised in our previous correspondence with you, the absence of an assurance from Senator Scullion that he was not involved in discussing the transaction with former directors and staff adds to our concern. The ILC also believes that the existence of such an approach may explain Minister Scullion's intransigent refusal to support an investigation into the transaction.

**Attachment Five** outlines a number of undeclared material personal interests between former ILC Director (and principal negotiator and driver of the ARR transaction) David Baffsky and entities associated with the vendor, GPT, and its largest shareholder, the Government of Singapore Investment Corporation. These relationships are such that Mr Baffsky should have been aware that they represented potential conflicts of interest. More significantly, such behaviour would represent a serious breach of Director Baffsky's director's duties as he personally drove the negotiation of the purchase of ARR. The failure to declare these connections, and the potential effect that these may have had on the transaction, represents a potential breach of directors' and fiduciary duties that requires investigation.

**Attachment Six** outlines an apparent breach of the former ILC Directors' obligations under the CAC Act to keep the relevant Minister informed. This followed explicit requests from the then Minister, and it appears that the Minister may have been deliberately misled. This raises serious questions about the nature of the transaction and perhaps indicates knowledge that the Directors' conduct in relation to the transaction would not be condoned.

### *The need for an inquiry*

As is clear from the substantial information already provided in earlier correspondence and the new information presented in this letter, this is a matter of great importance involving myriad

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significant public interest issues, including public sector corporate governance standards and the stewardship of substantial public (Indigenous) moneys. It is incontrovertible that up to \$150 million that should rightly be directed towards Indigenous land-related benefits will not flow to those interests as a result of a process that has been demonstrated to be seriously flawed. Despite this, there has to date been no action by the Minister for Finance, who has both the regulatory responsibility for public sector corporations and the broader democratic functions of protecting the public interest and anticipating potential future calls on the Commonwealth Budget.

In providing this new information, the ILC seeks to highlight many of the unanswered questions and unexplained actions surrounding the transaction. What is irrefutable is that the serious issues surrounding the ARR acquisition necessitate an independent inquiry with full powers to investigate and compel evidence. An investigation would also facilitate a determination of whether there is sufficient evidence to allow the Minister for Finance and/or the ILC itself to pursue compensation for damages resulting from contraventions of the CAC Act, including breaches of directors' duties.<sup>9</sup> Additionally, such evidence may allow the Minister for Finance to seek pecuniary penalty orders of up to \$200,000, payable to the Commonwealth<sup>10</sup>, and, if serious misconduct is exposed, criminal charges may be pursued against former Directors and officers.<sup>11</sup> Most importantly, an investigation would allow the Minister for Finance and his Department to identify any systemic and regulatory weaknesses. It would also facilitate remedial action to ensure that similar circumstances are never allowed to arise again.

I wish to be absolutely clear in stating that the ILC Board, comprising a majority of Indigenous Directors, is pursuing this issue solely because of our commitment to the highest standards of good corporate governance, and our commitment to see Commonwealth funds allocated with full and transparent accountability. As Attorney-General Brandis has noted, 'In a democracy, it is not character assassination to call a public official to account, nor to subject their performance to public scrutiny.'<sup>12</sup> To continue to turn a blind eye to the many concerns surrounding the ARR acquisition is untenable if strong standards of accountability in the public sector are to be upheld.

### ***ILC's legal advice***

As mentioned in my previous correspondence to you, the ILC Board has deferred a decision in response to Minister Scullion's request to be provided with the ILC's legal advice in relation to the former Directors. This request is extraordinary in itself, and **also requires advice from you on dealing with the potential conflict of interest involved.**

In relation to this issue, the ILC is preparing additional advice to you that evidences the persistent and public criticisms of the ILC Board and key staff by Minister Scullion which both predates his appointment as Minister, and continued after his appointment, albeit in a less direct fashion. The ILC Board strongly believes these actions are sufficient to warrant Minister

<sup>9</sup> CAC Act Sch 2 cl 4 and 6

<sup>10</sup> CAC Act Sch 2 cl 3

<sup>11</sup> CAC Act s 26

<sup>12</sup> Attorney-General George Brandis, quoted in *The Australian* 27 February 2015

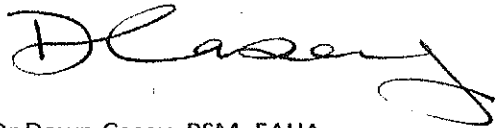
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Scullion's exclusion from involvement in any potential investigation and the decision to conduct such an investigation. Such an investigation should be independently overseen by Minister Cormann as the appropriate regulator. We will provide this further advice in due course.

The ILC Board asks that you carefully consider Minister Scullion's role in any future appointments decisions, including to the ILC Board, given the serious allegations which remain outstanding over members of the former Board and the former General Manager, and the apparent links between Minister Scullion and these individuals.<sup>13</sup>

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 Minister for Finance given his responsibilities for public sector corporate governance and the regulatory oversight of public sector corporations.

Yours sincerely

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

Dr Dawn Casey, PSM, FAHA  
Chairperson

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<sup>13</sup> We note that Minister Scullion appointed the former chair of the ILC, Ms Shirley McPherson, to the board of Indigenous Business Australia in November 2014, and as a member of the Expert Indigenous Working Group for the COAG Investigation into Indigenous Land Administration and Use.

**Ayers Rock Resort transaction: source documents and context**

The ILC Board notes that we have already provided substantial information to the Minister for Indigenous Affairs and the Minister for Finance which clearly indicates that a thorough and independent review of the Ayers Rock Resort (ARR) transaction is required.

We note, however, that copies of the source documents have not been provided. Accordingly, the key source documents that underpin the ILC Board's concerns, and those relating to the new information outlined in Attachments Two to Six, are listed below and are available for your review should you wish to be provided with copies of them.

These source documents comprise new information not previously made available to the Government.

1. 20 October 2008: Letter from Ross Grant (Grant Samuel) to ILC Directors, 'Acquisition of Voyages Hotels and Resorts' (Grant Samuel Letter of Engagement)
2. December 2008: Horwath HTL Due Diligence Report
3. 1 December 2008: Colliers International Valuation Report
4. 16 December 2008: Board Paper for Meeting No 123
5. 9 April 2009: Grant Samuel Project Red Rock—ILC Board Update
6. 15 April 2009: Strategic Land Acquisition Proposal—Update
7. 30 April 2009: Grant Samuel Financial Model for Ayers Rock Resort and ILC
8. 26 May 2009: CBRE Hotels Valuation of Ayers Rock Resort
9. 25 May 2010: ILC Estimates of Cash Flow
10. August 2010: Horwath HTL Due Diligence Report
11. 11 August 2010: Letter from D Baffsky (ILC) to M Cameron (GPT CEO)
12. 12 August 2010: Letter from M Cameron (GPT CEO) to D Baffsky (ILC)
13. 8 September 2010: Letter from D Baffsky (ILC) to M Cameron (GPT CEO)
14. 1 October 2010: Board Paper for Meeting No 136
15. 6 March 2012: Email from Director Neil Westbury to General Manager David Galvin titled 'Due Diligence Queries re Acquisition of ARR'

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16. 30 June 2013: Voyages Indigenous Tourism Australia Pty Ltd Directors' Report
17. 18 December 2013: McGrathNicol ARR Review—Final Report
18. 20 February 2014: McGrathNicol Valuation Report
19. ILC Board Meeting Minutes:
  1. 16–17 December 2008; Meeting No 123
  2. 19 January 2009; Meeting No 124
  3. 18 February 2009; Meeting No 125
  4. 15 April 2009; Meeting No 126
  5. 23 April 2009; Meeting No 127
  6. 26 August 2009; Meeting No 129
  7. 16 December 2009; Meeting No 131
  8. 18 February 2010; Meeting No 132
  9. 15 April 2010; Meeting No 133
  10. 16 June 2010; Meeting No 134
  11. 25 August 2010; Meeting No 135
  12. 1 October 2010; Meeting No 136.

### **McGrathNicol findings**

Given serious concerns about the merits of the ARR transaction as a whole, the current Board engaged McGrathNicol to conduct a broad review. The table below extracts a number of McGrathNicol's key findings, highlighting only some of the many issues that were found. The table provides the context and foundation upon which to assess the new information advanced in Attachments Two to Six.

The McGrathNicol report is the primary basis for the ILC's longstanding view that an investigation is required into what transpired, and who was responsible. We reiterate that the McGrathNicol review did not have any powers to compel evidence, and was therefore constrained in its capacity to determine what occurred.

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Given the serious issues relating to both process and outcomes raised by the McGrathNicol review, it is clear that a full investigation is both justified and necessary if full accountability for what transpired is to be determined, and appropriate lessons learned to inform any policy and legislative change that may be required. This conclusion is reinforced by the fact that the Department of Finance, which has regulatory responsibility for public sector corporations, has neither sought nor been provided with key source documents that underpin the McGrathNicol findings. Given the above, and the new information provided herein, the lack of investigation to date is incomprehensible.

### Key Findings: McGrathNicol Review

1.	The CBRE valuation (relied upon by the former ILC Board) was 17 months old and not updated to reflect changes to trading performance. McGrathNicol calculated that, had they done so, the value of the resort would have been in the order of \$250 million (p26).
2.	The price paid exceeded the key pre-sale valuation by CBRE by \$22 million (p24). The Grant Samuel financial modelling presented to the Board was not a full speaking valuation (p27).
3.	The fee negotiated with Grant Samuel, the due diligence consultants, 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 practice, or normal good practice for a Commonwealth entity (pp58–59).
4.	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).
5.	The capex projections used in the modelling presented to the Board were limited to 'essential capital only'; yet occupancy levels were projected to grow notwithstanding a long-term decline in visitation and deteriorating capital facilities. McGrathNicol found these occupancy projections appeared to be 'overly optimistic' (p32).
6.	The due diligence consultants were requested to reduce their capex projections from \$77 million over five years down to \$53 million to cover only 'essential requirements' (p34).
7.	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).
8.	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 \$292 million to \$250 million (p32).
9.	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, the NPV calculation would reduce to between \$237 million and \$274 million (p37).
10.	Key risks identified prior to the transaction that 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 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] affects earnings (p51).

**Unjustified upward revision in the ARR purchase price: a potential breach of sections 23–25 of the *Commonwealth Authorities and Companies Act 1997* and section 191F of the *Aboriginal and Torres Strait Islander Act 2005***

***Overview***

The extent of the total financial disadvantage to the ILC and ultimately the Commonwealth arising from the Ayers Rock Resort (ARR) transaction could be as high as \$150 million—this on its own makes the case for an investigation overwhelming. The Government's unwillingness to date to initiate such an investigation is, as the current ILC Board has stated before, both inexplicable and incomprehensible.<sup>14</sup>

In addition, it has come to the ILC Board's attention that there is a new and particular element of the purchase price negotiation which is of serious concern. The former ILC Board, without any sound reasoning documented in the minutes, agreed to an upward revision in the purchase price of \$30 million, despite strong concerns from certain Directors and due diligence advisers indicating that the purchase price may not have been commensurate with the resort's value.

As the former Board had already sought and failed to secure funds from the Land Account, and failed to raise adequate bank finance for the acquisition, it appears that the agreement to pay this extra \$30 million may have represented an inducement for GPT<sup>15</sup> to provide vendor financing designed to allow the transaction to proceed.<sup>16</sup> Notwithstanding the inability to attract commercial finance, if the increase is found to be without a commercial rationale, the ILC Board's agreement to this increase is at least a breach of the legislative requirement that the Board operate in accordance with sound business principles.<sup>17</sup> In the wider context—particularly considering the information in Attachments Three and Five—it raises the suspicion of a deliberate ploy to induce an unnecessary and unjustified extra payment of \$30 million by the ILC. This can be investigated only through a proper and independent inquiry.

***Actions of the former Board***

In Board discussions on 16 and 17 December 2008<sup>18</sup>, it was noted that GPT was offering the portfolio of properties then for sale (which included ARR) at a price of \$282 million. ILC Director Kevin Driscoll stated that he considered this price to be excessive given the assets' location and

<sup>14</sup> ILC media release, 3 March 2015, <http://www.ilc.gov.au/Home/Media/Media-Releases/Cormann-reversal-inexplicable-and-incomprehensible>

<sup>15</sup> GPT were the owners of ARR, and the vendors in the transaction.

<sup>16</sup> Letter from M Cameron (GPT CEO and MD) to D Baffsky (ILC Director), 12 August 2010

<sup>17</sup> *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 191F ('ATSI Act')

<sup>18</sup> Minutes, ILC Board Meeting No 123, 16–17 December 2008

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returns. Director Driscoll also raised concerns that the \$80 million identified as required for building and infrastructure upgrades may have been underestimated. The Board agreed not to submit an offer for the entire portfolio of properties. Instead GPT would be advised that it could approach the ILC with its bottom line offer for the ARR and El Questro Resorts only, if GPT could not sell to another party.

At Board meeting No 124 on 19 January 2009, ILC General Manager David Galvin advised the Board that GPT had come back with a bottom line offer of \$270 million for ARR only. The Chair stated that if the ILC was not able to access funding from the Land Account the acquisition would not proceed.<sup>19</sup>

At Board meeting No 125 on 18 February 2009, Mr Galvin advised that due diligence had confirmed a reduction in the ARR's required capex refurbishment costs to \$59 million over five years<sup>20</sup> and advised that a paper canvassing an investment by the Land Account into the ILC to facilitate the purchase of the ARR had been provided to the then Prime Minister's Office.<sup>21</sup>

At Board Meeting No 127 on 23 April 2009, the Board was advised that Minister Macklin would not support the use of the Land Account to fund the purchase. A Board paper stated that a key risk was that the ILC would need to borrow \$320 million in total to fund the purchase and necessary refurbishments.<sup>22</sup> The Board was advised that discussions with the National Australia Bank (NAB) had indicated the latter was prepared to lend up to \$200 million on the condition that legislative amendments were enacted to guarantee the ILC's annual earnings of at least \$45 million.<sup>23</sup> The Chair stated that it was unlikely such a provision would be enacted until 2010. Director Driscoll expressed concern that Grant Samuel's cash flow forecasts for ARR are a complete reversal of the past ten years. Director Baffsky noted that Indigenous employment outcomes rather than financial return should be the prime consideration.<sup>24</sup> Director Baffsky suggested that the chairman of the Investment Committee, Mr Ian Ferrier, be asked to work with the General Manager on putting a recommendation to the Board on the best way to

<sup>19</sup> Minutes, ILC Board Meeting No 124, 19 January 2009

<sup>20</sup> Note that this followed a request to forecast 'essential' capex only, where far greater expenditure would clearly be required to support Grant Samuel's optimistic revenue forecasts. In fact, McGrathNicol noted at p34 of their report that Planned Property Management (PPM, the capex due diligence advisers) indicated via email that the requested downward revisions were reaching such a level that [David Wylie of PPM] 'could not put his name to it'. In the four years since acquisition, \$59 million capex has already been required. Voyages estimate that by Year Five, total capex expenditure will be \$74 million, some \$15 million above the Grant Samuel estimates.

<sup>21</sup> Minutes, ILC Board Meeting No 125, 18 February 2009; note that the ILC has not been able to locate a copy of the paper referred to.

<sup>22</sup> Strategic Land Acquisition Proposal—Update, ILC Board Meeting No 127, 23 April 2009

<sup>23</sup> We note that by August 2010, NAB had formed the view that the 'ILC has *imprudently sought to overextend itself* by pursuing this transaction' (Letter from R Jenkins [Grant Samuel] to D Galvin [ILC GM], 5 August 2010).

<sup>24</sup> Director Baffsky similarly expressed such a view at ILC Board Meeting No 23, 16–17 December 2008. This, in itself, raises questions about whether the then Board was acting in compliance with section 191F of the ATSI Act, which requires it to act in accordance with 'sound business principles', as it indicates that commercial viability was not being given the necessary primacy in the Board's decision processes.

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proceed to secure the necessary funding. The Board agreed to offer GPT either a payment of \$200 million now or a deferred payment of \$220 million payable over 18 months. The Board agreed to attempt to acquire ARR on terms and conditions acceptable to the ILC.<sup>25</sup>

At Board meeting No 129 on 26 August 2009, the minutes indicated Director Driscoll again expressed his concern at the ILC's borrowing such a large amount of money. He said he did not support the proposed purchase, as the trend in visitors and revenue had continued to drop over the past few years and he believed the cost of repairs and restoration would be greater than anticipated. The Chair deferred further discussion of the transaction until all Directors were available.<sup>26</sup> For various reasons, discussion continued to be deferred until June 2010.<sup>27</sup>

At Board meeting No 134 on 16 June 2010 (notwithstanding all Directors were not present), the Board agreed to progress negotiations with GPT to purchase ARR subject to finance being secured, legislative change to the ILC's funding being passed, further due diligence being undertaken and acceptable legal documentation.<sup>28</sup> A Board paper<sup>29</sup> prepared by Grant Samuel and circulated to Directors for this meeting, indicated that GPT had advised<sup>30</sup> that, due to the recovery of the economy, GPT's recapitalisation and the introduction of a second airline to Yulara, GPT was no longer willing to sell the resort at a price of \$270 million.<sup>31</sup>

The Board paper outlines an alternative vendor-financed proposal based around a purchase price of \$300 million split into two phased parts, with the full acquisition to take effect after five years. The ILC would manage the resort, and would retain 100 per cent of profits, but would provide GPT with a fixed return of 6.5 per cent on their equity over the five years, with a minimum uplift payment of \$17 million at year 5.<sup>32</sup> With *no recorded discussion of the purchase price* in the minutes of this or subsequent meetings, the Board nevertheless decides to acquire the resort at this price in October 2010.<sup>33</sup>

What is clear from this outcome is that members of the former Board who led the transaction and who voted in its favour did not give appropriate consideration to the justification and implications of the sudden increase of \$30 million in the asking price. GPT's Summary Report for

<sup>25</sup> Minutes, ILC Board Meeting No 127, 23 April 2009

<sup>26</sup> Minutes, ILC Board Meeting No 129, 26 August 2009

<sup>27</sup> Minutes, ILC Board Meeting No 130, 28 October 2009; Minutes, ILC Board Meeting No 131, 16 December 2009; Minutes, ILC Board Meeting No 132, 18 February 2010; Minutes, ILC Board Meeting No 133, 15 April 2010

<sup>28</sup> Minutes, ILC Board Meeting No 134, 16 June 2010

<sup>29</sup> Grant Samuel, Project Red Rock—ILC Board Update, June 2010

<sup>30</sup> Note that the ILC has no record of the GPT advice referred to in the Board paper.

<sup>31</sup> We note that this advice is not reflected in the tenor of the correspondence between Mr Cameron (GPT CEO) and Mr Baffsky.

<sup>32</sup> Grant Samuel, Project Red Rock—ILC Board Update, June 2010

<sup>33</sup> Minutes, ILC Board Meeting No 136, 1 October 2010; Minutes, ILC Board Meeting No 134, 16 June 2010; Minutes, ILC Board Meeting No 135, 25 August 2010. Note that the structure of this arrangement as a phased purchase of equity from GPT changed to a pure vendor finance arrangement between June and August 2010.

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2009 confirmed that GPT remained keen to dispose of their remaining non-core assets including ARR, while noting that the GPT's strengthened balance sheet enabled them to retain the non-core assets to be sold when market conditions improved.<sup>34</sup> The relevance of a general economic recovery to ARR's circumstances appears arguable. Virgin Blue had agreed to begin flying to Yulara, but it was not clear that this would bring immediate and substantial benefits in terms of increased occupancy and revenue. Moreover, there is no indication that there was an alternative buyer on the horizon<sup>35</sup>, and the asset had been on the market for more than three years.

In retrospect, it is clear that the three factors purportedly relied upon by GPT to justify an increased price (the recovery of the economy, GPT's recapitalisation and the introduction of a second airline to Yulara) failed entirely to lead to an improved performance for the resort. This places a substantial question mark over the legitimacy of the rationale presented to the Board for the upward revision in the price. Figure One in Attachment Three indicates that not only had EBITDA for the resort been falling for each of the previous three years, it fell in each of the following three years, clearly not justifying an 11 percent increase in the purchase price.

A number of facts are irrefutable. One, the ILC was not in a position to raise commercial finance to purchase the asset, even at a price of \$270 million (and just 14 months previously had offered GPT \$220 million). Two, the \$30 million increase in the purchase price came simultaneously with GPT's agreement to provide vendor finance to enable the transaction to proceed. Without vendor finance, the ILC would not have been in a position to proceed. With vendor finance, the transaction was feasible, at least for the period until it was required to be refinanced.

Notably, the ILC received clear advice from Horwath HTL in August 2010 that the decline in EBITDA in the first half of 2010 indicated a decline in the resort's value. While McGrathNicol was critical that the Board did not seek an updated valuation on this basis and continued to rely on a valuation that was 17 months old<sup>36</sup>, correspondence between Director Baffsky and GPT indicates that Mr Baffsky did at least attempt to negotiate a reduction in price on this basis.<sup>37</sup> GPT's response (which refused to consider lowering the price) clearly states that 'the whole purpose of structuring the deal with, effectively, a large degree of very attractively priced

<sup>34</sup> GPT, Summary Report 2009, <<http://www.gpt.com.au/getattachment/938fc32a-d2b3-4f47-812e-0c603a0cf16d/2009-Annual-Review.aspx>>

<sup>35</sup> McGrathNicol, ARR Review—Final Report, 18 December 2013, p8

<sup>36</sup> McGrathNicol, ARR Review—Final Report, 18 December 2013, pp63–64. McGrathNicol criticised the Board for continuing to rely on the CBRE valuation and stated that the advice from Horwath made the need for an updated valuation clear as the resort's value would have decreased in light of its declining revenue. Mr Baffsky himself noted in his letter to GPT CEO Michael Cameron dated 11 August 2010, that he 'imagine[d] that if CBRE was to update its valuation [following receipt of Horwath's advice], its conclusions would be different'. Regardless, no updated valuation was sought, and the Board proceeded regardless.

<sup>37</sup> Letter from D Baffsky (ILC Director) to M Cameron (GPT CEO and MD), 11 August 2010

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vendor financing was, as we understand it, to enable the ILC to acquire the asset...'.<sup>38</sup> In Director Baffsky's reply to Mr Cameron, dated 8 September 2010, he acquiesces to the increased price, accepting that 'the structure that we might enter into has moved as a result of some of the constraints that we operate under...'.<sup>39</sup>

The facts suggest that GPT was effectively provided with a substantial inducement, totalling \$30 million, to provide vendor finance to the ILC, and thus facilitate the transaction. Without commercial financing or the ability to draw from the Land Account, this option could never be more than a stop-gap arrangement. It has left the ILC holding a severely impaired asset, and having to allocate substantial internal funds to sustaining the enterprise. The final payment of \$138 million to GPT falls due in 2016 (and a \$60 million loan from ANZ in 2017). The ILC will likely be forced to refinance this amount at above bank interest rates as the amount of finance required is beyond normal bank loan valuation ratios.

The transactions ultimately approved by the ILC Board could not be justified commercially without vendor finance, and consequently lacked inherent commercial merit. The vendor finance merely operated to defer the day of reckoning (at best gambling on a financial recovery for ARR without appropriate due diligence). It was fundamentally to the commercial detriment of the ILC, saddling it with a substantial debt that will severely diminish its capacity to perform its other functions, potentially for years to come. The arrangement was not based on any specific cost-benefit analysis, and exacerbated the due diligence shortcomings identified in the McGrathNicol report.

This element of the transaction is at best a breach of the legislative requirement that the ILC Board act in accordance with sound business principles<sup>40</sup>, as well as a *prima facie* failure to exercise the required due care and diligence by the then Directors, given that no discussion of the increased price is recorded in the minutes.<sup>41</sup> If proven to be a deliberate ploy by those Directors driving the transaction to induce an unnecessary and unjustified extra payment of \$30 million by the ILC, the legal consequences would be even more serious.

Despite then Minister Macklin's request to be kept informed, none of these issues were communicated to her until General Manager David Galvin wrote to her on 10 August 2010 (see Attachment Six, below). It is apparent that the then Directors (or at least those driving the transaction) were not prepared to expose the details of their decision making processes to broader scrutiny by the Minister and her Department.

<sup>38</sup> Letter from M Cameron (GPT CEO and MD) to D Baffsky (ILC Director), 12 August 2010

<sup>39</sup> Letter from D Baffsky (ILC Director) to M Cameron (GPT CEO and MD), 8 September 2010; it is notable that this letter refers to a previous letter from Mr Cameron dated 1 September 2010. The ILC has no record of this document.

<sup>40</sup> ATSI Act s 191F

<sup>41</sup> *Commonwealth Authorities and Companies Act 1997* (Cth) s 22

### ***Wana Ungkuntja***

Simultaneously with the sudden increase in purchase price, the Board also inexplicably granted Wana Ungkuntja (WU)<sup>42</sup> a 7 per cent interest in the ARR, and two directorships on the Voyages Board (though only one vote). This interest crystallises upon the repayment of the debt, or at the expiry of ten years, whichever happens sooner. While WU had a right of first refusal in relation to the sale of ARR, the former ILC Board noted at Meeting No 135 on 25 August 2010 that this option held no monetary value and the Board had previously determined that WU was not an appropriate body to which to divest the property.<sup>43</sup> Regardless, the Board resolved to offer WU a 3 per cent interest and one directorship in August 2010.<sup>44</sup> With no recorded explanation to, or discussion by, the Board and in spite of the above considerations, this interest had increased to 7 per cent and two directorships by October 2010.<sup>45</sup> On current valuations and debt levels, this increase is probably worth around \$1 million. It may increase considerably once the WU interest crystallises, depending on how the Voyages debt has been dealt with.

### ***Summary***

On the evidence currently available, Director Baffsky negotiated on behalf of the ILC an increase in the ARR purchase price of \$30 million. This price increase was ultimately approved by the Board. Given the financing challenges facing the transaction, it seems likely that this increase was designed to secure vendor financing from GPT.<sup>46</sup> Without commercial financing or the ability to draw from the Land Account, this option could never be more than a stop-gap arrangement and has left the ILC in difficult financial circumstances. The final payment of \$138 million to GPT falls due in 2016 and will likely force the ILC to refinance this amount at significant cost from a commercial lender. As previously noted, this will have significant consequences for the ILC's performance of its statutory functions, potentially for years to come,

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<sup>42</sup> WU is the business arm of Nyabgatjatjara Aboriginal Corporation (NAC), a regional Aboriginal social development organisation. NAC's membership comprises the three Aboriginal communities closest to Uluru. WU was granted a first right of refusal over ARR assets in 1997.

<sup>43</sup> Minutes, ILC Board Meeting No 122, 22 October 2008

<sup>44</sup> Minutes, ILC Board Meeting No 135, 25 August 2010

<sup>45</sup> Minutes, ILC Board Meeting No 136, 1 October 2010; it is notable that the ILC entered an agreement with WU in 2008 under which WU was entitled to an eventual 20 per cent equity in ARR. The ILC's view was that this agreement lapsed following the Board's decision not to proceed in December 2008, and it had since been determined that WU's first right of refusal was worthless. Letters between the ILC and WU CEOs, dated 26 August 2010 and 1 September 2010, indicate that some negotiation was entered into with these considerations in mind, though the ILC cannot find a record of the negotiations in which the final agreement was reached, nor the reasons for the ILC's concessions. There is no record of this negotiation ever having been discussed or agreed to by the ILC Board.

<sup>46</sup> Letter, M Cameron (GPT CEO and MD) to D Baffsky (ILC Director), 12 August 2010

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and will diminish the ILC's capacity to provide benefits to Indigenous interests across the country.<sup>47</sup>

This decision was made in spite of warnings from some Directors<sup>48</sup> and due diligence advisers that the purchase price may already have been too high. Given the highly detrimental and uncommercial nature of the arrangement for the ILC, this element of the transaction (if proven to be true) is at best a breach of the legislative requirement that the ILC Board operate in accordance with sound business principles and the Directors' duties under the CAC Act<sup>49</sup>, and at worst a deliberate and potentially illegal ploy to induce an unnecessary and unjustified extra payment of \$30 million by the Commonwealth. For this reason, a thorough independent investigation is necessary to determine the true motivations behind this decision.

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<sup>47</sup> Notably Directors Trust and Gorringer expressed concern that other ILC projects would suffer (Minutes, ILC Board Meeting No 123, 16–17 December 2008; and Minutes, ILC Board Meeting 127, 23 April 2009)

<sup>48</sup> For example, Director Driscoll continuously raised concerns, including that the initial \$282 million purchase price was too high and that capex projections were underestimated (Minutes, ILC Board Meeting 123, 16–17 December 2008); that he did not believe that the resort would be a commercial success (Minutes, ILC Board Meeting 124, 19 January 2009); that he questioned the validity of the cashflow projections as they were a complete reversal of the figures over the past 10 years (Minutes, ILC Board Meeting 127, 23 April 2009); that the ILC should not borrow such a large amount of money given the downward visitation trend, and that the cost of repairs would be greater than anticipated (Minutes, ILC Board Meeting 129, 26 August 2009). Directors Trust and Gorringer expressed concern that other ILC projects would suffer (Minutes, ILC Board Meeting 123, 16–17 December 2008; and Minutes, ILC Board Meeting 127, 23 April 2009). The Indigenous Directors expressed a belief that attracting Indigenous people Australia-wide to training and employment at ARR might be more difficult than predicted (Minutes, ILC Board Meeting 123, 16–17 December 2008); and Director Trust again raised this concern at Meeting 127 on 23 April 2009

<sup>49</sup> ATSI Act s 191F; CAC Act s 22

ATTACHMENT THREE

**Unjustified restrictions in Grant Samuel terms of engagement: a potential breach of sections 22–25 of the *Commonwealth Authorities and Companies Act 1997* and section 191F of the *Aboriginal and Torres Strait Islander Act 2005***

***Overview***

The terms under which Grant Samuel was engaged to lead the due diligence for the Ayers Rock Resort (ARR) transaction were fundamentally disadvantageous to the ILC, arguably creating an incentive for Grant Samuel to act otherwise than in the ILC's best interests.<sup>50</sup>

Under the agreement, the ILC paid Grant Samuel a retainer fee of \$70,000 per month, increasing to 1 per cent of the sale price should the transaction go ahead.<sup>51</sup> As noted by McGrathNicol, this creates no incentive for Grant Samuel to seek the lowest possible transaction price, nor to advise the ILC against proceeding with the transaction.<sup>52</sup>

In addition, the agreement contains restrictive terms in relation to potential legal proceedings that are profoundly disadvantageous to the ILC, and effectively shield Grant Samuel from the consequences of any deficient or improper performance. This is new information not identified by McGrathNicol. The negotiation and approval of these terms of engagement by Director Baffsky and General Manager Galvin, and their engagement by the Board, comprise potential breaches of both the CAC Act and the ATSI Act.

While the ILC is not bound by the Commonwealth Procurement Guidelines, the ILC's Procurement Policy strongly reflects these. The ILC Procurement Policy, though established and standard practice, was not followed in this instance.

***Restrictive terms of Grant Samuel's engagement***

Grant Samuel was the lead due diligence adviser to the ILC in relation to the acquisition of ARR and associated assets. These services were provided pursuant to a proposal dated 20 October 2008, approved (in principle) by the ILC Board on 22 October 2008 and signed by the ILC General Manager, David Galvin, on 28 October 2008.

The highly restrictive terms of the engagement, described below, have the effect of preventing the ILC from pursuing Grant Samuel to recover any losses in excess of Grant Samuel's fees.<sup>53</sup> The effect of such restrictions is particularly significant in light of the financial disadvantage actually

<sup>50</sup> McGrathNicol, ARR Review—Final Report, 18 December 2013, p9

<sup>51</sup> Letter from Ross Grant (Grant Samuel) to ILC Directors, 'Acquisition of Voyages Hotels and Resorts', 20 October 2008, cl 3 ('GS Letter of Engagement')

<sup>52</sup> McGrathNicol, ARR Review—Final Report, 18 December 2013, p9

<sup>53</sup> GS Letter of Engagement cl 4

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suffered by the ILC (estimated at up to \$150 million) as a result of the inflated purchase price paid and the level of debt incurred.

The terms of Grant Samuel's engagement are such that they allow the ILC only extremely limited recourse for any flaws in the services provided. These terms appear deliberately designed to deter the ILC from seeking recompense for poor contractual performance, and at the same time force the ILC to take steps to prevent others from pursuing or acting in any way that would impact Grant Samuel, for example by initiating proceedings or an inquiry into the transaction. This was achieved through the imposition of a number of draconian and highly unusual contractual provisions, namely that:

1. The ILC must pay Grant Samuel \$750 per hour plus any out of pocket expenses on a full indemnity basis for any work that Grant Samuel does in answering any legal claim or any other form of inquiry in any way associated with the services provided under the proposal, including, but not limited to, a legal claim by the ILC. The ILC can recoup this money only if a court finally determines that Grant Samuel committed gross negligence or wilful misconduct.<sup>54</sup>
2. Unless a court holds, with all rights of appeal exhausted, that the costs were caused by Grant Samuel's gross negligence or wilful misconduct, the ILC :
  - i. Indemnifies Grant Samuel for any costs, including an award of damages and/or legal costs, in any way associated with Grant Samuel's services under the proposal;<sup>55</sup> and
  - ii. Limits the quantum of potential damages payable by Grant Samuel to the quantum of fees paid under the proposal (and not the quantum of the damages suffered by the ILC).<sup>56</sup> Note that the fees paid to Grant Samuel by the ILC were in the order of \$6 million, while the financial disadvantage suffered by the ILC is estimated to be up to \$150 million.

In the event of a dispute, the ILC has to overcome a very high legal threshold to recover any damages or costs incurred in indemnifying Grant Samuel. Ordinary negligence involves a breach of a legally imposed duty of care, but to prove gross negligence or wilful misconduct the ILC would likely have to prove that Grant Samuel failed to exercise any care, showed reckless disregard for an obvious risk, or acted in a way that it knew was wrong but it intentionally persisted in that act or persisted with disregard to its likely consequences.<sup>57</sup>

<sup>54</sup> GS Letter of Engagement cl 4(i)

<sup>55</sup> GS Letter of Engagement cl 4(ii)

<sup>56</sup> GS Letter of Engagement cl 4(iii)

<sup>57</sup> *Red Sea Tankers Ltd and Others v Papchristidis* [1997] 2 Lloyd's Rep 547 at 584–5; *James Thane Pty Ltd v Conrad International Hotels Corp*; *Conrad International Hotels Corp v Workers' Compensation Board*; *Conrad International Hotels Corp v Jupiters Ltd* [1999] QCA 516; *Stancomb v Trowbridge Urban District Council* [1910] 2 Ch 190; *Boral Resources (Qld) Pty Ltd v Pyke* [1992] 2 Qd R 25

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In practical corporate terms this makes a commercially sensible claim against Grant Samuel for any deficiencies—which the ILC Board believes are numerous—in their advice or services almost impossible, even if the ILC were able to prove that Grant Samuel breached the terms of the proposal or was negligent in the provision of its services.

### ***Role of the then ILC Board and General Manager***

It is clear from the documentary record available to the ILC that:

1. the then Board did not properly consider or even make any attempts to properly or reasonably inform itself of the content of Grant Samuel's proposal;<sup>58</sup> and
2. the terms of engagement were not subjected to the usual and established ILC Procurement Policy and internal quality assurance processes normally applied by the ILC to commercial proposals.<sup>59</sup>

As a consequence, the ILC Board accepted a proposal that does not comply with the statutory requirement to operate on 'sound business principles'<sup>60</sup>, and that was likely not in the 'best interests' of the ILC.<sup>61</sup>

The ILC Board's agreement to Grant Samuel's proposal represented a significant departure from the ILC's established contract review and approval procedure<sup>62</sup>, and resulted in the ILC's agreeing to very onerous terms without any recorded legal or financial due diligence. The review process is standard practice whenever the ILC signs contracts, even where the contract has been approved in principle by the ILC's Board.<sup>63</sup>

In the ILC's records the first mention of this proposal is in the minutes to the ILC's Board meeting on 22 October 2008. In that meeting, Director Baffsky spoke to the Board about the proposed fee structure only, and appears not to have made any mention of the other restrictive terms. The minutes include statements from Director Baffsky that Grant Samuel had proposed a fee of \$70,000 per month with a completion fee of 1.5 per cent of the total consideration payable, and that he had negotiated a reduction in the completion fee to 1 per cent of

<sup>58</sup> Minutes, ILC Board Meeting No 122, 22 October 2008

<sup>59</sup> See McGrathNicol, ARR Review—Final Report, 18 December 2013, pp57–59; Minutes, ILC Board Meeting No 122, 22 October 2008

<sup>60</sup> ATSI Act s 191F(1)

<sup>61</sup> CAC Act s 23

<sup>62</sup> See McGrathNicol, ARR Review - Final Report, 18 December 2013, pp 57-59

<sup>63</sup> As documented in the *ILC Contracts Practice Note*, the process involves an ILC staff member with appropriate delegate authority requesting the contract before a senior administrative officer sets up all necessary budgets and job identifications. The contract is then reviewed by an ILC lawyer who provides advice on the terms including any indemnities and/or limitation of liability clauses. Once the legal aspects are settled the contract is reviewed by an accountant for tax and financial issues. Only after this process is complete will an ILC lawyer recommend the contract for execution.

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consideration payable.<sup>64</sup> There are no documentary records available to the ILC to establish the truth or otherwise of Director Baffsky's assertions. The ILC has no other records of any negotiation between the ILC and Grant Samuel regarding the content of the proposal, and the ILC has no records that it considered any alternative service providers.<sup>65</sup>

It seems that, based on Director Baffsky's explanation alone, the ILC Board resolved to authorise General Manager Galvin to sign the proposal. There is no record of the proposal or even a summary briefing being tabled at the ILC Board meeting, as would be normal practice—even more so given the significant expenditure to be incurred.<sup>66</sup>

By resolving to accept Grant Samuel's proposal without properly considering its content or an alternative service provider, ILC Board members may have breached their individual directors' duties to exercise their powers and discharge their duties with the care and diligence expected of a reasonable person in their position.<sup>67</sup> The Directors may not be able to rely on the business judgment rule<sup>68</sup> in this matter because they appear to have failed to inform themselves about the subject matter of their decision to an appropriate extent.<sup>69</sup>

In the event that Director Baffsky and General Manager Galvin were aware of the specific terms of the proposed engagement between Grant Samuel and the ILC (as it seems they were), and failed to inform the Board of the onerous and disadvantageous terms proposed (as it seems they did), then they clearly would bear a much greater share of responsibility for the ultimate outcome. Moreover, if that omission was intentional, then it raises serious concerns about their conduct, and perhaps more importantly, their motivations.

Following the ILC Board's resolution on 22 October 2008, Mr Galvin requested a signed copy of the proposal from Ms Jacoline Bekker of Grant Samuel on 27 October 2008. Ms Bekker provided a signed proposal to Mr Galvin on 28 October 2008. It was addressed to the Directors of the ILC, marked 'Attention Mr David Baffsky AO', and dated 20 October 2008. Within three hours of the receipt of the proposal from Grant Samuel via email on 28 October 2008, Mr Galvin signed and thus executed the contract.

The ILC has no record of its receipt in the ILC Adelaide Office in the days after 20 October 2008, and has no record of any prior correspondence between ILC Directors or staff and Grant Samuel regarding the content of the proposal. Further, our records do not indicate that the contract

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<sup>64</sup> Minutes, ILC Board Meeting No 122, 22 October 2008, p 3

<sup>65</sup> McGrathNicol, ARR Review—Final Report, 18 December 2013, p 58

<sup>66</sup> Minutes, ILC Board Meeting No 122, 22 October 2008

<sup>67</sup> CAC Act s 22

<sup>68</sup> CAC Act s 22(2)

<sup>69</sup> If this were found to be the case, these Directors could potentially be ordered to pay damages to the ILC (CAC Act Sch 2 cl 4)

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was ever made available to the Board before its execution. The absence of the usual legal and financial review was specifically raised with Mr Galvin by email dated 25 November 2008 by an officer responsible for arranging payment of Grant Samuel's invoices. Mr Galvin approved the payment.<sup>70</sup>

### ***Adequacy of Grant Samuel's performance***

While not the central point of this analysis, it needs to be stated that there are *prima facie* indications that the Grant Samuel due diligence, and particularly its revenue forecasts, were deficient, making a potential action for breach of contract or negligence more than hypothetical. McGrathNicol concluded that the Board's decision to proceed with the transaction based on 'overly optimistic' financial forecasts and valuations which were 17 months out of date was 'unsatisfactory' in addressing the known risk<sup>71</sup> that the ARR purchase price was not commensurate with the asset's value.<sup>72</sup> Despite this and other concerns, Grant Samuel recommended that the Board purchase ARR in their presentation to the ILC Board on 1 October 2010.

Set out below is a table comparing the Grant Samuel forecasts against both past performance of the ARR and actual EBITDA since acquisition. The table demonstrates that Grant Samuel forecast a sustained upturn in EBITDA, whereas the resort had undergone a period of prolonged and steady downturn in EBITDA.<sup>73</sup> No persuasive reason was offered by Grant Samuel for the dramatic change in performance which they forecast, and McGrathNicol concluded that the forecast was 'ambitious' and 'overly optimistic'.<sup>74</sup> The table also shows that since acquisition, on an accumulated basis, EBITDA has been \$87 million less than Grant Samuel forecast. Both data sets suggest *prima facie* that Grant Samuel's due diligence was seriously deficient. Other high-level advice was provided to the ILC Board, particularly by both Horwath HTL and senior ILC staff<sup>75</sup>, that warned the Board of the risks were they to proceed.<sup>76</sup> That advice appears to have been largely ignored by both Grant Samuel and the Board.<sup>77</sup>

<sup>70</sup> Email from Hanne Damgaard (ILC) to D Galvin (ILC GM), 25 November 2008

<sup>71</sup> Horwath HTL Due Diligence Report, 10 August 2010, 'Key Issue 1'

<sup>72</sup> McGrathNicol Report, 18 December 2013, p50; and see also pp7, 22, 26, 29, 32, 36, 52, 64

<sup>73</sup> We note that Director Driscoll had raised exactly these concerns on a number of occasions during the Board's early consideration of the transaction; see Minutes of ILC Board Meeting Nos 123, 124 and 127

<sup>74</sup> McGrathNicol Report, 18 December 2013, pp7, 30, 32

<sup>75</sup> The Board paper for Meeting 126, 15 April 2009, by D Galvin and J Lindsay identified the following:

#### 'Key Risks

- The need for the ILC to borrow up to \$320 million
- The restrictions on borrowings by the ILC
- The need to expend an estimated \$71.3 million on capital expenditure for infrastructure/repairs of the resort asset
- The ongoing impact on inbound visitors to Australia and tourism as a result of the global financial crisis
- The size and complexity of the management of the asset and operations of ARR'

In section 5 of the paper it reproduced a table of risks that were provided as far back as the December 2008 meeting.

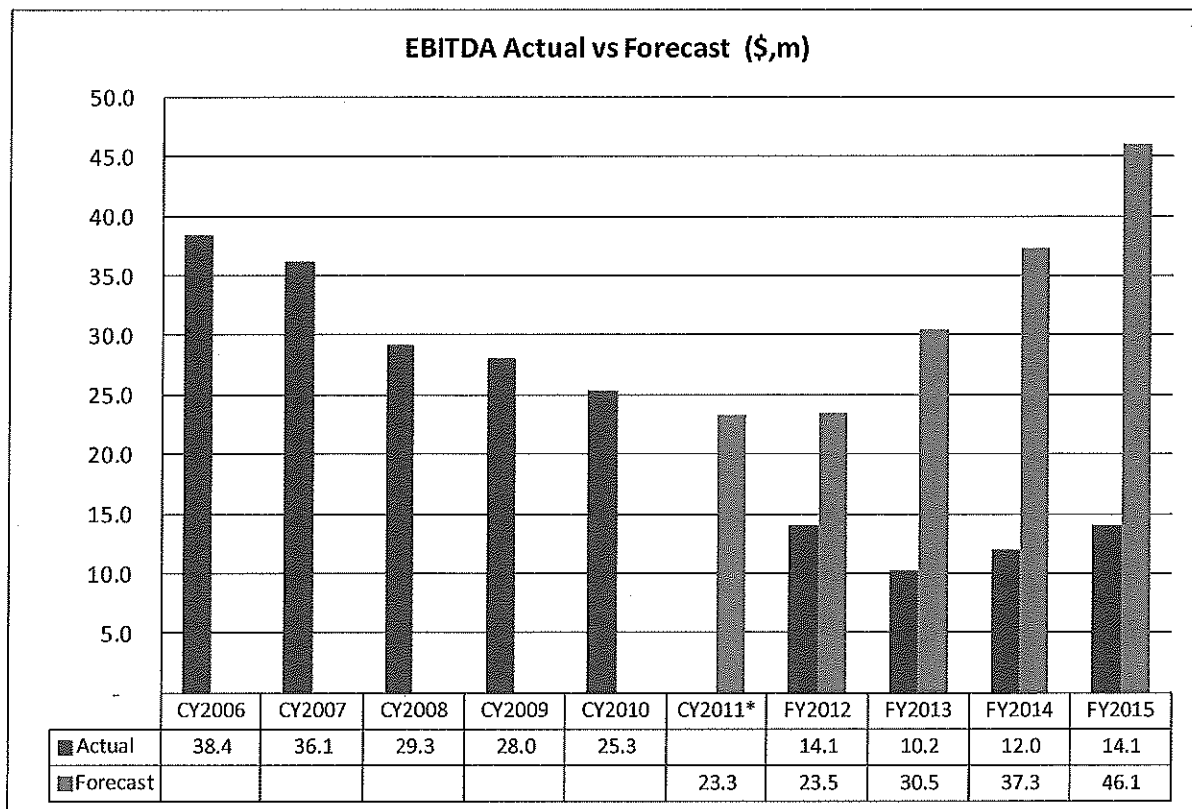


Fig 1. Comparison of Grant Samuel's forecasts against past performance and actual EBITDA since acquisition

### Summary

The above-mentioned factors, including:

- Director Baffsky's unrecorded negotiations with Grant Samuel;
- Director Baffsky's and Mr Galvin's apparent failure to inform the Board of the engagement's restrictive terms;
- the failure to follow the ILC's standard competitive procurement and contract review procedures; and
- the Board's approval of a significant contract (worth millions of dollars) apparently sight unseen and on Director Baffsky's word alone;

when viewed in the context of an agreement that puts Grant Samuel's interests at odds with the ILC's and prevents the ILC from seeking redress for deficient performance, raise the worrying

<sup>76</sup> Horwath HTL Ayers Rock Resort Due Diligence Report, August 2010

<sup>77</sup> Note that Director Baffsky noted the Horwath concerns in his 11 August 2010 letter to M Cameron of GPT, and noted that, were the CBRE valuation to be updated in light of this, 'its conclusions would be different'. Despite Director Baffsky's advertence to this issue, no updated valuation was sought by the ILC Board or Grant Samuel, and the transaction proceeded at a price of \$300 million. The McGrathNicol report concluded that, had an updated review been sought, the resort's value would have been in the order of \$250 million (McGrathNicol Report, 18 December 2013, p26).

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possibility that there was in place either a tacit or an explicit arrangement or understanding for Grant Samuel to inflate its forecasts to ensure that the transaction would go ahead.

Such a hypothesis would explain why Director Baffsky—a person with high level commercial skills and acumen—would propose, and why the ILC Board, without questioning, approved an agreement that incentivised Grant Samuel to encourage the transaction to proceed, regardless of risk and at the highest possible price, while shielding Grant Samuel from incurring any liability as a result of its actions.

The possible motivations for such behaviour remain unclear. However, if it occurred (and the facts outlined above are consistent with such an interpretation), then it would have amounted to at least a failure by the former Directors to exercise reasonable care and diligence under sections 22 to 25 of the CAC Act, as they failed to inform themselves of the content of the agreement despite knowing that the fees payable under the contract would be substantial. It also represents a clear failure to act in accordance with 'sound business principles'<sup>78</sup>, and in the best interests of the ILC.<sup>79</sup>

More significantly, such behaviour would represent a serious breach of Director Baffsky's director's duties and Mr Galvin's duties as ILC General Manager, as Director Baffsky and Mr Galvin were directly involved in negotiating and executing the arrangement, and appear not to have informed the other Directors of its content.

The issues raised here are new information and, given the significance of the concerns raised and the seriousness of the potential consequences, justify on their own the need for a thorough and independent investigation into the whole transaction.

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<sup>78</sup> ATSI Act s 191F

<sup>79</sup> CAC Act s 23(1)

**Funding the acquisition of ARR: a plan to access the Land Account in breach of sections 23, 24 and 25 of the *Commonwealth Authorities and Companies Act 1997***

***Overview***

When the current ILC Board began a careful review of the Ayers Rock Resort (ARR) acquisition it discovered a number of deficiencies in the associated due diligence and in the way the transaction was conducted. When these issues were raised by the Board, Directors Baffsky and Jeffries were extremely antagonistic to any oversight of the transaction, and to any internal changes within the ILC that would facilitate greater transparency over what occurred. Simultaneously, Senator Scullion adopted a highly adversarial approach to the ILC involving targeted personal criticism of Board members and staff in the Parliament.

If the ILC Board, in full knowledge of the high financial risks that the acquisition presented, decided to acquire the ARR with the belief and intention that the Land Account could be used to fund any resultant financial problems and approached the then Opposition Shadow Minister for Indigenous Affairs, Senator Scullion, seeking a commitment to facilitate such a draw down in the event of a change of government in 2010, then it could be concluded that the previous ILC Board did not act in the best interests of the ILC or for a proper purpose. This would potentially amount to a breach of sections 23, 24 and 25 of the CAC Act.

Only an independent review of the matter can conclusively determine whether such an approach to Senator Scullion occurred, and, if so, whether there has been a breach of the CAC Act.

***Risks associated with the ARR acquisition and a plan to use the Land Account to fund the acquisition***

The previous ILC Board's acquisition of the ARR has created long-term financial difficulties for the ILC. The final payment of \$138 million to GPT falls due in 2016 and will force the ILC to refinance this amount, plus a \$60 million loan from ANZ which falls due in 2017, at significant cost from a commercial lender. This will have consequences for the ILC's performance of its statutory functions for years to come and will significantly diminish the ILC's capacity to deliver Indigenous benefits across the country. In the absence of a sustained improvement in ARR revenue, servicing the associated debt and principal potentially reduces the available funds for the ILC's core functions by over 40 per cent each year, as its current credit risk exposure is to repay \$23 million per year out of a total annual budget of only \$50 million. Unless the resort's financial performance improves dramatically over a sustained period, this situation is likely to continue for a considerable period into the future.

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These financial challenges are all the more concerning considering the way the previous ILC Board went about the acquisition, including:

- the determination of former ILC Directors to push ahead with the ARR transaction notwithstanding due diligence advice that outlined a wide array of fundamental risks;<sup>80</sup>
- the decision to complete the transaction despite advice that the commercial risks potentially outweighed the benefits;<sup>81</sup>
- the largely undocumented negotiations with GPT and Wana Ungkuntja;
- the highly unusual terms of engagement of the ILC's due diligence advisers Grant Samuel which protect Grant Samuel from any adverse consequences of their actions;<sup>82</sup>
- the adoption of short-term vendor finance without a clear guarantee that its refinancing after five years could be achieved on a sound commercial basis;
- ignoring sustained and ultimately accurate warnings by Director Driscoll regarding the consequences of proceeding;<sup>83</sup>
- the failure to keep the then Minister for Indigenous Affairs fully apprised of significant events;<sup>84</sup> and
- the indifference to the warnings and concerns expressed by the then Minister for Finance and the then Minister for Indigenous Affairs along with the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, Dr Jeff Harmer, in the period immediately before the decision to acquire.<sup>85</sup>

The significant risks inherent in the transaction were acknowledged by the former ILC Board in a letter to then Minister for Finance, Penny Wong, dated 5 November 2010. The letter attached a 'Contingency Plan', which conceded:

'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 per cent in 2000 to 51 per cent in 2009
- Qantas airfares have been high, if not prohibitive, since competition was eliminated with the collapse of Ansett in 2001
- 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
- The visitor experience is limited—there is little exposure to Indigenous culture and activities

<sup>80</sup> See for example: Horwath HTL Ayers Rock Resort Due Diligence Report August 2010.

<sup>81</sup> See Attachment Two.

<sup>82</sup> For further information see Attachment Three.

<sup>83</sup> See for example Minutes, ILC Board Meeting No 122, 22 October 2008; Minutes, ILC Board Meeting No 124, 19 January 2009.

<sup>84</sup> See Attachment Six.

<sup>85</sup> See Attachment Six.

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- Average stay at the resort is only 1.8 days
- ARR has been on the market for two years
- Tourism activities were not core business for the owner'

In the face of such admissions, the former Board's 'contingency plan' was inadequate and ineffective. The three options presented to the then Minister for Finance were to:

1. Renegotiate external finance amounts at the end of Year 5. This failed to acknowledge that the loan-to-valuation ratio would be well outside commercial banking standards.
2. Renegotiate the final payment terms with the vendor to try to avoid having the vendor call upon the security.
3. Sell the airport, despite the fact that this was recognised as the most critical and integral asset underwriting the resort's viability.
4. Sell the resort, despite the knowledge that in the two years that GPT had the property on the market, there were no other interested purchasers.<sup>86</sup>

As noted above, the decision to proceed with the ARR transaction using the vendor finance arrangement has left the ILC severely financially exposed. The ATSI Act limits the amount of borrowings and guarantees that may be entered into by the ILC. As at June 2010, this limit was \$300,936,439. In the absence of established and standard terms and conditions for borrowings or specific restrictions on the types of borrowings that can be obtained by the ILC under the ATSI Act, it would have been prudent for the then ILC Board to ensure it was protected from credit risk exposure by introducing a maximum limit on the loan-to-value ratio and types of borrowings. The credit risk exposure created by the ARR transaction should have been considered by the ILC's Audit and Risk Management Committee; however, there is no evidence of adequate oversight by this committee. This may be attributable to the clear conflict of interest created by Director Baffsky's chairmanship of this committee, and his self-assumed role as the key driver and negotiator of the transaction.

It is readily apparent from these circumstances that the previous ILC Board appears to have disregarded the high risks associated with the ARR acquisition and in effect adopted a 'proceed at any cost' approach to the transaction. Director Baffsky is on record noting the challenges facing the transaction. In a letter to the GPT CEO, he stated, *inter alia*:

*Since signing the Heads of Agreement, the ILC and its consultants have largely completed the due diligence update with only one major issue arising. This very fundamental issue results from the further deterioration in operating performance, which I am sure you will appreciate leads us to conclude that the magnitude of the consideration agreed cannot be justified based on that performance.*

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<sup>86</sup> Letter, S McPherson (ILC Chair) to Minister for Finance Penny Wong, 5 November 2010, Attachment B: Key Performance Drivers and Contingency Plan Purchase of Ayers Rock Resort (ARR)

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*...This view has been forcefully presented in a report by Horwath, which we cannot ignore. Consequently, the ILC is forced with two choices—to withdraw or put forward an alternative proposal.*

*In our previous analysis we had been working off the Voyages 2009 actual EBITDA of \$28 million and 2010 budget EBITDA of \$26.6 million. In fact, at the time of the original board approval in early 2009, our analysis was on the basis of an ARR EBITDA of \$30.1 million. Clearly these are very different earnings figures than the current figures. Nevertheless, when we focus on current year's earnings of \$22.9 million, it is evident that the terms set out in the Heads of Agreement would not now be accepted by the ILC board.*

*... I should also mention that the CBRE valuation of ARR for the NAB dated May 2009 showed a value of \$270 million with the CBRE financial analysis showing EBITDA in 2010 of \$28.1 million. I imagine if CBRE was to update its valuation, its conclusions would be different.*

The following day, GPT rejected Mr Baffsky's approach for a price of around \$270 million (even though he admits a valuation would have taken the value lower), and insisted on a price of \$300 million (plus an uplift factor of \$17 million).

Yet, instead of withdrawing, the ILC went forward, agreeing to the higher price.<sup>87</sup>

The idea of drawing down funds from the Land Account was first put to both then Prime Minister Rudd and Minister Macklin by the previous ILC Board.<sup>88</sup> Significantly, the proposal was rejected on the basis that:

- 'the purchase would not meet the criteria for an investment of the Land Account under the *Financial Management and Accountability Act 1999* (Cth);
- the purchase was a high risk/low return investment with added concerns around the complexity of the transaction, management risks and the downturn in the economy;
- financial information available provided that, relative to ILC's net assets, its borrowing capacity under the ATSI Act was unlikely to be equal to or more than the amount required to fund the proposal; and,
- the size of the investment and high level of risk and financial exposure it would create for the ILC.'<sup>89</sup>

<sup>87</sup> Refer Attachment Two.

<sup>88</sup> Minutes, ILC Board Meeting No 125, 18 February 2009; Letter from Dr Jeff Harmer, Secretary, Department of Families, Housing, Community Services and Indigenous Affairs, 30 March 2009.

<sup>89</sup> Letter from Dr Jeff Harmer (FaHCSIA Secretary) to S McPherson (ILC Chair), 30 March 2009.

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After Minister Macklin rejected the idea of using the Land Account to acquire the resort, the ILC sought finance from third-party commercial sources. One such funder was the NAB, which expressed a view that the ILC 'had imprudently sought to overextend itself' and did not understand the implications of the acquisition.<sup>90</sup> This is indicative of the extremely high risk the acquisition presented. In response to NAB's position, Grant Samuel advised that it was inconceivable that the ILC could actually default on a loan considering the Land Account represented \$1.6 billion.<sup>91</sup>

It is apparent from the circumstances set out above that, despite the obvious risks involved in the ARR acquisition, the then ILC Board completed the acquisition in a belief that any resulting financial difficulties could ultimately be covered by a draw down from the Land Account. This belief apparently persisted even after then Minister Macklin had refused to allow a draw down of the Land Account to fund the acquisition.

In these circumstances it seems unlikely that Senator Scullion, who was then Shadow Minister for Indigenous Affairs, and Senator for the Northern Territory, was not approached by key ILC Directors and staff involved in the transaction seeking a draw down from the Land Account to retire the outstanding debt in the event there was a change of government following the 2010 general election.

The prospect of a legislative and ultimately political fix to the financing challenges involved in the transaction explains much of what has transpired including the secrecy and timing of the purchase (virtually simultaneously with the 2010 election<sup>92</sup>) and the then ILC Board's pursuit at any cost of the acquisition in full knowledge that it posed an extraordinarily high risk to the ILC's financial position.

If it is established that Senator Scullion was approached by members of the previous ILC Board to draw down funds from the Land Account were he to become Minister, the legal and political ramifications are serious and may also explain his intransigent refusal to consider an investigation. The existence of such an approach may explain the adversarial approach that Senator Scullion appears to have shown towards the current ILC Directors who have attempted to shed light on the true nature of the ARR acquisition. Moreover, he promulgated the development of a policy framework aimed at amalgamating the ILC with Indigenous Business Australia.<sup>93</sup> A merger of the two organisations would have expedited the turnover of the current

<sup>90</sup> Letter from R Jenkins (Grant Samuel) to D Galvin (ILC GM), 5 August 2010

<sup>91</sup> Letter from R Jenkins (Grant Samuel) to D Galvin (ILC General Manager), 5 August 2009

<sup>92</sup> Refer Attachments 5 and 6

<sup>93</sup> See for example 15 February 2013, Senate Estimates: Community Affairs–Cross Portfolio Indigenous Affairs (Hansard); 16 April 2013, *Australian* (Patricia Karvelas), 'Liberals signal revamp of Indigenous land agencies'; 7 June 2013, Senate Estimates: Community Affairs–Cross Portfolio Indigenous Affairs (Hansard); 24 June 2013, Senator Scullion speech to the Senate (Adjournment) (Hansard).

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ILC Board and the legislative change would have provided the opportunity to revise the provisions governing the use of the Land Account, perhaps allowing it to be used to repay the ILC's debt for the ARR acquisition.

The ILC Board wrote to the Prime Minister on 2 March 2015 and raised a concern that Minister Scullion may have had links to the previous Directors and been privy to elements of the transaction, and recommended that the Prime Minister obtain an assurance this was not the case. We have had no response to date to this correspondence.

In the absence of any assurance that this is not the case, the current ILC Board considers that the possibility of an approach to Senator Scullion to draw down the Land Account requires investigation. If confirmed, it would suggest that the former ILC Directors were acting otherwise than in the best interests of the ILC and sought to commit Land Account funds to serve interests outside those for which it was established. If this is so, it would indicate *prima facie* breaches by the former Directors of their duties under CAC Act sections 23, 24 and 25.

### **Summary**

The previous ILC Board was aware of the high financial risk associated with the ARR acquisition. They sought to raise commercial finance, and failed. They sought a drawdown from the Land Account, and were refused. Ultimately they funded the transaction at an excessive price through vendor finance. This was inherently a stop-gap solution.

In these circumstances, the question arises whether the former Directors approached Senator Scullion seeking his agreement to draw down funds from the Land Account in the event there was a change of government in 2010.

If the former ILC Board pursued the acquisition of ARR with the intention that any financial problems associated with the acquisition could be solved through a draw down from the Land Account, and with the knowledge of the significant financial risks that the acquisition presented, then the former ILC Board did not act in the best interest of the ILC or for a proper purpose. This would potentially comprise a breach of sections 23, 24 and 25 of the CAC Act.

The possibility of such an approach by the former Directors may explain Senator Scullion's reluctance to support an independent inquiry into the matter.

An independent inquiry should be conducted to establish whether the former Board (or some Directors and officers) approached Senator Scullion to fund the ARR acquisition from the Land Account and whether this amounts to a breach of sections 23, 24 and 25 of the CAC Act.

**Undeclared material personal interest: a potential breach of sections 27F and 27J of the *Commonwealth Authorities and Companies Act 1997***

***Overview***

The relationships that existed between Director Baffsky and various entities associated with the ARR vendors, GPT and the Government of Singapore Investment Corporation, raise a possibility that Director Baffsky had additional undisclosed conflicts of interest<sup>94</sup> regarding the ILC's acquisition of the ARR. Without an independent inquiry into the matter, it is difficult to assess the depth of these relationships and whether they amount to a material personal interest.

***Possible material personal interests of Director Baffsky in the ARR acquisition***

At all times during the negotiation and completion of the ARR transaction, the Directors of the ILC, including Director Baffsky, had duties under the CAC Act. Section 27F of the CAC Act requires that '[a] director of a Commonwealth authority who has a material personal interest in a matter that relates to the affairs of the authority must give the other directors notice of the interest...'. Further, section 27J of the CAC Act provides that a director who has a material personal interest in a matter that is being considered in a directors' meeting must not be present for consideration of the matter or vote on the matter.

It was incumbent on Director Baffsky to be aware of these obligations and to consider carefully whether his relationships with anyone directly or indirectly associated with GPT could appear to influence Director Baffsky's decisions on the matter and amount to a material personal interest.

Director Baffsky was aware of these obligations, as is apparent by his declaration of an interest related to his past role as Chairman of Accor Asia Pacific from 1993 to 2008 and then Honorary Chairman of Accor Asia Pacific from 2008 to the present. Accor continues to play an important and very effective partnership role in the management of ARR. Further, Director Baffsky also declared an interest in relation to the ILC Board's discussions (subsequent to the purchase of the ARR) relating to a company involving then ILC Director Jeffries and established with the assistance of Ariadne Australia Limited, a company for which Mr Baffsky is chairman.<sup>95</sup>

In contrast to his declaration in relation these material personal interests, Director Baffsky failed to declare any material personal interest on the ILC's acquisition of ARR from GPT. However, the McGrathNicol report into the matter uncovered what it classified as a 'remote' connection. The

<sup>94</sup> Additional to the potential conflict found by McGrathNicol in the review of the ARR transaction. See below.

<sup>95</sup> Ariadne Australia Limited, *Annual Report 2009*, p4; Ariadne Australia website, 'Board of Directors', <http://www.ariadne.com.au/board-of-directors/>

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Singapore Government is the largest shareholder in GPT, holding some 11 per cent of the shares through GIC Private Limited which is wholly owned by the Singapore Government. Mr Baffsky is a board member on SATS, a Singapore-listed company which is 43 per cent owned by Temasek Holdings. Temasek Holdings is itself wholly owned by the Singapore Government.

Mr Baffsky, in documents tabled to the Senate, alleged that the current ILC CEO, Mr Michael Dillon, had sought to mislead the committee in relation to Mr Baffsky's personal interests and commented as follows:

*The McGrathNicol Report concluded that it 'has no further knowledge regarding the connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be "remote".'*

*Mr Dillon has misrepresented McGrathNicol's findings on this issue and has sought to mislead your Committee.*

*The Committee might also wish to note that McGrathNicol also considered my role as Honorary Chairman of Accor Asia Pacific, which was awarded the hotel services contract for the ARR by Voyages after a competitive process. It found that I properly declared my conflict of interest and took no part in considerations and decisions by the Voyages Board about the hotel services contract.*

*It is curious that Mr Dillon ignores McGrathNicol's findings about the propriety with which I have managed an immediate conflict of interest, but seeks to infer that I may have behaved improperly in relation to a connection considered to be remote. So remote in fact that I myself did not know about it.<sup>96</sup>*

Mr Baffsky's connections to GPT and associated entities appear to be more complex than the above statement suggests, and less remote than McGrathNicol were able to ascertain in their review of the transaction. In particular, two other potential material personal interests exist between Mr Baffsky and GPT and associated entities.

First, GPT's board includes Mr Lim Swe Guan as a director acting as a private nominee of GIC Private Limited. From 1 February 2004 to 23 October 2012 Mr Guan was a director of the Australian-listed company Thakral Holdings Limited, which has now changed its name to Wynyard Properties Holdings Limited.

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<sup>96</sup> Letter from D Baffsky (former ILC Director) to Senator Z Seselja, 5 March 2015

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In July 2009, Ariadne Australia Limited, chaired by Mr Baffsky, made a loan of \$9.1 million on commercial terms, which was secured over a strategic parcel of shares in the Singapore-listed entity Thakral Corporation Limited. According to Ariadne Australia Limited's 2010 Directors Report this transaction 'represented an investment of a material portion of Ariadne's shareholders funds'.

Thakral Holdings' 2010 Annual Report indicates that Thakral Investments Pty Ltd and Associates own 42 per cent of Thakral Holdings, and the Government of Singapore Investment Corporation owns 13.9 percent.<sup>97</sup> In 1996 Thakral Corporation Limited and Thakral Holdings Limited each took a 50 per cent interest in two Australian hotels through a jointly controlled trust.

The 2010 KPMG Audit Report for Thakral Holdings noted that Thakral Holdings Group 'does not comply with ASX Recommendation 2.1 which recommends that the Board have a majority of independent directors. Messrs Kartar Singh Thakral, Rikhipal Singh Thakral and Inderbethal Singh Thakral are assessed as non-independent as a result of being associated with various Thakral family and other related entities which together are substantial security holders. Also Mr Lim Swe Guan was until 18 February 2011 a senior executive of the Government of Singapore Investment Corporation Pty Ltd, which is also a substantial security holder'.<sup>98</sup>

Each of the three current executive directors of Thakral Corporation Limited—Mr Kartar Singh Thakral, Mr Jaginder Singh Pasricha and Mr Inderbethal Singh Thakral—have been or were directors of Thakral Holdings Limited. Mr Kartar Singh Thakral is chairman of both corporations. Mr Kartar Singh Thakral and Mr Inderbethal Singh Thakral are also current directors of Thakral Investments Pty Ltd.

Moreover, since 1999, there has been an established relationship between Accor Asia Pacific (through the period when Mr Baffsky was Chairman) and Thakral Holdings Limited, as Accor managed a significant proportion of Thakral Holdings' hotel assets.<sup>99</sup>

This means that, when the ILC acquired ARR, a director of GPT was also a director of Thakral Holdings Limited, which held assets through a jointly controlled trust with Thakral Corporation Limited (a 'related entity'), and shared three directors with Thakral Corporation Limited, and, around the time of the ILC acquisition, Ariadne Australia Limited, chaired by Mr Baffsky, lent \$9.1 million to Thakral Corporation Limited. In addition, Accor Asia Pacific (of which Mr Baffsky was Honorary Chairman) managed Thakral Holdings' hotel assets.

<sup>97</sup> Thakral Holdings Group, *2010 Annual Report*, p 59

<sup>98</sup> Thakral Holdings Group, *2011 Annual Report*, 'Audit Opinion', p 33

<sup>99</sup> Thakral Holdings Group, *2011 Annual Report*, p 7; Thakral Holdings Group, *2010 Annual Report*, p 2

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Second, another material personal interest may exist in that Mr Baffsky was appointed a director of the Sydney Olympic Park Authority in 2009, which had been charged with managing the economic development of Sydney Olympic Park. GPT holds significant interests in Sydney Olympic Park, and listed it as one of its prime development opportunities for its Industrial/Business Park portfolio.

Mr Baffsky has told the Senate he was unaware of the connections between him and GPT raised in the McGrathNicol report. However, it should be noted that Mr Baffsky has been awarded the French Government's Chevalier de la Legion d'Honneur for his work in expanding Accor's hotel interests into Asia. Further, Mr Baffsky has recently been appointed chair of SATS subsidiary Food & Allied Support Services Corp. Pte Ltd (FASSCO). The FASSCO website notes that:

SATS, originally a Singapore Airlines subsidiary, is one of the largest food and gateway solutions companies in Asia and enjoys the stability of being linked to Temasek Group, a Singapore government-linked company.

Given Mr Baffsky's clear and deep involvement in Singapore Government owned businesses, the possibility exists for Mr Baffsky to have had a potential material personal interest in his role in directly and personally negotiating key elements of the purchase of ARR with GPT, whose largest shareholder is a Singapore Government owned investment corporation, at a time when a company he chairs had negotiated a significant loan secured over a strategic share parcel in a Singapore-listed company with significant shareholding and director links to a related entity which itself had significant shareholder and director links to the Singapore Government Investment Corporation.

The available documents show that Mr Baffsky personally led key elements of the negotiations with both GPT and the ILC's due diligence advisers on the transaction. This was a highly unusual approach to ILC business operations, which are normally developed, negotiated and undertaken by ILC staff with Board involvement limited to strategic oversight.

In relation to these negotiations, the ILC holds very limited records of the discussions, or of the offers that were made, considered, amended and accepted. Apart from being extremely poor practice and leaving the ILC seriously disadvantaged in relation to protecting its commercial interests, this situation leaves open the possibility that issues extraneous to ILC interests were driving the shape and structure of the transaction, and, indeed, may have been driving the very rationale for the transaction itself.

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### Summary

It is clear that there existed relationships between Director Baffsky and entities associated with GPT, Thakral Corporation and its related entities, and the Singapore Government, and that Director Baffsky ought to have been aware of these relationships at the time that he led negotiations on the ILC's acquisition of the ARR. **Mr Baffsky's possible material personal interest is all the more relevant because the key elements of the transaction were driven and personally guided by him.** Only a full independent inquiry into the matter, with powers to compel the giving of evidence, can determine whether the nature of these relationships amounts to a material personal interest in favour of Director Baffsky. If proven to be so, Director Baffsky's conduct could amount to a breach of sections 27F and 27J of the CAC Act.

**Failure to inform the Minister: a potential breach of sections 15 and 16 of the *Commonwealth Authorities and Companies Act 1997***

***Overview***

At the time the ILC negotiated and ultimately acquired the ARR the ILC Board had various responsibilities under the CAC Act including the obligation to immediately give the Minister notice of a proposal to acquire a significant business interest and to provide information on the request of the Minister.

On 19 August 2009 then Minister Macklin wrote to the then chair of the ILC, Ms Shirley McPherson, and asked for information relating to the financial arrangements for the ARR purchase, the impact this would have on the ILC's operations and the Indigenous benefits that would be derived from the acquisition. Ms McPherson responded over a year later in a letter dated 23 September 2010, which included the statement '... it is noted that when you wrote to me on 19 August 2009, the ILC had suspended all negotiations on the purchase of ARR. Consequently, there was no advice that I could provide to you at that time'.

The fact that Ms McPherson answered the Minister's request over a year later is in itself a concern. Furthermore, the ILC's Board Minutes show that the ILC was still actively pursuing the ARR acquisition throughout the period that Ms McPherson claimed negotiations were suspended.<sup>100</sup>

An investigation into the ILC's acquisition of ARR can uncover why the ILC Board showed such reluctance to keep the Minister appropriately informed of its ambition to acquire the resort and whether this was a breach of the CAC Act.<sup>101</sup>

***Responsibility to keep Minister informed***

The ILC has responsibilities under section 15 of the CAC Act to immediately give the Minister written notice of any proposal to acquire a significant business interest or commence a significant business activity. The ILC's acquisition of the ARR was a business acquisition of a scale unprecedented in the ILC's history and would certainly qualify as a significant business activity. As such, when the ILC proposed to acquire ARR, the then ILC Board had a legislative obligation to immediately inform the Minister of the full nature of the proposal.

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<sup>100</sup> See for example Minutes, ILC Board Meetings Nos 131, 132, 133

<sup>101</sup> CAC Act ss 15–16

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Section 16 of the CAC Act requires the ILC to give the Minister such reports and information as the Minister requires and this information must be provided within the time limits set by the Minister. This means that, if the Minister responsible for the ILC makes a request for specific information, the ILC has a legislative obligation to provide that information in full and in a timely manner.

These legislative obligations are fundamental to ensuring that the Minister responsible for a statutory corporation such as the ILC has access to all necessary information to properly oversight the corporation.

During the period that the ILC first proposed, negotiated and ultimately acquired ARR the Minister responsible for the ILC was Minister Macklin. The Minister wrote to the ILC on 19 August 2009 noting the ILC's obligations under section 15 of the CAC Act. The Minister specifically requested details of the proposed financial arrangements for the purchase of ARR, the impact on the ILC's operations and the Indigenous benefits that would be achieved through the acquisition of ARR. While no time limit was set in that letter, the ILC was obliged under section 16 of the CAC Act to provide all available information in response to the Minister's inquiry in a reasonable time.

On 10 August 2010, almost a year after the Minister's request and eleven days prior to the 2010 general election and while the Government was in caretaker mode, ILC General Manager David Galvin wrote to formally advise the Minister that the ILC proposed to purchase ARR and intended to establish a subsidiary to hold and operate ARR. The letter stated negotiations were proceeding, that there was a non-binding Heads of Agreement<sup>102</sup> between the parties and invited the Minister to request further information. Mr Galvin's letter provided no information on the proposed financial arrangements nor on the potential impact on the ILC's operations and debt levels as had been requested by the Minister a year earlier.

On 23 September 2010, the then Chair of the ILC, Ms Shirley McPherson, wrote to the Minister and advised as follows:

*...it is noted that when you wrote to me on 19 August 2009, the ILC had suspended all negotiations on the purchase of ARR. Consequently, there was no advice that I could provide to you at that time, and the ILC's General Manager, Mr David Galvin, informed Mr Dillon of this.<sup>103</sup> On 25 June 2010, Mr Galvin met with Mr Dillon and advised him that the ILC had recently reopened negotiations on the purchase of ARR and provided him with an overview of the purchase.*

<sup>102</sup> Heads of Agreement dated 13 July 2010.

<sup>103</sup> Note that Mr Dillon was Senior Adviser to Minister Macklin at this time.

Ms McPherson's assurance that all negotiations on the purchase of ARR had ceased in the period between when the Minister sent the letter dated 19 August 2009 and when Mr Galvin met with Mr Dillon on 25 June 2010 is not accurate. The ILC's Board Minutes throughout that period show that the ILC was actively pursuing the acquisition by attempting to secure finance for the acquisition<sup>104</sup> and by receiving and considering updated financial statements from ARR.<sup>105</sup>

Furthermore, the Board Minutes show that the ILC's Directors actually visited ARR in that period to inspect the facilities.<sup>106</sup>

While it may be that the ILC had suspended direct negotiations with GPT between 19 August 2009 and just prior to 25 June 2010, when the content of the ILC's Board Minutes in that period are considered against Ms McPherson's statement that '... the ILC had suspended *all* negotiations on the purchase of ARR', Ms McPherson's statement can at best be considered misleading.

Moreover, in breach of section 16 of the CAC Act, the then Directors of the ILC failed to provide information that was specifically requested by the Minister on 19 August 2009 in a timely manner. This information related to the financial arrangements for the purchase of ARR, the impact this would have on the ILC's operations and the Indigenous benefits that would be derived from the acquisition. This was the subject of ongoing discussions among the then Directors of the ILC throughout the period when, according to Ms McPherson, negotiations had ceased and no information could be provided.

## Summary

At the time it negotiated and acquired ARR, the ILC Board had obligations under sections 15 and 16 of the CAC to immediately inform the Minister of any proposal to acquire a significant business interest and to provide any information requested by the Minister in a timely manner.

In a letter dated 19 August 2009 the Minister wrote to Ms McPherson and asked for information relating to the financial arrangements for the purchase of ARR, the impact this would have on the ILC's operations and the Indigenous benefits that would be derived from the acquisition. Ms McPherson responded to the Minister over a year later on 23 September 2010 and stated that during the period between the date of the Minister's letter, 19 August 2010, and 25 June 2010 the ILC had suspended all negotiations on the acquisition and that there was no advice that could be provided at that time. While the then ILC Directors may have suspended direct

<sup>104</sup> Minutes, ILC Board Meeting No 132, 18 February 2010.

<sup>105</sup> Minutes, ILC Board Meeting No 131, 16 December 2009 and ILC Board Meeting No 133, 15 April 2010.

<sup>106</sup> Minutes, ILC Board Meeting No 133, 15 April 2010

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negotiations with GPT, the ILC's Board Minutes for that period show that the ILC was still actively pursuing the acquisition, which makes Ms McPherson's letter misleading.

Perhaps of more significance than this potential breach of the CAC Act is the substantive issue of why the then Board and Chair went to the effort of hiding the negotiations being undertaken (particularly around financing the transaction) and then misleading the then Minister in relation to these events. On its face, the Board, and particularly the Chair, appear to have breached sections 15 and 16 of the CAC Act. An investigation is warranted to examine the issue and determine whether there was a breach of the CAC Act and why it occurred.

### Attachment A—Schedule of Documents

Doc No	Date	Description of Doc	Decision
1	29 Oct 2014	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	Release in full
2	12 Jan 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM	Released in full
3	26 Feb 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment	Released in full
4	23 March 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment	Released in full
5	23 March 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachment	Released in full
6	2 March 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM, including attachments	Released in full
7	14 April 2015	Letter from ILC's Chairperson, Dr Dawn Casey, to the Honorable Tony Abbot PM	Released in full
8	27 March 2015	Letter from Senator Nigel Scullion to the ILC's Chairperson, Dr Dawn Casey	Released in full
9	22 Oct 2008	ILC's board minutes from meeting number 122	Irrelevant information redacted under s 22(1)(b)
10	16 Dec 2008	ILC's board minutes from meeting number 123	Irrelevant information redacted under s 22(1)(b)
11	19 Jan 2009	ILC's board minutes from meeting number 124	Irrelevant information redacted under s 22(1)(b)
12	18 Feb 2009	ILC's board minutes from meeting number 125	Irrelevant information redacted under s 22(1)(b)
13	15 April 2009	ILC's board minutes from meeting number 126	Irrelevant information redacted under s 22(1)(b)
14	23 April 2009	ILC's board minutes from meeting number 127	Irrelevant information

			redacted under s 22(1)(b)
15	17 June 2009	ILC's board minutes from meeting number 128	Irrelevant information redacted under s 22(1)(b)
16	26 Aug 2000	ILC's board minutes from meeting number 129	Irrelevant information redacted under s 22(1)(b)
17	28 Oct 2009	ILC's board minutes from meeting number 130	Irrelevant information redacted under s 22(1)(b)
18	16 Dec 2009	ILC's board minutes from meeting number 131	Irrelevant information redacted under s 22(1)(b)
19	18 Feb 2010	ILC's board minutes from meeting number 132	Irrelevant information redacted under s 22(1)(b)
20	15 April 2010	ILC's board minutes from meeting number 133	Irrelevant information redacted under s 22(1)(b)
21	16 June 2010	ILC's board minutes from meeting number 134	Irrelevant information redacted under s 22(1)(b)
22	25 Aug 2010	ILC's board minutes from meeting number 135	Irrelevant information redacted under s 22(1)(b)
23	1 Oct 2010	ILC's board minutes from meeting number 136	Irrelevant information redacted under s 22(1)(b)
24	20 Oct 2010	ILC's board minutes from meeting number 137	Irrelevant information redacted under s 22(1)(b)
25	16 Dec 2010	ILC's board minutes from meeting number 138	Irrelevant information redacted under s 22(1)(b)
26	23 Feb 2011	ILC's board minutes from meeting number 139	Irrelevant information redacted under s 22(1)(b)
27	20 April 2000	ILC's board minutes from meeting number 140	Irrelevant information redacted under s 22(1)(b)

28	20 Dec 2011	ILC's board minutes from meeting number 144	Irrelevant information redacted under s 22(1)(b)
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**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 Gorringer (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.

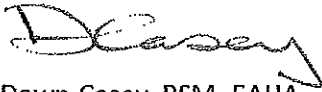
<sup>1</sup> Senator Andrew Murray, *Review of Operation Sunlight: Overhauling budgetary transparency*, June 2008, p 78 available at <[http://www.finance.gov.au/sites/default/files/budget-transparency-report\\_0.pdf](http://www.finance.gov.au/sites/default/files/budget-transparency-report_0.pdf)>.

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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 dark ink, appearing to read 'D Casey', with a stylized flourish at the end.

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**

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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

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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 Macpherson 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 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.

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 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 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 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.

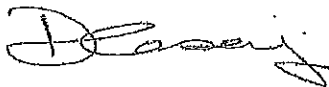
I am delighted to advise the Ms Lisa Gay has been appointed to the Voyages Board and has agreed to take on the important and in the current climate, critical role of Chair. Ms Gay brings to the Voyages Board considerable governance and commercial skills from her many years working as General Counsel 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 black ink, appearing to read 'Dawn Casey', with a stylized flourish at the end.

Dr Dawn Casey PSM FAHA  
Chair

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Australian Government  
Indigenous Land Corporation

COPY

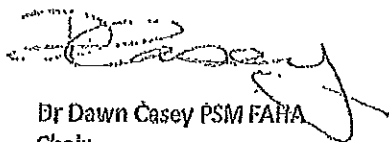
8 January 2014

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



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

Dr Dawn Casey PSM FAHA  
Chair

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opportunity



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



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



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 McGrathNicol 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

CN2013/63

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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Australian Government  
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

Dr. Dawn Casey PSM FAHA  
Chair

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Australian Government  
Indigenous Land Corporation

COPY

18 December 2013

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 dark ink, appearing to read 'Dawn Casey', with a long, sweeping flourish extending to the right.

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

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>.

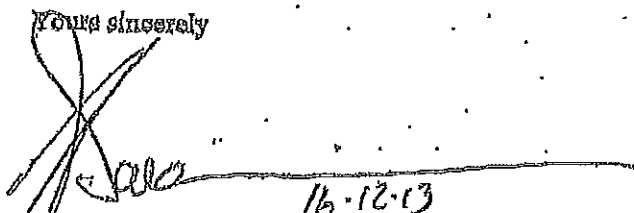
Some of the other issues you raise are matters that the review team can consider, but I do not see a need for these to be specifically addressed in a revised Terms of Reference.

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.

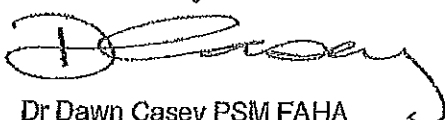
Accordingly, to be totally transparent and in the interests of ensuring the Report is seen to be independent, the ILC Board has today approved the public release of the Report of Component Two forthwith.

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

Pasted / e-mailed  
18/12/13

peopleland  
opportunity



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

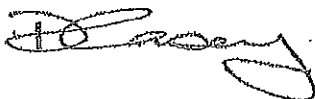
expressed by Minister Scullion in writing regarding stability and the desirability of reappointing Mr Baffsky. I have already written to Minister Scullion addressing his concerns in more detail.

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

COPY

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>Ms Lisa Gay (Chair) 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>Ms Olga Havnen is a current ILC Director, Mutitjulu director and VITA Director.</p> <p>Mr Koos Klein is the current VITA Managing Director and has been with the organisation since acquisition.</p> <p>Ms Sandra Armstrong is a current Director on the VITA board and is one of the two Wana Ungkuntja representatives.</p> <p>Mr Brian William James is a current associate Director on VITA and is the second Wana Ungkuntja representative.</p> <p>Mr George Bedwanj 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 Anandilyakwa traditional owners.</p> <p>Mr Ian Ward Ambler 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>Mr Owen Cole 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>Mr Sean Cummins 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>Mr Peter Thomas - 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.*

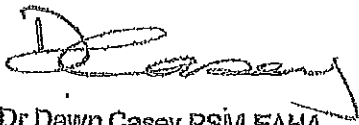
On any reading, this is a clear request to me to reappoint Mr Baffsky. It followed a phone conversation the night before where you similarly requested me to reappoint Mr Baffsky.

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

**CONFIDENTIAL AND PRIVILEGED**

**Attachment C**

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

# Executive summary

McN+

McGRATHNICOL

Area	Key findings
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## 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	
Installments	\$'000 Value
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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## 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	\$274 to \$295 million: ✦ Passing Year's Income Capitalised ✦ Third Year's Income Capitalised ✦ 10 Year Discounted Cash Flow	\$269.5 to \$273.8 million: ✦ Stabilized Income Capitalised ✦ Five Year Discounted Cash Flow ✦ 10 Year Discounted Cash Flow	✦ Calculation of Net Present Value of 10 year forecast ARR Cashflows

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.

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### 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.

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Area	Key findings
Value for money (continued)	<p><b>Negotiations</b></p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> </ul> <p><b>Overall conclusions on value for money</b></p> <ul style="list-style-type: none"> <li>* 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).</li> <li>* 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.</li> <li>* 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:             <ul style="list-style-type: none"> <li>• documentation supports that the ILC considered valuation advice provided by consultants and attempted to negotiate the transaction price with GPT;</li> <li>• the transaction price was consistent with the NPV suggested by the GS financial model; however</li> <li>• the transaction price was higher than the value suggested by CBRE;</li> <li>• the CBRE valuation was not updated to reflect changes to trading performance, which may have resulted in reduced valuation conclusions; and</li> <li>• It is arguable that some of the assumptions used in the GS financial model were ambitious.</li> </ul> </li> <li>* 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.</li> </ul>

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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").
- \* 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.

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Area	Key findings
ANZ cash advance facility and the GPT vendor finance facility	<p>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:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> </ul>
Borrowing limits	<p>McGrathNicol examined whether the borrowings to facilitate the ARR purchase fell within the monetary limits prescribed by the ATSI Act:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> </ul>
Risk management	<p>McGrathNicol examined whether the risk strategies adopted to mitigate the risks identified at the time of the ARR purchase were appropriate:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> </ul>

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Area	Key findings
Engagement of advisors and consultants	<p>McGrathNicol examined whether the consultancies commissioned by the ILC Board were consistent with the ILC's purchasing guidelines and generally accepted governance procedures:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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).</li> <li>* 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.</li> </ul>
Engagement with the Australian Government	<p>McGrathNicol examined whether the ILC's engagement with key Australian Government stakeholders in respect of the acquisition of the ARR was appropriate:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> <li>* 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).</li> </ul>
Capital expenditure forecasts	<p>McGrathNicol examined whether projections of the capital refurbishment and maintenance requirements over the immediate, medium and longer term were realistic and appropriate:</p> <ul style="list-style-type: none"> <li>* 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.</li> <li>* 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.</li> <li>* 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.</li> </ul>

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## 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

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

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 stylized flourish at the end.

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.

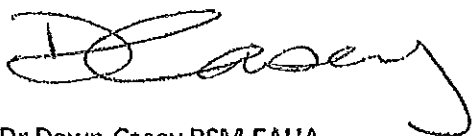
As I noted in my previous letter to you, the ILC Board noted with concern that Minister Scullion has recently appointed one of the former Directors involved in the transaction to a significant and remunerated term on another statutory corporation, and to a significant COAG-related policy advisory council. 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', with a stylized flourish at the end.

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

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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

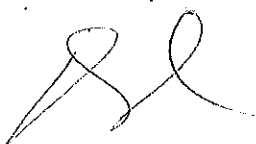
Dear Prime Minister

**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 dark ink, appearing to read 'Dawn 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**

peopleland  
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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

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.

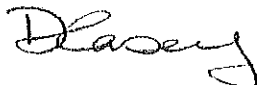
Were you to categorically confirm that there is a public interest and no private interest for the legal advice to be provided to Minister Scullion, based on an assurance from the Minister that he was not involved in discussions or considerations relating to the acquisition of the ARR in 2010, and that 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: C14/89336

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.

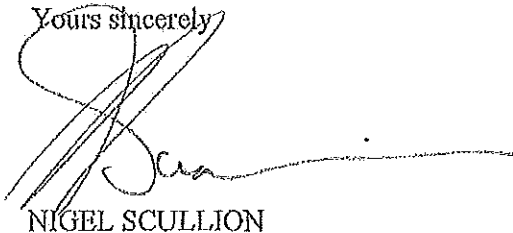
Therefore, as required under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), I would ask that you provide to me as soon as possible any additional information not previously provided that would support the basis of any legal action the ILC proposes to take, 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 dark ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

1 Feb 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.

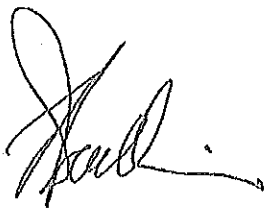
In particular, I believe stability is critical in relation to the governance of Voyages given the current nature of the tourism industry and the challenges it brings to operations at the Ayer's Rock Resort.

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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Australian Government  
(/)

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

## 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

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, appearing to read 'D Casey', written in dark ink.

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~~ *McN*

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 Gorringer

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

Mr David Galvin	General Manager	<i>by videoconference</i>
Ms Sue Andrews	Board Secretariat	

A copy of the Agenda is attached.

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

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

Redacted under s 22(1)(b) of the FOL 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 Fol 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 Ungkuntja 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 Corringe	

**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 Fof 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 Fof Act.

One page redacted under s 22(1)(b) of the Fol 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	by telephone

**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 Gorringer	by telephone
Mr Ian Trust	by telephone

*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 Fof 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 FoI 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 FoI 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 Corringe	
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 Fol Act

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

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

Document 18

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



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

**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 Gorringer	
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 FoI Act

Redacted under s 22(1)(b) of the Fol 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 Fol 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**



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

**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 Gorringer. 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



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

**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 Gorringer	
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 FOL 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 Fol Act

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

Redacted under s 22(1)(b) of the Fol 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 Ungkuntja (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 Fof 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	(until 11.30 am)
Ms Evonne Goolagong Cawley MBE AO	
Mr Max Gorringe	(by teleconference)
Mr Ian Trust	(by teleconference)

The following attended all or part of the meeting:

Mr David Galvin	General Manager
Mrs Jodie Lindsay	Chief Operating Officer (by teleconference)
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 Ungkuntja (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



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

**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 Fol 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 Gorringer	
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 Fol 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 Gorringer*

*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 Fol Act

**Document 26**

**ILC Board Minutes from meeting number 139 held on 23 February 2011**



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

**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 Gorringer	
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**



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

**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 FoI 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 Fol Act

Document 28

ILC Board Minutes from meeting number 144 held on 20 December 2011

Board in confidence



**ILC BOARD MEETING No 144**

**Tuesday, 20 December 2011**

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

**Australian Government  
Indigenous Land Corporation**

**MINUTES**

**ATTENDED BY THE BOARD:**

Dr Dawn Casey PSM FAHA

Mr Ian Trust

Mr Graham Atkinson

Mr David Baffsky AO

Ms Olga Havnen

Mr Sam Jeffries

Mr Neil Westbury PSM

Chair

Deputy Chair

The following staff attended all or part of the meeting:

Mr David Galvin

Mrs Jodie Lindsay

Mr Paul Hayes

Mr Mike O'Ryan

Ms Sue Andrews

Chief Executive Officer

Chief Operating Officer

General Counsel

Director, Policy and Program Development

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 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



**COPY**

**SENATOR THE HON MATHIAS CORMANN**  
**Minister for Finance**

C14/3578

Dr Dawn Casey, PSM, FAHA  
Chair, Indigenous Land Corporation  
Office of the Chairperson  
PO Box 586  
Curtin ACT 2605

Dear Dr Casey

I am responding to your letter, received 4 November 2014, asking that I consider initiating proceedings for a declaration of contravention under clause 6 of Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* (CAC Act). You allege that 4 former officers of the Indigenous Land Corporation (ILC) have breached their duty of care and diligence under section 22(1) of the CAC Act relating to the purchase of the Ayers Rock Resort (ARR). You have also advised that ILC believes that it has a civil cause of action against these former officers, on which you have suspended further action pending my response.

I am appreciative of the detailed letter and attachments that you sent. However, I am advised that the allegations you have made require further investigation before I can reach a determination whether there are sufficient grounds for proceedings that would lead to a declaration of contravention against the former officers of ILC under the CAC Act.

In reading the material you provided, it appears that investigations will also need to consider whether there have been breaches of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), under which the purchase of ARR was authorised, as well as possible breaches of both civil and criminal law.

Given that these allegations are broader than just the possible CAC Act breaches, I think it is important for the investigation to have a wider look at the purchase of ARR and related actions by former officers of the ILC and other parties involved. Such an investigation would pursue all the allegations made, rather than the limited focus of CAC Act breaches by the 4 officers named in your letter. I also think it is important that the entire facts of the purchase and related actions are investigated by the Government itself.

Accordingly, I have written to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, on this matter. As the portfolio Minister responsible for ILC and also for the ATSI Act, he is more appropriately placed to conduct any investigation of the broader issues through his department. He may of course choose to engage entities such as the Australian Government Solicitor to assist or to request that the Auditor-General conduct a

performance audit which might further inform the need or otherwise for actions at law. On conclusion of any investigation, I have asked Minister Scullion to provide me with any further evidence relevant to the CAC Act issues you have raised.

As you are aware, I have been following the performance of ARR in the quarterly reports provided by you. I thank you for your continued provision of that information and look forward to the outcome of the upcoming investigation.

Copies of this letter have been given to the Prime Minister, the Attorney-General and the Parliamentary Secretary to the Prime Minister.

Kind regards I

/Mathias Cormann  
Minister for Finance

LP December 2014

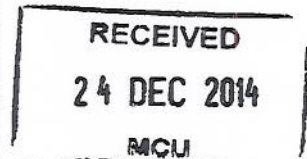


**SENATOR THE HON MATHIAS CORMANN**  
Minister for Finance

C14/3578

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

Office of the Minister for Indigenous Affairs	
<input checked="" type="checkbox"/> Reply by Minister	<input checked="" type="checkbox"/> Brief Req'd
<input type="checkbox"/> Reply by Parl. Sec.	<input type="checkbox"/> Subject: .....
<input type="checkbox"/> Reply by CoS	.....
<input type="checkbox"/> Reply by Advisor	.....
22 DEC 2014	
<input type="checkbox"/> Reply by Dept	<input type="checkbox"/> NFA
Referral: .....	
Instructions: <i>due date 21 Jan</i>	
<i>Re: allocation 2015</i>	



*Nigel*  
Dear Minister

*to Maya Stuart-Fox's branch.*

I am writing to you in regard to a letter dated 29 October 2014 from Dr Dawn Casey, Chair of the Indigenous Land Corporation (ILC), which was also copied to you. Dr Casey asked me to consider exercising my powers under clause 6 of Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) with respect to the actions of 4 former officers of ILC in the purchase of the Ayers Rock Resort (ARR).

However, Dr Casey makes a number of allegations and the material provided raises issues that are broader than breaches of the CAC Act. They encompass responsibilities that the then Board of ILC had under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), as well as possible breaches of civil and criminal law. Furthermore, ILC believes it has a civil case against the former officers under the *Civil Dispute Resolution Act 2011*, and Dr Casey advises that she has deferred action on this pending a response.

I am advised that my department has received advice from the Australian Government Solicitor (AGS) that, while there is insufficient evidence for me to make a decision regarding possible CAC Act breaches at this time, if the information contained in Dr Casey's letter is correct, further investigation is warranted.

As you are aware, both current and former ILC board members have publicly expressed their views around the merits of the decision to purchase ARR and subsequent actions taken. This includes the parties commissioning their own reports, being the McGrathNicol and the Aegis reports respectively. It is time the entire events around the purchase of ARR, including any breaches of the ATSI Act the CAC Act or any other law, are examined and addressed by the Government itself.

Given the breadth of the allegations raised by Dr Casey, it is appropriate that you, as the responsible Minister for ILC and the ATSI Act, instigate an investigation regarding the purchase of ARR and related actions. This would include alleged breaches of the ATSI Act, the CAC Act and the full range of allegations about the process failure raised

by Dr Casey's letter. It would be prudent if this investigation was conducted with some urgency to assess these serious allegations. AGS has also advised that the responsible Minister, under section 19 of the PGPA Act, could require the accountable authority of ILC to provide any reports, documents or information relevant to the investigation.

In considering your options for the investigation, I am advised that the AGS has offered their services in examining documentation available surrounding the purchase. A further option for an independent review may involve asking the Auditor-General to conduct a performance audit of the ARR purchase and the related issues raised by Dr Casey.

If the result of your investigation finds that there may be grounds for further action under the CAC Act, I would ask that you advise me with some urgency.

I have sent a copy of this letter to the Prime Minister.

Kind regards

**Mathias Cormann**  
**Minister for Finance**

19 December 2014



A circular postmark from Amsterdam, Netherlands, dated 13 JAN 2015. The text "AMSTERDAM" is at the top, "NEDERLAND" is at the bottom, and "13 JAN 2015" is in the center. There is a small triangle above the word "RIVER".

Moreover, to protect the integrity of any investigation on the terms you have proposed, we respectfully suggest that it would be prudent for you (as the Minister responsible for public sector accountability) to obtain a formal assurance from Minister Scullion that he was not privy to information related to the proposed transaction nor personally involved in discussions related to the financing or merits of the transaction prior to its execution in October 2010.

Were it to be the case that Minister Scullion had been involved in discussions relating to the transaction before its execution, then it would not be appropriate for him or his Department to have carriage of the investigation.

For the reasons outlined above, the ILC Board's preferred model for an investigation into the transaction would be for you and your Department to take carriage of the investigation, and for it to be undertaken through the engagement of an independent and experienced Senior Counsel or retired judge who could interview key players and assess the evidence against the applicable legal requirements.

I would appreciate an early response to this letter.

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

Yours sincerely

Dr Dawn Casey, PSM, FAHA  
Chairperson


12 January 2015



MINISTER FOR INDIGENOUS AFFAIRS

Reference: C15/1011

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

  
Dear Minister

Thank you for your letter of 19 December 2014, in which you request I instigate an investigation regarding the purchase of the Ayers Rock Resort (ARR) by the Indigenous Land Corporation (ILC), including any potential breaches of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

I appreciate the need for you to respond to allegations put to you. In this case, significant scrutiny of the ILC's decision to purchase the ARR and subsequent decisions has already been undertaken, which addresses these allegations.

In relation to the purchase of the ARR:

- The ILC purchased the ARR in May 2011 for \$317 million from the GPT Group.
- ILC provided assurance to the then Minister that it had undertaken extensive due diligence and that care to ensure that the proposed purchase was compliant with the ILC's obligations under the ATSI Act and CAC Act.
- Following the purchase, trading results were significantly lower than forecast, noting that the overall tourism market suffered as a response to the global financial crisis and that occupancy rates were impacted by decisions by Qantas to reduce air capacity into the ARR in mid-2012.
- In September – October 2013 the value of the ARR was written down by \$62 million, and further written down to approximately \$202 million in March 2014.
- More recently there has been an improvement in the ARR's financial performance and I note that the value has subsequently been written up to \$225 million, highlighting that valuations of any company can fluctuate up and down significantly over time.
- The ARR has also increased its Indigenous employment numbers from 2 to 252 Indigenous employees since the acquisition by the ILC.

The purchase and subsequent actions by the ILC Board has been subject to a high level of Government and independent scrutiny:

- In 2013 the ANAO conducted a performance audit of the ILC's administration of the Land Acquisition Programme. The audit included consideration of the ARR transaction and did not make significant negative conclusions in this regard.
- In 2013 the ILC themselves commissioned McGrathNicol to conduct a review of the financial performance and acquisition of the ARR. The report does not outline a clear case for any breaches of either the CAC Act or ATSI Act.
- In 2014 former ILC directors commissioned Aegis Consulting to review the transaction and subsequent commentary about the transaction. This report noted that many of the criticisms of the purchase process were not valid.

These reports are enclosed for your consideration.

I have reviewed the issues raised by the Chair of the ILC in her letter to you of 29 October 2014. I note that the Chair raises no new facts, further to those investigated in the above reports.

In particular, I note the McGrathNicol Report (the Report) examined the specific matters raised by the Chair in her correspondence. The Report findings are based on information provided by the ILC, discussions held with ILC management, the ILC Oversight Committee, current and previous ILC directors, consultants and stakeholders, and publicly available information regarding the ILC and its past and current Board of Directors.

The Report concluded, based on the comprehensive analysis conducted by the (then) Board, the due diligence conducted into the transaction, and recommendations of key advisors, that there is no evidence to suggest that the ILC Board acted contrary to their CAC Act duties. On the basis of this and in the absence of any new evidence, I am satisfied that all issues raised by the Chair of the ILC, including possible breaches of the CAC Act by the ILC Board, have been comprehensively and independently investigated and that there is no merit in conducting a further investigation into this matter. As Minister with responsibility for administration of the ATSI Act there is no further action I intend to take.

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.

I look forward to your advice on how to proceed.

Yours sincerely

NIGEL SCULLION

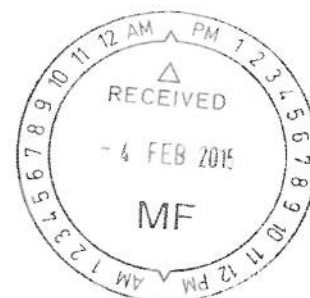
3rd February 2015



CONFIDENTIAL AND PRIVILEGED

3 February 2015

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



Dear Minister

On behalf of the Board of the Indigenous Land Corporation (ILC), I am writing further to my letter to you dated 12 January 2015 in relation to the Government's investigation into the former ILC Board's acquisition of the Ayers Rock Resort (ARR).

In that letter I sought an assurance as to the independence and qualifications of the proposed investigator to examine the ARR transaction, and indicated that the ILC Board's preferred model for an investigation would be for you and your Department to take carriage of the investigation, and for it to be undertaken through the engagement of an independent and experienced Senior Counsel or retired judge.

At its next meeting on 25 February 2015, the ILC Board needs to consider its next steps in relation to this matter, particularly in relation to the potential legal avenues available to the ILC in order to recover its loss resulting from the ARR transaction. In order to inform these discussions, the ILC Board would appreciate your early response (prior to 25 February 2015) to my letter to you dated 12 January 2015.

Please do not hesitate to contact me if I can provide any further information in relation to this matter.

Yours sincerely

Dr Dawn Casey, PSM, FAHA  
Chairperson



**SENATOR THE HON MATHIAS CORMANN**  
**Minister for Finance**

REF: MC15-000208

Senator the Hon Nigel Scullion  
Leader of The Nationals in the Senate  
Minister for Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

  
Dear Minister

Thank you for your letter of 3 February 2015, in which you detailed your consideration of the issues raised by the Chair of the Indigenous Land Corporation (ILC), Dr Dawn Casey, in her letter to me of 29 October 2014. You sought my advice on how to proceed.

I agree with your conclusion that the Chair of ILC raises no new facts in relation to the purchase of Ayers Rock Resort, further to those considered as part of the various reviews identified in your letter. I note that the ILC's own independent review (McGrathNicol, 2013) finds "no evidence to suggest that the [former] ILC Board have acted contrary to their [*Commonwealth Authorities and Companies Act 1997*] CAC Act duties". However, in Dr Casey's letters of 29 October 2014 and 3 February 2015 (attached), Dr Casey claims that the ILC has grounds to take civil action against former ILC officers. Based on this assertion, it is not clear to me whether Dr Casey is in possession of further evidence that has not been provided to government. Neither is it clear to me whether such information, if it is in her possession, is relevant to the allegations she has made in relation to the CAC Act or the *Aboriginal and Torres Strait Islander Act 2005*.

In view of Dr Casey's recent letter reiterating these claims, in my view it would be prudent for you, as the responsible Minister, to request, under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), that Dr Casey provide you and me with any information that would support the basis of any further legal action ILC proposes to take, and ask that you are notified as soon as practicable after the ILC makes a decision to initiate any legal action.

Dr Casey, as part of the accountable authority of ILC, is obliged under section 19 of the PGPA Act to "keep the responsible Minister informed of the activities of the entity and any subsidiaries of the entity" and "give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires".

I would ask that you keep me informed of any further information that arises from any enquiry you may choose to undertake.

Kind regards

Mathias Cormann  
Minister for Finance

12 February 2015



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~~

NIGEL SCULLION

17th February 2015



**STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION**  
**Legislation Committee**

6 March 2014

Mr Michael Dillon  
Chief Executive Officer  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Mr Dillon

I refer to your appearance and evidence on 28 February 2014 before the Senate Finance and Public Administration Legislation Committee (committee) at its hearing for Additional Budget Estimates (2013-14) on cross-portfolio Indigenous matters. I attach a copy of the proof Hansard from the hearing.

The committee has decided to follow up the following exchange on pp 32-33:

**Senator McKENZIE:** My final question goes to an earlier question I asked Ms Carroll. Seeing that you are at the table, you might be able to clarify whether or not you are a friend, former colleague and co-author of a book—

**Senator McLUCAS:** Chair, that is out of order.

**Senator McKENZIE:** with the chairman of the MJD Foundation, Mr Westbury

...

**Mr Dillon:** I have not taken it on notice. It is not appropriate for me to in my role as ILC CEO. If the committee gives me permission to—

**Senator McKENZIE:** Did you co-author a book?

**Mr Dillon:** answer in my personal capacity—

**CHAIR:** Mr Dillon, would you like to answer Senator McKenzie's question—yes or no?

**Mr Dillon:** Only if I can speak in my personal capacity.

The committee notes you did not refuse to answer the question and wishes to provide you with the opportunity to respond and provide any necessary additional information relevant to this matter. I note any response that you provide will be covered by parliamentary privilege.

As you know all evidence to estimates hearings must be made public. The committee has decided to write to you under Standing Order 25(2)(a) where the committee may inquire into and report upon the performance of departments and agencies allocated to them. This will provide the committee with more flexibility in how it treats this correspondence.

Your response by COB Friday 14 March 2014 would be appreciated along with an indication of whether you would have any objections to your response being made public.

Please contact me on (02) 6277 3530 if you wish to discuss this matter.

Yours sincerely

Lyn Beverley  
Committee Secretary



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

### FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

#### **Estimates**

(Public)

FRIDAY, 28 FEBRUARY 2014

CANBERRA

#### **CONDITIONS OF DISTRIBUTION**

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It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE SENATE

**[PROOF COPY]**

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**<http://parlinfo.aph.gov.au>**

**SENATE**

**FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

**Friday, 28 February 2014**

**Members in attendance:** Senators Lundy, McKenzie, McLucas, Moore, Peris, Seselja, Siewert, Smith.



## **CROSS-PORTFOLIO INDIGENOUS MATTERS**

### **In Attendance**

Senator Scullion, Minister for Indigenous Affairs

### **Department of Health**

#### **Outcome 8**

Mr Mark Booth, Acting Deputy Secretary

Ms Samantha Palmer, First Assistant Secretary, Indigenous and Rural Health Division

Dr Anthony Hobbs, Principal Medical Adviser

Ms Alison Killen, Assistant Secretary, Indigenous Health Programmes Branch

Dr Masha Somi, Assistant Secretary, System Effectiveness Branch

Ms Meredith Taylor, Assistant Secretary, Rural, Remote and Indigenous Access Branch

Ms Janet Anderson, First Assistant Secretary, Acute Care Division

Mr Adam Davey, First Assistant Secretary, People, Capability and Communication Division

Mr Keith Tracey-Patte, Assistant Secretary, Regional Service Grants, Grants Services Division

Dr Richard Bartlett, First Assistant Secretary, Medical Benefits Division

### **Department of the Prime Minister and Cabinet**

#### **Outcome 1**

#### **Overview**

Ms Rebecca Cross, Head of Domestic Policy

Ms Elizabeth Kelly, Deputy Secretary, Governance

Ms Liza Carroll, Associate Secretary, Indigenous Affairs

Mr Richard Eccles, Deputy Secretary, Indigenous Affairs

### **Program 1.1: Prime Minister and Cabinet**

#### **Indigenous Affairs Group**

Ms Ngaire Hosking, First Assistant Secretary, Schools, Youth and Evidence Division

Mr Brian Stacey, First Assistant Secretary, Land, Housing and Recognition Division

Ms Nadine Williams, First Assistant Secretary, Employment and Economic Development Division

Ms Caroline Edwards, First Assistant Secretary, Strategy Policy, Health and Communities Division

Ms Marsha Milliken, First Assistant Secretary, Delivery and Network Division

Mr Simon Crowther, Acting First Assistant Secretary, Programme and Support Division

Ms Kate Gumley, First Assistant Secretary, Employment Review Taskforce

Ms Kerrie Tim, Special Advisor, Indigenous Engagement Branch

Mr Mark Laduzko, Assistant Secretary, School Attendance and Community Engagement Branch

Mr Stephen Goodwin, Assistant Secretary, Education and Youth Branch

Mr Mike Fordham, Assistant Secretary, Remote Attendance Strategies Branch

Mr Matthew James, Assistant Secretary, Evidence and Evaluation Branch

Mr Pat Sowry, Assistant Secretary, Remote Infrastructure Branch

Ms Mandy Doherty, Assistant Secretary, Recognition and Reconciliation Branch

Mr Andrew Davitt, Assistant Secretary, Land Branch

Ms Belinda Campbell, Assistant Secretary, Remote Housing Branch

Ms Lee Emerson, Assistant Secretary, Coordination and Commonwealth/State Branch

Mr Neil Harwood, Assistant Secretary, Community Safety Branch

Mr John Shevlin, Assistant Secretary, Health Programmes Branch

Mr Robert Ryan, Assistant Secretary, Local Solutions Branch

Mr Gavin Matthews, Assistant Secretary, Remote Network Design Branch

Mr Paul Salmond, Assistant Secretary, Environment Programmes Branch  
Ms Michelle Kinnane, Assistant Secretary, Indigenous Portfolio Bodies Branch  
Mr Kamlesh Sharma, Assistant Secretary, Funding Management Branch  
Ms Marian Moss, Assistant Secretary, Indigenous Affairs Branch  
Mr Geoff Richardson, Assistant Secretary, Indigenous Workforce Strategies Branch  
Ms Kari Ahmer, Assistant Secretary, Programme Office and Deregulation Branch  
Ms Tania Rishniw, Assistant Secretary, Employment Review Taskforce  
Mr James McDonald, Assistant Secretary, Welfare Reform and Employment Policy Branch  
Ms Brenda Love, Assistant Secretary, Economic Development and Strategic Partnerships Branch  
Mr James Atkins, Acting Assistant Secretary, Indigenous Employment Programmes Branch  
Mr Ryan Bulman, Acting Assistant Secretary, RJCP Delivery Branch  
Ms Maria Jolly, Assistant Secretary, Programmes Review Branch  
Ms Jennifer Goolagong, Acting Assistant Secretary, Network Operations Branch

**Governance Group**

Ms Michelle Crosby, First Assistant Secretary, Corporate Services Division  
Ms Myra Croke, Acting First Assistant Secretary, Ministerial Support Division  
Mr Ben Neal, Assistant Secretary, People, Capability and Performance Branch  
Ms Amanda McIntyre, Assistant Secretary, Chief Financial Officer Branch  
Ms Sarah Cruickshank, Assistant Secretary, Strategic Communications Branch

**Agencies—Committee to advise attendance****Indigenous Business Australia**

Mr Chris Fry, Chief Executive Officer  
Mr Leo Bator, Chief Operating Officer  
Mr Satish Kumar, Chief Financial Officer  
Mr Rajiv Viswanathan, General Manager, Investments  
Ms Kirsty Gowans, General Counsel

**Indigenous Land Corporation**

Mr Michael Dillon, Chief Executive Officer  
Ms Janet Elizabeth Fiedler, Manager, Corporate Governance

**Committee met at 9:04**

**CHAIR (Senator Smith):** I declare open this meeting of the Senate Finance and Public Administration Legislation committee. Today the committee will continue examination of the additional estimates, with cross portfolio hearing on Indigenous matters. The committee will examine outcome 2 of the Department of the Prime Minister and Cabinet and the Department of Health in relation to Indigenous health issues as listed on the program, Indigenous Business Australia and the Indigenous Land Corporation. The program has been grouped into the themes and issues that relate to the Prime Minister and Cabinet portfolio and the Health portfolio. The committee has fixed Friday 11 April 2014 as the date by which answers to questions on notice are to be returned. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into the *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders, pp 124-125)

**CHAIR:** I welcome the Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion, and officers of the Department of the Prime Minister and Cabinet. We will begin the first session on Closing the Gap and Stronger Futures. Minister, would you like to make an opening statement?

**Senator Scullion:** I have a short opening statement. The transfer of 1,722 Indigenous staff over 35 programs from eight agencies to the Department of the Prime Minister and Cabinet has now been completed. We now have the capacity, the priority and the commitment across government to start really making a difference. Since the Closing the Gap strategy was introduced we have allocated billions of dollars across governments on Australian government Indigenous expenditure alone. In terms of the last Closing the Gap report, we should all acknowledge it paints a pretty grim picture. Life expectancy has increased slightly, but it is not on target because the life expectancy of the mainstream is increasing at a faster rate. Only two out of the eight targets in reading, writing and numeracy have had significant improvements. The employment rate has, in fact, deteriorated. School attendance rates have not improved—in some cases we are going backwards—and in remote areas the situation is far worse. The reason we think it is far worse is that the aggregated figures are global figures, and the acceleration that we are getting in some areas in the cities masks how badly we are doing in some of the remote areas.

We need to find a new way, where Aboriginal and Islander people find their own solutions to problems, with parliament's support. The priorities of this government are simple—they are simple to say, but I do not think they are as easy to achieve—getting kids to school, getting people into full-time jobs and providing safe communities. It is clear that simply spending money is not the answer. I think we all acknowledge that. We need a strategy that produces a different set of results. I accept that the committee will quite properly examine who got money and who did not get money. That is the convention of an estimates committee, in particular. But it would be fantastic if we changed the convention of saying, 'How is it going in Aboriginal and Islander affairs,' and we say, '35 million, that's how it's going,' or, '50 million, that's how it's going,' or '12,000, that's how it's going,' and we

actually start to say, 'Let's focus on the results, let's focus on the outcomes.' Whilst the convention of this committee, quite properly, is to examine the finance, it would be terrific if the committee, as a parliamentary committee, ensured that the focus is on outcomes and not so much on the dollars. That is all I have for opening remarks.

**CHAIR:** Ms Carroll, do you have an opening statement?

**Ms Carroll:** No, we do not have an opening statement.

**Senator McLUCAS:** Thank you for that opening statement, Minister. It does bring me to the justice target. I understand you, as shadow minister, committed an incoming Abbott government to providing bipartisan support for the target. Does the coalition government stand by its commitment to bipartisan support for the new justice target that was promised by you before the election?

**Senator Scullion:** At the risk of being verballed, can you provide me the exact statement where we made a commitment to a particular justice target?

**Senator McLUCAS:** You said in a media release on 9 August 2013:

The Coalition will provide bipartisan support for Labor's proposed new Closing the Gap targets on incarceration rates, higher education and disability services but I am worried if we get too many targets they will lose their impact and then we could lose focus.

**Senator Scullion:** You are referring to the Labor Party's target at the time—is that correct?

**Senator McLUCAS:** I am referring to words that went under your name.

**Senator Scullion:** I will just clarify that. The words that you have just read out mean that I was providing bipartisan support to a particular target that Labor had suggested they were coming up with. There has been quite wide debate, and I think there is broad support from both sides of parliament for ensuring that we have a suite of targets that lower incarceration rates. The issue was whether or not we actually had a firm target. We had a suite of options. We all agree that fewer people should be incarcerated, but we need to understand that, in around 80 per cent of Aboriginal incarcerations, particularly those involving violence and assault, other Aboriginal people are also involved. So the notion was that the number of offences needed to drop but also that the number of victims needed to drop, because that is the whole idea. It was a general comment, and I stand by that comment—that we should have bipartisan support on those matters. But there has not been a target since then that would meet those particular measures. I certainly stand by our position that we would broadly support lowering the number of victims, in particular, of crime in those areas. We would see it as having a bipartisan approach to any of the targets. If you have a particular suggestion of a particular target, of course the government would like to hear it.

**Ms Carroll:** To add to what the minister said, obviously the setting of targets generally is a matter for COAG. As the minister indicated, there has been continuous consideration of these options. On the issue of taking something like this to COAG, that will happen over a period of time.

**Senator McLUCAS:** Which does fit with what you provided to the committee at the last Senate estimates. You said:

We are still in the process of providing advice and talking to the new government about those issues.

But I still have a concern. Minister, I did not quite follow everything you said there. My question is: does the government stand by its commitment to bipartisan support for the new justice target that you committed to prior to the election?

**Senator Scullion:** We do stand by moving towards a justice target in some form. But the notion that has been discussed has always been around incarceration and lowering, necessarily, incarceration rates. I would just put to you that this process through COAG needs to focus on minimising the victims, not so much on the incarceration, but—

**Senator McLUCAS:** That is fine. The words of the target can be negotiated; the COAG process would allow that to happen.

**Senator Scullion:** Well, as we have already indicated, this is a matter before COAG and subject to the ongoing discussion of COAG.

**Senator McLUCAS:** I think you are saying that, yes, you are committed to a justice target?

**Senator Scullion:** Consistent with the evidence provided at the last Senate estimates, this is a matter for COAG. Yes, we are still committed to ensuring that through COAG the matters around justice, incarceration and the high levels of Aboriginal and Islander victims need to be dealt with. That should be a process through COAG.

**Senator McLUCAS:** Given that and given that we are now six months into the first term of this government, what specific steps have you requested that the department take and what steps have you taken to progress the negotiations around developing a justice target?

**Ms Carroll:** I can answer from the department's point of view. As we gave evidence last time, we are continuing to work on the issue of justice. On the general issue of a justice target, the Prime Minister has committed to having Indigenous issues on the agenda of each COAG meeting. As we go forward those agendas will firm up. School attendance was discussed at the first COAG meeting. As the issues are brought forward for each of the COAG meetings, the issues of incarceration rates, justice et cetera, including consideration of a justice target, would come forward over time.

**Senator McLUCAS:** Without going to the policy advice question, has the minister or the Prime Minister asked the department to progress work on developing a justice target?

**Ms Carroll:** The department has been doing a lot of work around Indigenous incarceration rates. In fact, the Prime Minister's advisory committee had some discussions about Indigenous incarceration rates at their last meeting. It is ongoing advice that we provide to government around a range of issues including these.

**Senator McLUCAS:** Of course you would be doing that. A lot of that is data collection, I imagine, but the next step after data collection is prioritising the development of a target. Is that work being undertaken?

**Senator Scullion:** The vast majority of the matters, everybody would concede, fall under the criminal code of the various state and territory jurisdictions. This is why the matter is through COAG.

**Senator McLUCAS:** That is right. That is why we established it that way.

**Senator Scullion:** Indeed. If we could move independently in any way on that we would be, but this is clearly a COAG agenda. As we have indicated, we would like to see this as part of the COAG agenda and that those negotiations will ensure that it has a level of priority on the COAG agenda. Beyond that, we will certainly report back on those elements of the COAG discussions at the next set of estimates. Or, if you would like to place a question on notice, I can give you an update on exactly where we are going in terms of the COAG agenda.

**Senator McLUCAS:** Thank you. Who within the government has the responsibility for considering a new justice target? Is it you, Minister Scullion?

**Senator Scullion:** In terms of any new target, this is specifically a target in consideration of closing the gap, so it will be under my responsibility. Of course, I will work closely with the Attorney and I will be working closely with the Prime Minister and the Prime Minister's office on those matters.

**Senator McLUCAS:** Who do you take advice from—other than the department, of course? How will you develop that? Will you have consultations? How will that happen?

**Senator Scullion:** Clearly, without the support of the states and territories this is going to go nowhere. Because it is a COAG decision, the fundamental consultations will happen with the various jurisdictions. They obviously have their various departments, whether they are attorneys or others, who have the roles and responsibilities parallel to my position. One would imagine that the consultation should happen through those bodies. Sadly, there is not necessarily consistency across the various jurisdictions on a whole range of those matters, which is why we use COAG to try to have a concise position. As I said, we are pursuing these matters through COAG and the normal process of consultation would be with those jurisdictions.

**Senator McLUCAS:** So states and territories only?

**Senator Scullion:** Yes, indeed. They are fundamental to COAG.

**Senator McLUCAS:** Do you think it might be useful to talk with Aboriginal and Torres Strait Islander people?

**Senator Scullion:** With respect, I thought that was actually a given in this place.

**Senator McLUCAS:** I would have answered that question by saying I was going to talk to Aboriginal and Torres Strait Islander people first. That might be the first stop.

**Senator Scullion:** We have been in discussions, in constant discussions. I have certainly been doing very little else for the last three years and I have a clear understanding from a whole broad range of individuals, from communities, from families and from representative organisations. They have all, particularly those who are in the area of legal advocacy and justice, been actively and very carefully considering a lot of those matters—

**Senator McLUCAS:** So you know that already.

**Senator SCULLION:** not only within the legal area but also within the health areas to try to deal with the very difficult issue of lowering incarceration while keeping a really close eye on it so that that does not have the

impact of returning perpetrators to a place where victims can come under further threat. It is a very difficult area, as you would appreciate.

**Senator McLUCAS:** I am not going to the policy; I am going to the process.

**Senator Scullion:** We have been consulting widely, and will continue to, with Aboriginal and Islander Australians. As I said, that is a given with this government.

**Senator McLUCAS:** As Minister for Indigenous Affairs, have you undertaken analysis of the potential impacts on Indigenous incarceration rates as result of the Commonwealth decision to cut funding to Indigenous legal service providers? Could you could give to the committee an understanding of what you have done following that decision.

**Senator Scullion:** The decision to cut funding to legal services has been analysed and an adjustment was made to ensure that the funds that were removed from front-line legal services were only in the area of advocacy and law reform. As I understand it, originally there was an announcement of around \$42 million across Aboriginal legal services. That is now down to \$3 million a year and I am satisfied, as is the Attorney-General, that these areas have been embargoed to impact only on advocacy and law reform. Front-line legal services will not be impacted on. Its impact on incarceration rates will be neutral. I understand that many of these questions, whilst I am more than happy to provide the answers, were provided to the estimates process through Attorney-General's.

**Senator McLUCAS:** What discussions did you have with the Attorney-General prior to that decision being announced?

**Senator Scullion:** We had some broad-ranging discussions. There was a broad agreement that the government would say there would be no impact on front-line legal services.

**Senator McLUCAS:** How can you say that? How do you know that?

**Senator Scullion:** Because the only areas that were to be affected were quantified. The only areas that were affected and intended to be affected were advocacy and law reform. We have had no feedback whatsoever that that reduction in funding to law reform and to advocacy has had an impact on front-line legal services.

**Senator McLUCAS:** You have had no—

**Senator Scullion:** None.

**Senator McLUCAS:** When do the cuts come into place?

**Ms Edwards:** You would be aware that the overarching reduction in funding is primarily a matter for the Attorney-General's Department.

**Senator McLUCAS:** Yes, I am.

**Ms Edwards:** Only a small number of legal services are within the Prime Minister's department. The funding was announced in the MYEFO savings measures in December and it will be 4.21 per cent over three years. We are working with those services now in relation to their renewed funding agreements for next year on how those reductions can be accommodated within the ordinary planning of those services. We are working closely with all of the services to ensure there will not be impacts on front-line services delivery.

**Senator McLUCAS:** So what is the answer to the question of when the cut will come in? Is it 1 July this year or now?

**Ms Edwards:** It is 1 July.

**Senator McLUCAS:** So, Minister, you would not have received advice about reduction in services because the cut has not yet occurred.

**Senator Scullion:** I have had a number of meetings with those people who are potentially affected. They not only have my assurances; they know that they are currently working with the department around those exact parameters—that front-line services will not be affected. They are assisting in ensuring that is not the case in terms of their future funding.

**Senator McLUCAS:** What was the purpose of law reform and policy officers? What did they do? What do they do?

**Ms Edwards:** As I mentioned, Prime Minister and Cabinet is only responsible for a small element of the legal services, so I would have to refer questions about anything to do with the general Aboriginal legal service to the Attorney-General's Department. We are responsible for only the family violence prevention legal services, which are under a different framework.

**Senator SIEWERT:** Minister, I was asking the Human Rights Commission about the impact of these cuts. It was very clear from Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda's response that it will definitely impact on lowering incarceration rates. He gave a very good example from Queensland. The Human Rights Commissioner was very clear that this will have an impact, that advocacy and policy is essential in addressing the appalling incarceration rates. Did you seek the Human Rights Commission's advice? Here we have somebody who is an expert in these areas, and he is saying: 'Yes, it will have an impact.'

**Senator Scullion:** I am aware of the justice commissioner's views on these matters, and all of those matters are taken into consideration to ensure there is no negative impact on incarceration. As I have indicated to Senator McLucas, as we are going through this process that has been outlined by Ms Edwards, that is the process of ensuring that does not happen. Through your questions, the commissioner has drawn a view that, because you cannot have an advocacy service, that is somehow going to lead to further incarceration. He is welcome to that view. We believe that if you have no impact on front-line services, so people are provided with the very best legal advice, we will not have an impact on incarceration.

Mr Gooda's views and mine may separate at some stage, but I have a very good working relationship with the commissioner. I spoke to him on a number of other matters literally a couple of days ago. In the context of the answers to your questions, I think there is broad scope to ensure that there is no impact on front-line services. That is our intention. Whilst he can draw comparisons with the numbers of advocates and the law reform around the place, we have to make cuts across the board. Tragically, we have been left with a pretty broken economy—

**Senator SIEWERT:** Oh, please don't start on that.

**Senator Scullion:** Excuse me, Senator, if you can just allow me to finish. So we have to make cuts across the board. We have said that the bench line should be that this will not have an impact on front-line services. It will not have an impact on front-line services or incarceration rates. As Ms Edwards has indicated, we are going to ensure that that is the process, as we ensure that the finance for those legal organisations takes place.

**Senator SIEWERT:** Senator Scullion, you have just said it will not have an impact on incarceration rates. The idea is that we are trying to bring down incarceration rates. That is the point.

**Senator Scullion:** That is exactly what I said; do not verbal me, Senator.

**Senator SIEWERT:** No, you can go back and check the *Hansard* record. You just said it will not have an impact on incarceration rates. And that is the very point—we are trying to bring them down.

**Senator Scullion:** I was saying it in the context that it would not have a negative impact on incarceration rates, which is what you were suggesting. It will not have a negative impact on incarceration rates because it will not have an impact on front-line services.

**Senator SIEWERT:** We are trying to bring incarceration rates down. That is the point. And that is the point that Mr Gooda was making with the Queensland example.

**Senator Scullion:** Without being argumentative, you were suggesting that, by our activities, the cuts we were making to the legal aid services were going to effect an upward pressure on incarceration rates. I was making the point that we had gone to a great deal of care to ensure that that was not the case. Of course I do understand that it is in all of our interests to lower incarceration rates and to lower the number of victims, particularly Aboriginal and Islander victims, in this area.

**Senator PERIS:** Minister, last year you told the committee that 23 alcohol plans were going ahead in the Northern Territory. Can you provide an update on this? Have any of these been approved?

**Senator Scullion:** None of the alcohol management plans have come before me for approval, and my inquiries indicate that the reason for that is that they are not compliant; they do not meet the specifications that come before me. My department is working actively with a range of these communities to ensure that these plans can be compliant before they come towards me.

With regard to one of these management plans, I visited a community about a week or 10 days ago to talk to them about why this particular plan might not have been compliant, and they wanted to provide me with a range of other evidence and information around this. I am sure your next question will ask me when I expect to see those plans. As soon as the first ones are compliant, I am ready to have a look at those.

**Ms Carroll:** Perhaps I could add to that. The department has recently received—since the last estimates—I think two alcohol management plans, which we are currently considering.

**Senator McLUCAS:** Who did you receive them from?

**Ms Edwards:** The process of developing the plans is an assisted process. The 23 communities referred to have been working with officials from the Northern Territory government, closely with officers of Prime Minister and

Cabinet, to develop the plans. So there is ongoing consultation and then there is a process to assess them against the minimum standards, which came into effect in February last year. Just recently a couple of those plans have got to the position of being assessed by more senior management to check whether they comply with the minimum standards, after which time they will be provided to the minister. So the two that have come to us recently are ready for that more high-level assessment.

**Senator PERIS:** So you can clarify that you do have the 23 plans but they do not adhere to what—

**Ms Edwards:** There are 23 locations in which the Northern Territory officials are assisting people to develop the plans. A number of those communities have the view that they had endorsed the plans previously but most of those endorsed plans—11 of 14—were done prior to the commencement of the minimum standards, so this was before the Stronger Futures legislation came into effect and the minimum standards came in in February last year. After the minimum standards came in, all of the ones that had been previously endorsed from the view of the community had to come back into discussion to then assess them against the minimum standards.

**Senator Scullion:** It was either Senator Peris or Senator McLucas—I cannot recall—who asked if we could provide on notice the names of the communities. We have asked the communities and across the board they have said that they wish their application to remain anonymous.

**Senator PERIS:** Okay. Have you had any discussions or representations from the liquor industry in relation to the development and implementation of these alcohol management plans?

**Senator Scullion:** No, I have not.

**Ms Edwards:** I am not aware of any.

**Senator PERIS:** Have you at any stage discussed the AMPs with Minister Nash or her staff?

**Senator Scullion:** No.

**Senator PERIS:** As you would be well aware, Minister, alcohol related violence is increasing in the Northern Territory. Can you outline the actions the government has taken to fast-track any of these alcohol management plans?

**Senator Scullion:** The alcohol management plans as a consequence of legislation introduced by the previous government—not that I disagree with that at all—as you have been made aware this morning are not compliant, so that has been some period of time. As I have indicated, there was one community I visited at their request to discuss some elements around alcohol management in their area. I am aware that they have a plan, but I have not had any further discussions outside of that.

**Ms Edwards:** The alcohol management planning aspects of the Stronger Futures legislation are only one element of the measures under the Stronger Futures package that is more broadly designed to combat alcohol related harm, ranging from the restrictions in place, other funding and a lot of the funding through our community safety measures, including the night patrols. I want to ensure that you are aware that there is a suite of measures that go to community safety, including alcohol related harm, in addition to the alcohol management planning scheme.

**Senator PERIS:** Will funding be committed to implement these plans and, if so, how much?

**Senator Scullion:** I think we would be getting ahead of ourselves if we do not know that the plans are approved at this stage, but if and when they are approved we will certainly make that available.

**Senator PERIS:** Thank you.

**Senator McLUCAS:** Just for the record, the evidence we have received today is quite different to what we received at last estimates. There may be very good reasons for that, but we will pursue that with questions on notice. Essentially, at last estimates, Minister, you indicated that they were quite imminent. Obviously something has happened in between, and we will pursue that on notice.

**Ms Edwards:** The process of negotiating alcohol management plans with the communities can be a very lengthy one. It is one driven by the timetable of the community.

**Senator McLUCAS:** We will pursue it on notice, Ms Edwards. We are very short of time. Thank you.

**Senator SIEWERT:** I would like to ask about the various national partnership agreements that are coming up for renewal. Could you give us a breakdown of where the negotiations are for each of them, please.

**Ms Carroll:** I am just looking at my list of the national partnership agreements. In terms of the details of them, officers would be expecting to come up and discuss them under the particular areas.

**Senator SIEWERT:** Are you not responsible for overseeing—

**Ms Carroll:** We can talk about them generally, but the specifics of each one—

**Senator SIEWERT:** Yes.

**Ms Carroll:** The national partnership agreement on the remote service delivery finishes at the end of this financial year. The government is in the process of considering the future direction for remote service delivery.

**Senator SIEWERT:** That should be covered here in this area, shouldn't it? We will just go through them each, first. Are they in the process of negotiating now?

**Ms Carroll:** The government is considering the remote service delivery at the moment.

**Senator SIEWERT:** Okay.

**Ms Carroll:** The other one was the national partnership on Indigenous early childhood development. That, too, finishes in June this year. Again, that is under consideration by government.

**Senator SIEWERT:** Are these all being discussed at COAG?

**Ms Carroll:** Agreement about what happens with that partnership agreement is a decision for COAG because it is a national partnership.

**Senator SIEWERT:** Does that mean there has not been a decision made yet on whether either of those are going to continue?

**Ms Carroll:** That is right. I think the other one that finishes this financial year is the national partnership on the Indigenous clearing house, which is a very small national partnership. Again, that is for consideration at the moment.

**Senator SIEWERT:** Have any of these been discussed with Aboriginal communities and stakeholders—the future of them and whether it is a good idea to continue them or whether people want them to continue?

**Ms Carroll:** There has not been a formal set of consultations but we regularly get feedback about the different national partnership agreements through the state and territory governments. As you know, this funding goes to the state and territory governments and is then implemented by them, in a lot of cases—not all cases. Certainly, we are talking to state and territory governments but also getting feedback from individuals.

**Senator SIEWERT:** How are you getting feedback from individuals?

**Ms Carroll:** Certainly our staff—the staff of Department of Prime Minister and Cabinet—on the ground would be hearing from service providers et cetera. As part of ongoing policy information and feedback, we get that on a regular basis.

**Senator SIEWERT:** Is it fair to say there has not been a formal process of consultation?

**Ms Carroll:** That is correct.

**Senator SIEWERT:** What sort of process of evaluation has been undertaken? For the remote services delivery up until now we have had very regular reports. That is in a different category. But with the others, what form of ongoing monitoring and evaluation have you done in terms of how successful the community thinks it has been?

**Mr James:** There is an evaluation that is nearing completion for the Remote Service Delivery National Partnership.

**Senator SIEWERT:** There have been regular reports around that?

**Mr James:** Yes, and of course there are the coordinator general's reports as well.

**Senator SIEWERT:** That is what I mean.

**Mr James:** The last element of that evaluation involved a survey of Indigenous community members in 10 communities, partly conducted by Indigenous community members themselves. So there was direct consultation with—

**Senator SIEWERT:** That is for remote services?

**Mr James:** Yes, remote service delivery. With regard to the clearing house, we had a small evaluation undertaken that mainly talked to policymakers and the like, but it also involved Aboriginal peak organisations. The clearing house is largely for policymakers and senior officials. So, yes, we had a clearing house evaluation completed, working closely with the states and territories.

**Senator SIEWERT:** What about early childhood development?

**Ms Carroll:** The evaluation is currently in train.

**Senator SIEWERT:** Does that include talking to communities and service deliveries?

**Ms Carroll:** I do not have the detail of what that involves, but we could provide that.

**Senator SIEWERT:** Could you perhaps take that on notice?

**Ms Carroll:** Yes.

**Senator SIEWERT:** I am conscious of time; I will put my other questions on notice.

**Senator PERIS:** Could you advise what the balance was of the Aboriginal Benefits Account, as of 30 June, for the last three years?

**Mr Stacey:** When you say 'balance,' if you are meaning how much is in the account, currently it is about \$450 million. It fluctuates. If you want the balance over the last three years, then I will have to take it on notice.

**Senator PERIS:** What is the estimated project balance at 30 June 2014 and 30 June 2015?

**Mr Stacey:** I think it would be better if I took that on notice because it is quite specific.

**Senator PERIS:** Minister, are you able to advise us of the current policy guidelines of the ABA? And, if so, have they been amended since the last election?

**Senator Scullion:** I am not aware of that. Mr Stacey may be able to provide some answers.

**Mr Stacey:** Yes, there are guidelines around grant funding out of the ABA and, no, they have not been amended since the election.

**Senator PERIS:** How many applications to the ABA have been processed and approved during the term of the previous government?

**Mr Stacey:** Again, it is a very specific question. I just do not have that information to hand.

**Senator Scullion:** That will have to be taken on notice.

**Senator PERIS:** Are you also able to advise if there have been grants that have been overturned in the past six months?

**Ms Carroll:** We might be able to answer some of the more recent questions, but obviously we will take the historic question on notice. In 2013-14, 47 ABA projects were announced by the previous government. Of these, 43 without funding agreements were put in place and reviewed by the minister and approved. Four projects that did not have funding agreements have not proceeded.

**Senator PERIS:** Can I have the names of those? Do you have them here? Are we allowed to have that information?

**Ms Carroll:** We would need to check with the applicants before we provided you with specific names. We can talk about numbers of projects and all of those sorts of things, but we would always confirm before we put an applicant's name on the public record.

**Senator PERIS:** It is probably well documented, but one of the ABA grants that was recently overturned was the MJDF, Machado Joseph Disease Foundation. Do you know the purpose of this grant?

**Ms Carroll:** Yes. We are aware of the MJD Foundation grant and the particular additional funds that were applied for by the MJD Foundation of \$10 million.

**Senator PERIS:** Minister Scullion recently stated that the funding was inconsistent with the ABA funding parameters. Can you table the legal advice to the effect that this funding was in breach of relevant legislation?

**Ms Carroll:** Just for a start, we would never table legal advice. I think it is going to the intent of the parameters of the whether ABA funds are spent and the focus of what is possible and preferred to spend the ABA funds on. So, clearly, the issue around the MJD Foundation is the notion of providing additional funds for the ongoing operation of the MJD Foundation when the funds should really be for the disease sufferers. We should be looking at how things like the National Disability Insurance Scheme over time will be able to pick up the needs of those disease sufferers.

**Senator PERIS:** It was the \$10 million that was overturned. My understanding was that the \$10 million was to be invested and only earnings spent, which was half a million. Is that your understanding, or no?

**Ms Carroll:** Yes.

**Senator PERIS:** I want to put on record that, without that money, the employment of two full-time MJD therapists will not be able to go ahead now. The jobs of two MJD Aboriginal community workers have been lost. It will affect physiotherapists who go to Ngukurr and Galiwinku, as well as a psychological counselling project which was to work on suicide prevention. Just recently two mild sufferers of MJD committed suicide. This is not just to do with Groote Eylandt sufferers; it affects people right across the Northern Territory.

Where to now? If this is not funded, what happens now? Have you spoken to anyone in the health portfolio. Are they going to pick up the slack for this and, if so, how soon?

**Senator SCULLION:** Perhaps I could answer that question. In terms of how the ABA fund is run, one fundamental is that we do not pay for recurrent costs. There was only one other precedent in the whole time of the ABA, when the minister made the same decision on the foundation. This is just an extension of the first time that happened.

As an absolute principle, I think it should be acknowledged that the Aboriginal Benefits Account is Aboriginals' money. This is money that has been taken from royalties. I do not think that any Australian would say that, if they were in Sydney suffering from MJD, they should put their hands in their own pocket and pay for treatment. Paying for it should be front and centre the responsibility of the Commonwealth government or the other jurisdictions through the health system; it should not come out of Aboriginals' own money. I have had a longstanding view on this—and other people on the committee would know it—and my position remains exactly the same. It is the reason that those funds should not continue to be provided from the Aboriginal Benefits Account. This is not only in principle; it is also the fact that the amount of money that has gone to MJD is half the money spent on the entire budget allocated for Homelands, the building of houses, yet that is being held in trust. There are, I think, a whole range of very good reasons why this one precedent should not be supported.

But I very much understand the concerns of the communities about it between now and when the Commonwealth does start paying for it and taking on the responsibility, which it will do, first of all, through the rollout of the NDIS—and I have been in discussions with Minister Fifield about accelerating the rollout, instead of just to Barkly, to other places, and no doubt in the future we will be able to report on how that is going. I have written to Senator Fifield about ensuring that MJD is actually registered as a disability so the whole range of services and therapies that should be available will be available—

*Senator McLucas interjecting—*

**Senator Scullion:** Sorry, Senator McLucas, you were intervening with—

**Senator McLUCAS:** Just some information about how the NDIS works, but that is all right.

**Senator Scullion:** But there is obviously going to be a period of time in between. But I can tell you today that we will be offering the MJD Foundation exactly the same amount, \$500,000 a year, between now and when the mainstream health services can demonstrate that we are looking after them to their benefit, because I know they are remote and I know that is challenging. So we have offered the MJD Foundation \$500,000 a year for over three years. Over that period of time, we want to ensure that this is looked after not by Aboriginals' own money but by the people who should be taking responsibility for it—in this case, the Commonwealth government. As I have said, those people afflicted by MJD will not be affected at all by this decision, and Aboriginal people will no longer be paying for something that all other Australians would expect the Commonwealth to pay for.

**Senator PERIS:** So you are saying the Commonwealth will provide half a million dollars every year for the next three years?

**Senator Scullion:** Indeed.

**Senator PERIS:** Between the pair of us, we know the problems all too well. You have been to Groot. You have been to East Arnhem Land and seen the impact on that entire community—what they have been through, obviously with Rio and now MJD. So I take that as good news for the community. Is it?

**Senator Scullion:** It is good news in the sense that we are not inappropriately using Aboriginal people's money for the fund. We are not using Aboriginal people's money to pay for something that everybody else would expect the Commonwealth to pay for. And we have given a safety net to insure my words that nobody should not be receiving those therapies as we move to the NDIS, which—and I assume that was the commentary from Senator McLucas—would meet more end-state access. But, as I said, we should move to making sure that the Commonwealth are providing all the levels of amenity that they require, and I am sure that this interim position will ensure that that is the case.

**Senator PERIS:** And this will happen almost immediately?

**Senator Scullion:** We are in negotiations at the moment. The department is having discussions with the foundation at the moment. But it will be provided, whether it is the foundation or someone else. It has to be provided. Those levels of amenity will be provided, as I have undertaken in the past.

**Senator PERIS:** That is all from me.

**Senator SIEWERT:** I have a question about Stronger Futures funding. It is about funding for NAAJA, the Northern Australian Aboriginal Justice Agency. Are they getting funding beyond June this year, at this stage?

**Ms Edwards:** NAAJA's funding would not be entirely or even predominantly from the Stronger Futures package. It is primarily funded, I would expect, from the Attorney-General's Department as part of their ordinary legal aid.

**Senator SIEWERT:** But I thought they were also getting funding under the Stronger Futures package.

**Ms Edwards:** Yes. I will pass over to my colleague to help you.

**Mr Harwood:** I believe NAAJA is also receiving supplementary funding for their legal assistance program—

**Senator SIEWERT:** That is what I thought, yes.

**Mr Harwood:** under Stronger Futures.

**Senator SIEWERT:** What is the state of that funding—how much do NAAJA have now, and till when do they have a funding guarantee?

**Mr Harwood:** The funding under Stronger Futures is guaranteed till the end of Stronger Futures, which I believe is 2022. But, as for exactly how much funding they get under that supplementary program, I might have to take that on notice.

**Senator SIEWERT:** If you could take that on notice. So, they have funding beyond June 2014?

**Ms Carroll:** Senator, I think the main issue will be the funding agreement cycles, and so what they might have is when their funding agreement finishes. Then it would be a renewed funding agreement.

**Senator SIEWERT:** So when does their funding agreement run till?

**Ms Edwards:** We would have to take that on notice.

**Senator SIEWERT:** Okay. Is it possible to get back to me today?

**Ms Edwards:** I will make efforts, Senator. We will report back, at least.

**Senator SIEWERT:** I am not trying to be rude—

**Ms Edwards:** No. It is a level of detail we had not expected today; we will provide a report on whether we can provide you that today.

**Senator SIEWERT:** That would be appreciated. Perhaps you could also tell me—if in fact that is the same situation for all of the community organisations that are funded under that process—if the funding agreement is the same for all of them.

**Ms Edwards:** So in relation to the supplementary assistance under Stronger Futures.

**Senator SIEWERT:** Yes.

**Ms Edwards:** We will get back to you today.

**Senator SIEWERT:** Thank you.

**CHAIR:** Minister and Ms Carroll, if you are in agreement and it is not too much of an imposition on officials, we are proposing to have some further questioning. I will go back to Senator McLucas, Senator Peris and Senator Siewert to see if they want to follow up and then have a five-minute morning tea break and then come back to do health.

**Ms Carroll:** The only thing I was going to check is whether there were any general corporate questions that you had today, because otherwise we will let those officials leave. So if we are then just flowing into health et cetera, we just wanted to check when you were going to cover those questions.

**Senator McLUCAS:** I can advise that we intentionally did not have any questions around corporate, simply so that we could get to the substance of the programs.

**Senator SIEWERT:** I am the same. I have some that I will put on notice.

**Senator SESELJA:** I have a question on the National Congress of Australia's First Peoples. I wanted to just get some details on it. It is all a bit new to me. I understand the congress is a company limited by guarantee; correct me if I am wrong. I understand it was established as a company with a series of capital injections by the Commonwealth to provide enough funding so that the congress could effectively live off investments; again, someone can correct me if I am wrong. I just wanted to go to some basics in terms of the funding and cost structure and things such as that, and I do not mind if it is the minister or officials who answer. I understand it received \$29 million from the previous government; is that correct?

**Ms Carroll:** Yes.

**Mr Stacey:** Yes, it is.

**Senator SESELJA:** Is it also correct there was around \$15 million in the forward estimates?

**Ms Carroll:** Yes.

**Senator SESELJA:** How much does the congress have in its reserves?

**Mr Stacey:** They had \$8.9 million at the end of December 2013.

**Senator SESELJA:** I just want to go to some of the cost structures. The sitting fees for board members, is that around \$80,000?

**Mr Stacey:** I might check on that and I will try to come back to you later in this estimates.

**Senator SESELJA:** And how many times a year does the board meet?

**Mr Stacey:** Again, I would like to quickly check and get back to you.

**Senator SESELJA:** In 2012-13 how much was spent on board remuneration?

**Mr Stacey:** I am not certain. Again, I would have to take it on notice.

**Ms Carroll:** Senator, because this is a company limited by guarantee, and these are the normal workings of that organisation, we do not regularly have all of that information to hand, but we can see what we can get for you during the course of today.

**Senator SESELJA:** So it does not get reported to the department?

**Ms Carroll:** Some of that information would get reported, so we will see what we can find for you during the course of the day.

**Senator SESELJA:** That would be great. How many staff were employed at the end of last year?

**Ms Carroll:** I understand congress employed 35 staff as at 30 June 2013.

**Senator SESELJA:** Do we have an update on that year to date?

**Mr Stacey:** No.

**Ms Carroll:** We do not have an update on that staff number. The staffing number would be something that is normally reported to us annually.

**Senator SESELJA:** How many of those staff are employed on SES salaries?

**Ms Carroll:** I am not sure if we know that, but we could certainly—

**Mr Stacey:** At least one—the chief executive, I believe. But, beyond that, again I would have to check.

**Senator SESELJA:** So you will get back to me on that?

**Mr Stacey:** Yes.

**Senator SESELJA:** How many individual members does this congress have?

**Ms Carroll:** There are 7,500 individual members and 172 member organisations.

**Senator SESELJA:** Do we know what the cost of membership is?

**Mr Stacey:** It is free.

**Ms Doherty:** Yes, the membership is free.

**Senator SESELJA:** How many members voted in the last elections of the congress?

**Ms Doherty:** We understand approximately 800.

**Senator SESELJA:** What was the cost of conducting those elections?

**Ms Doherty:** I do not think that is available to us, but I can check and get back to you.

**Senator SESELJA:** No problem.

**Senator McKENZIE:** I want to follow up on the issues around the Aboriginals Benefit Account. My understanding was that there was a \$6 million grant in 2010 to the account to cover operational costs for many years to come. Is that correct?

**Ms Carroll:** For the MJD Foundation?

**Senator McKENZIE:** Yes.

**Ms Carroll:** Yes.

**Senator McKENZIE:** How many years was that \$6 million grant supposed to cover?

**Mr Stacey:** In 2010 a grant of \$6 million for the Aboriginals Benefit Account was approved by the former minister to be invested in perpetuity.

**Senator McKENZIE:** You mean to cover operational costs for—

**Mr Stacey:** Yes. I think that was the case.

**Senator McKENZIE:** At the time it was granted, how much years was it imagined it would cover operational costs for?

**Mr Stacey:** My understanding was, and I will stand corrected, that it was meant to be in perpetuity—that is, pretty much forever ongoing.

**Ms Carroll:** The concept being that the interest on that that is drawn down is what is being used for the ongoing costs.

**Senator McKENZIE:** So it was planned that that amount of money would be enough, being used in the way it was envisaged, to cover the operational costs?

**Ms Carroll:** That was what the grant was for at that point in time.

**Senator McKENZIE:** Then last year in 2013 the former minister granted \$10 million; is that correct?

**Ms Carroll:** That was what she approved.

**Senator McKENZIE:** Was it for the same purpose—to cover operational costs for many years to come?

**Ms Carroll:** I think in addition it was also to cover the costs of some therapy et cetera.

**Senator McKENZIE:** Is that a normal use of the Aboriginals Benefit Account grants?

**Ms Carroll:** I think that goes to the issues that the minister was raising earlier and whether the Aboriginals Benefit Account funding would be used for that purpose or whether there were other places that that funding, for the purposes of things like therapeutic needs, should come from.

**Senator McKENZIE:** Is it the case that these two grants for the foundation are the only ones like this, or have there been others?

**Ms Carroll:** The foundation has received other funding.

**Mr Stacey:** In fact, the MJD foundation received an initial grant of \$1.7 million. So this was the third grant. I am not sure if your question was really about whether or not there were other grants out of ABA for similar purposes. Was that the—

**Senator McKENZIE:** Yes, that is exactly what my question was, Mr Stacey.

**Mr Stacey:** I am not aware of any others.

**Senator McKENZIE:** Right, thank you. Ms Carroll, are you aware?

**Ms Carroll:** No.

**Senator McKENZIE:** The chairman of the foundation, Mr Westbury, is also a director of the Indigenous Land Corporation; is that correct?

**Mr Stacey:** Yes, I believe that is the case.

**Senator McKENZIE:** The CEO of the Indigenous Land Corporation, Mr Dillon, is a friend, former colleague and co-author of the book with the chairman of the foundation, is that correct?

**Ms Carroll:** I would not want to comment on that. We would need to check about author of a book et cetera.

**Senator McKENZIE:** If you could get back to me on that. Was Mr Dillon a senior adviser to the former minister who approved this unusual grant?

**Ms Carroll:** Mr Dillon did work in the then minister's office at some point.

**Senator McKENZIE:** As a senior adviser?

**Ms Carroll:** Yes.

**Senator McKENZIE:** At the time the grant was approved?

**Ms Carroll:** I don't know.

**Senator McKENZIE:** Could you check on that for me, please?

**Ms Carroll:** No—that is not the case.

**Senator McKENZIE:** According to the foundation's annual report, it has more than \$8 million in assets, including \$6 million in the bank, which we canvassed earlier. How much interest has the foundation earned from the previous \$6 million grant, and what did it spend the interest on?

**Ms Carroll:** We would need to take that detail on notice.

**Senator McKENZIE:** And could you also go to the proportion of that that was spent on salaries?

**Ms Carroll:** I will find out what is available to us, or on the public record.

**Senator McKENZIE:** How much did the foundation propose to spend on salaries from the \$10 million grant in 2013?

**Ms Carroll:** We do not have with us the details of what was in the application, so we can take it on notice. But we would not normally disclose those specific details without going back to the organisation to check, just as we have mentioned before around some of the other things. So we will endeavour to get what is possible.

**Senator McKENZIE:** I do not know whether you want to comment, Minister, but given the unusual manner in which this financial arrangement has been set up, would you have anything additional to add about alternative ways we could assist the foundation to conduct the important work that it does?

**Senator MOORE:** I thought the minister explained that in the answer to Senator Peris.

**Senator McKENZIE:** That is why I am asking if there is anything he wanted to add.

**Senator Scullion:** No, I think I have comprehensively provided that answer to Senator Peris.

**CHAIR:** Senator Seselja?

**Senator SESELJA:** Just quickly on township leasing, Minister, could you give the committee an update on what kind of progress we have seen on township leasing in the last six months? I know there was a press release from yourself, I think back in October; but can you give an update on where that is up to?

**Mr Stacey:** Statements of commitments were provided to the committee at its last hearing, which were agreed to between the minister and traditional owners in Gunbalanya and Yirrkala. Beyond that, through the minister we have now made formal offers whereby the Commonwealth broadly outlines what it would be prepared to provide in exchange for the traditional owners agreeing to a township lease, including rental payments. We are expecting negotiations to commence very shortly in Gunbalanya, and we have had some very productive discussions this week with traditional owners at Gapuwiyak, another community in east Arnhem which may also be interested in a township lease. That followed on from some productive discussions at Yirrkala.

**Senator SESELJA:** I am interested in how it has gone over the last couple of years as well. Obviously we have seen some progress in the last few months; when did the department, or the government, become aware of interest in township leasing at Gunbalanya?

**Mr Stacey:** I believe that there was interest expressed from some traditional owners at Gumbalanya over two years ago or more.

**Senator SESELJA:** Yet the formal negotiation processes only started to take place around October last year?

**Mr Stacey:** That is correct.

**Senator SESELJA:** What was the delay over those couple of years in taking it to a more formal negotiation process?

**Mr Stacey:** I do not have all the background. My understanding is that, while some traditional owners may have been interested, others may not have been certain. In addition, the Northern Land Council, which was representing traditional owners, expressed concern overall about the township leasing model.

**Senator SESELJA:** So the Northern Land Council did not support it. Does the Northern Land Council support it now?

**Senator Scullion:** I attended Gumbalanya in October after having submissions from the community that it would be useful if I came out. Without reflecting on the previous government or any of their particular views, for all the reasons that have already been expressed by Mr Stacey, it had not progressed. I think we were able to progress the matter substantially, and it is now being advanced, as you would expect, through the community. I would certainly like to express my thanks to the Northern Land Council. It is a very difficult task. Traditional owners have a spectrum of views in the community, and effectively you have to have a unified view before you can move on these matters. If I can report, I think it is moving along very well, and there are continuing discussions. I have been to Gumbalanya a number of times and I have participated in those discussions. It seems to be on track. I know nothing happened for a long time, but there were a number of quite complex legal matters that the Northern Land Council was sorting out. I think it is pretty much on track and it seems to be very well supported by the communities.

**Senator SESELJA:** So, in your opinion, it was not to do with a lack of will from the government; it was more to do with the complexity of the negotiations and the legal arrangements?

**Senator Scullion:** I do not really want to reflect on that, Senator. I am not really sure about the history. All I know is that not much happened, but it is happening now.

**Senator PERIS:** Minister Scullion, in relation to the current negotiations with Gumbalanya, you have an MOU about going further? What do you have on the table at the moment?

**Mr Stacey:** Just to clarify, the statement of commitment was made by traditional owners and Gumbalanya and the minister to seek to negotiate a township lease by the end of June this year. We did provide copies of the statements of commitment in response to questions at the last estimates hearing.

**Senator Scullion:** The community said, 'Every time we do this we have a meeting and then it just drifts away.' We all agreed and said, 'What about we put a time frame around this so that we can all say that we have got until then to have all these discussions and come up with a decision? If the decision is no, we will go off and put our energies elsewhere.' The community indicated that it just goes on and on. They had been talking about this for a long time and nothing had actually happened. This was something from the community—let's have a statement of intent to negotiate this or not within a certain period of time so that we have some finality on it rather than it just going on into the future.

**Senator PERIS:** By June you either will go ahead with a 99-year lease agreement or you will not, depending on all the traditional owner groups and the outcome from the Northern Land Council?

**Senator Scullion:** We will be guided, as in all these cases, by what the community wants to do about this matter. As I said, the commitment was something that came from the community. We all needed to make a commitment of intent, and we did. When we come to the end of that time I would hope that they have come to a decision of one sort or another, but I will be guided by what the community wishes with regard to how we progress that in the future.

**Senator PERIS:** If the community agrees to any of these 99-year leases, where would money come from for the land? Is that Commonwealth money? Or is it ABA money?

**Mr Stacey:** Rental payments are derived from the Aboriginals Benefit Account, yes.

**Senator MOORE:** I just have a follow-up, as you requested, to some of the previous questioning. I am trying to remember: Minister, in the last part of your answer to Senator Peris about the MJD you said that you were going to commit to a figure of \$500,000 a year into the future. At the end of that, was it to the MJD foundation? Or to some other agency? Was the actual commitment to the foundation? Or to the issue?

**Senator Scullion:** I am sorry—could you clarify that?

**Senator MOORE:** When you gave the quite detailed response—and thank you—to Senator Peris about MJD, you said you were going to commit \$500,000.

**Senator Scullion:** We said we would offer that. We are in negotiations at the moment. So, we have offered that, but I know that that is the amount that is going to cover the therapy that is expected to be delivered. So in good faith we have said that that amount of money will be available. MJD may not necessarily be the organisation to deliver it—if they choose not to, for example. But we are committing to deliver it. They obviously have a network on the ground. If they have been in touch with the exact people then obviously we would seek to continue that. But if they chose not to accept that we would deliver it through some other mechanism.

**Senator MOORE:** Normally in this process we would have a discussion with the coordinator-general. The decision has been made for that position to cease. I am trying to find where that fits in to the money, because that position was funded into the future years, was it not?

**Ms Carroll:** In MYEFO there was a saving of the discontinuation of that position.

**Senator MOORE:** And the saving in terms of the original process for this year was through until the end of the financial year and then into the future. Is that right?

**Ms Carroll:** Yes.

**Senator MOORE:** I can find in the additional estimates that there was a saving in 2014-15, 2015-16 and 2016-17, but I just could not find anything under 2013-14 for the saving of January to June.

**Ms Carroll:** That money had already been appropriated, so that would just be part of the funds for this financial year.

**Senator MOORE:** It would just go back to—that awful term—consolidated revenue.

**Ms Carroll:** Or alternate use.

**Senator MOORE:** Within the program?

**Ms Carroll:** Yes.

**Senator MOORE:** Where do we find that? In the figures, how do we know that?

**Ms Carroll:** I think the problem is that because of the machinery-of-government changes the portfolio additional estimates statement has the things that have been settled by additional estimates to go forward. So, for the whole financial year it is a combination across different departments, so you have a transfer, and all those transfers have not actually been finalised. So, when we come to reporting back at the end of the financial year we should be able to gather a lot of those things together. But a number of the final financial transactions have not occurred yet.

**Senator MOORE:** So at the end-of-financial-year statements we should be able to find it all and then question accordingly?

**Ms Carroll:** Yes.

**Senator MOORE:** Thank you very much.

**Senator SIEWERT:** Going back to the alcohol management plans, I am aware that there is a House of Representatives inquiry into alcohol in Aboriginal communities. That is not going to prevent alcohol management plans being dealt with, is it?

**Ms Carroll:** No. We would be continuing with our current process, and obviously the House of Representatives process will continue, but we would not stop what we are doing.

**CHAIR:** We will take a five-minute break and then return on health issues.

[10:25]

**CHAIR:** I welcome Ms Samantha Palmer, First Assistant Secretary, Indigenous and Rural Health Division of the Department of Health and officers to join the officers of the Department of Prime Minister and Cabinet to this session on health issues. Ms Palmer, would you like to make an opening statement?

**Ms Palmer:** No, thank you, Chair.

**Senator SIEWERT:** I want to pursue both the partnership agreement and the health plan, the implementation of both and where they are up to.

**Ms Palmer:** The national partnership on Indigenous health outcomes?

**Senator SIEWERT:** Yes.

**Ms Palmer:** In December COAG made a decision to streamline national partnership agreements, which resulted in a decision not to continue work on the National Partnership Agreement on Closing the Gap in Indigenous Health.

**Senator SIEWERT:** That was made in December?

**Ms Palmer:** Yes. This was a NPA where there were no transfers from the Commonwealth to the state.

**Senator SIEWERT:** I am a bit gobsmacked! What are you doing?

**Ms Palmer:** The Commonwealth activity continues in relation to its contribution to that activity, the Indigenous Chronic Disease Package and the work that we have been doing. The states of course continue their activity because all of their funding under that NPA was their own funding. Since December we have actually been working much more closely with the states through the partnership forums that exist in each state. Those partnership forums involve the Commonwealth and state representatives and also representatives from the national Aboriginal Community Controlled Health Organisation affiliate in each state. So within the department we are putting much more effort into a consistent approach and the way we are working together to work with our state colleagues in relation to improving health outcomes for Aboriginal people.

**Senator SIEWERT:** What was the time line for the agreement?

**Ms Palmer:** The NPA expired in June last year and all NPAs were considered by COAG in the context of activity around streamlining NPAs. Questions were asked at last estimates about the NPA and we answered those questions, and those went up on the website a few weeks ago.

**Senator MOORE:** The parliamentary joint report on the review of NPA, which was concluded and, I understand, went to COAG—can we get a copy of that report?

**Ms Palmer:** That report has not finished going through the committees of COAG. When that report is available we will certainly—

**Senator MOORE:** And the time frame for that?

**Ms Palmer:** We paused it as a result of that COAG process and we are doing that as quickly as we can.

**Senator MOORE:** The review was going ahead and it was being done, why did you pause it?

**Ms Palmer:** We paused it at the time that the NPAs were being considered by COAG.

**Senator MOORE:** So the review that was working out how it worked was paused when they were considering why they would not continue?

**Ms Palmer:** The review is a joint document by the states and the Commonwealth and it has been working its way through committees. It is reasonable to say that it is in its final stages of going through committees.

**Senator MOORE:** And the decision to pause it was made by whom?

**Ms Palmer:** It was made by the department.

**Senator MOORE:** And that decision was reviewed by the then minister?

**Ms Palmer:** No.

**Senator MOORE:** I am trying to get my head around it. This review document has been widely discussed because the decision to end the NPA, without knowing exactly what was going to happen next, has been in discussion in the community and amongst people working in the profession. So the review was being conducted by whom and under whose authority?

**Ms Palmer:** It is a joint review activity between states and the Commonwealth.

**Ms Palmer:** There was an analysis done by AIHW as part of that review process. But the document itself was a document of the Commonwealth and the states. A variety of drafts of that had been through Commonwealth and state departments as it had gone through its drafting process. But it is not a final document until it has gone through those final committee approvals.

**Senator MOORE:** When was the last draft circulated? I am trying to get a time line. As the review was going on, when was the decision made to pause the review?

**Ms Palmer:** Somewhere in late November or December. We did that when we became aware that there was an impending consideration of decisions about NPAs at that COAG meeting.

**Senator MOORE:** That decision was made by the department in about November or December prior to the COAG meeting.

**Ms Palmer:** Yes.

**Senator MOORE:** Was the decision told to the COAG meeting, that the review had been paused?

**Ms Palmer:** I do not think it was part of—it was a much bigger, broader item that was going to COAG about streamlining NPAs in general.

**Senator MOORE:** Yes, but you went to COAG and one of the NPAs was the particular one on health, Closing the Gap.

**Ms Palmer:** I am not sure the degree to which every NPA that was discussed within that COAG approach because—

**Senator MOORE:** How many of the NPAs was Health engaged in?

**Ms Palmer:** At that time?

**Senator MOORE:** Yes.

**Ms Palmer:** We have the national partnership on Closing the Gap and Indigenous Health Outcomes and the Indigenous Early Childhood Development NPA.

**Senator MOORE:** So you are only involved in two.

**Ms Palmer:** Sorry, how many NPAs in total is Health involved in?

**Senator MOORE:** No, NPAs that were under review. Take that on notice.

**Ms Palmer:** I will have to pass that to PM&C, I think.

**Senator MOORE:** How many NPAs were Health involved in, how many NPAs were under review? Were there pre-existing review processes going on and was there a decision to pause all review activity around NPAs?

**Ms Palmer:** We will take that on notice.

**Senator SIEWERT:** In terms of the plan, then—

**Ms Palmer:** The National Aboriginal and Torres Strait Island Health Plan is currently under consideration of the government minister.

**Senator SIEWERT:** So the negotiations have finished.

**Ms Palmer:** The health plan when it was released by the former government in July was a Commonwealth-only document. It is different to the previous strategic framework which it replaced, which had previously gone through AHMAC. The national plan was not a document that had been negotiated with the states, because the previous government decided to release it as a Commonwealth-only document.

**Senator SIEWERT:** Where are the states up to in terms of their support of it or not?

**Ms Palmer:** Many of the states actually have their own health plans. When we were drafting the national Aboriginal and Torres Strait Islander health plan we worked very hard to ensure all the national plan was consistent with the material put forward in each of those states that had their own plan. We engaged the states in the consultation process as we were working towards putting to government what should be in that plan.

**Senator SIEWERT:** Are you saying the states at all happy with it because you have used the states' plans to develop it?

**Ms Palmer:** No, I cannot say the states are all happy with it. That is a matter for the states. But we tried very hard to make sure that what was put to government for the national plan was consistent with what states had had in their plans, where they had an existing plan. Not every state has one, but a number of states do. That was what we were attempting to do.

**Senator MOORE:** But was it, in terms of—

**Ms Palmer:** From our perspective, we believed it was.

**Senator MOORE:** Has that final plan been discussed with the states, then, the one that was launched in August or September?

**Ms Palmer:** In July; we had a stakeholder advisory group for the development of the plan. There were two state representatives on that group. Later in its development, one of the state representatives moved from WA to NT. That left us with one state representative. That state representative was making efforts to reflect states' views in that stakeholder advisory group on the plan.

**Senator SIEWERT:** The state commitment of funding that you were attempting to get previously, has that now been abandoned so that the states are no longer being required to say how much they are committing to a national health approach?

**Ms Palmer:** At this stage there is no administrative avenue for asking the states to be clear about what they are putting into Aboriginal health, although there are states that do make that clear when they make their budget announcements.

**Senator SIEWERT:** But not all states do.

**Ms Palmer:** No, that is correct.

**Senator SIEWERT:** Is it correct to say now therefore there is no real national approach, given that states are committing to certain amounts of funds to a national approach?

**Ms Palmer:** Under the welfare agreement Aboriginal and Torres Strait Islander health is a joint responsibility of the states and the Commonwealth. What we are trying to do through our activities with those state planning forums is to be much more proactive and coordinated about how we work with the states on that activity.

**Senator SIEWERT:** If there is no partnership agreement any further and some of the states are not making clear how much they are spending and making an upfront commitment, how does that increase that cooperation?

**Ms Palmer:** The use of NPAs within the Commonwealth is a matter for government.

**Senator SIEWERT:** That wasn't the question. We have abandoned that partnership approach, which is a much more upfront formal commitment, to a much more informal commitment where a number of states, from what you have just said, have not publicly committed to either a partnership—there is no partnership agreement anymore—or to any form of public agreement to national formal cooperation.

**Ms Palmer:** Within each of those state planning forums there have been commitments and signed documents between the Commonwealth and the state and the Aboriginal health sector. They are called partnership agreements. They were founded or formed within the previous strategic framework and a number of those states have alerted the Commonwealth to the expiry of those agreements and some of them have written the government about how those new agreements might be entered into. I think I can safely say that our partnership agreement and how that works within the planning forums that we have is being considered by government. It is important for you to know that there was not any lever for us within that previous NPA to ensure the states were actually spending what they committed to spend.

**Senator SIEWERT:** That was a problem with the previous agreement, it is not a justification for not making it better.

**Ms Palmer:** It is a fact, but also the monitoring and management that was in the previous NPA continues, because within that NPA how we were measuring progress is actually part of the Aboriginal and Torres Strait Islander health performance framework and also part of the national key performance indicators, and both of those things still continue irrespective of not having an NPA.

**Senator SIEWERT:** What is the expiry date on those? Are those in perpetuity?

**Ms Palmer:** Those are currently in perpetuity.

**Senator MOORE:** What does in perpetuity mean here?

**Ms Palmer:** We do not have an end date.

**Senator MOORE:** But it could be changed at any time by policy.

**Ms Palmer:** Of course governments do that.

**Senator SIEWERT:** In terms of the state processes, it sounds from what you are saying that different states are at different levels. Is it possible for you to tell us—you need to take it on notice; I appreciate that—which of the states has a forum that is about the agreement that is about to expire and where the other states are up to and what processes are in place, and also where you know there has been a formal commitment from the states to an amount of money that is being spent.

**Ms Palmer:** We can do that.

**Senator MOORE:** I have got a couple of direct questions in terms of process. I am trying to get my head around the various levels here. You said that you are working with the states which have their own form of fora across each one. Do we have details of those fora and who is involved?

**Ms Palmer:** We can provide that. They have been running for some time.

**Senator MOORE:** They are not on the website. If we can get a copy of what is continue to operate now, which, if I understand, is the basis on which ongoing Commonwealth-state discussions are continuing in the health space and the time. I have got a couple of specific questions in terms of the NPA and the plan and the linkages. You have given us the advice that the department recommended that the review cease while it happened. We can follow that up as soon as that document is public if we can find out, because we understand that first ministers around the states have a copy of a document of this nature. Can you tell us what Indigenous health programs are directly funded by the Commonwealth on an ongoing basis.

**Ms Palmer:** Broad Indigenous health programs on an ongoing basis.

**Senator MOORE:** Yes. You can take those on notice if you want to, but in terms of the specific questions about total government expenditure on Aboriginal and Torres Strait Islander health in 2013-14; Indigenous health programs which will be directly funded by the Commonwealth on an ongoing basis; which elements of Indigenous health programs and service delivery will no longer be funded by the Commonwealth government. The previous Labor government committed \$777 million to the new NPA in terms of closing the gap in Indigenous health. Is this money still committed?

As part of the discussions around NPA there was money on the table at \$777 million, which was part of all the announcements around the NPA moving together to close the gap. Is that \$777 million still committed and in the budget?

**Ms Palmer:** Sure, I will take that on notice.

**Senator MOORE:** Could we have the figures to confirm that?

**Senator SIEWERT:** Can you not tell us that one now?

**Ms Palmer:** Sorry, I thought you were running a whole list of things you wanted us to take on notice. I can give you detail about that right now, if you wish to have it.

**Senator MOORE:** The \$777 million?

**Senator SIEWERT:** I think that for that one it is important that we get it on the record now.

**Ms Palmer:** The funding that was committed by the Commonwealth in relation to the NPA comprises funding from different sources. There was \$777 million and it was \$992 million if you took into account MBS and PBS flow-on costs. They are part of that appropriation. That component continues. Most of the funding from the NPA was in the Indigenous Chronic Disease Fund. There is \$245.503 million allocated in this full year. Expenditure to date has been \$119.604 million. We have further commitments of \$78.441 million at this time.

**Senator MOORE:** Which is a total of—

**Ms Palmer:** What that means is that at this time there is about \$47 million that is not contracted.

**Senator MOORE:** Under chronic disease?

**Ms Palmer:** In the Indigenous Chronic Disease Fund, yes.

**Senator MOORE:** And that money is still there; it just has not been committed.

**Ms Palmer:** That is right, at the moment.

**Senator SIEWERT:** That is to be spent over the next—

**Ms Palmer:** Within this financial year.

**Senator SIEWERT:** But it is not committed.

**Ms Palmer:** That left-over is not committed at this time. We are still going through approval processes for some things.

**Senator MOORE:** In the agreement with the states, which was the core of the NPA process, the states were committed, under a chronic disease package, to \$8.22 million. Do you have that figure?

**Ms Palmer:** The states—

**Senator MOORE:** Under the NPA, the states were committed to fund their share of the chronic disease package. That was all public. It was a total of \$8.22 million.

**Ms Palmer:** The chronic disease package is Commonwealth only funding. The states put their own money into their own Indigenous activities.

**Senator MOORE:** Around chronic disease?

**Ms Palmer:** There was one state that wrote and indicated how much it was prepared to put into the NPA. That was Queensland. I have that number, but no other state had indicated at the time of the offer what they were prepared to put in. I did not bring it with me, but the Victorian government announced a long-term plan for Aboriginal health expenditure in last year's budget. I am just having a look here to see if I—

**Senator MOORE:** Put that on notice because you will be going through lots of papers. The core element that we are both seeking is the commitment into the future of the shared states-Commonwealth commitment to closing the gap and health. You did say that the previous NPA did not have clear accountability mechanisms that the state had to go through.

**Ms Palmer:** Yes.

**Senator MOORE:** You also said that people were looking together at how that kind of accountability could be built into a future plan.

**Ms Palmer:** In terms of a partnership, that is right.

**Senator MOORE:** Is having that transparency and shared commitment a priority?

**Ms Palmer:** It certainly is from the department's perspective, in terms of working together and maximising the investment that the states and the Commonwealth are putting into Indigenous health.

**Senator MOORE:** Minister, in terms of the process—we have been talking about the COAG process around closing the gap, the health commitment, national plans and what is going to happen after the NPA—what is your role in the clear issues about commitment of funding and commitment to cooperation?

**Senator Scullion:** I will central to making the decisions about how we progress those matters. There are only two choices in terms of the nature of the funding arrangements. It is either through an NPA or a bilateral arrangement. The only other matter that is germane to this is that there will be significant input from the health minister, as well, on those matters.

**Senator MOORE:** Is it you or the minister in the health area that goes through this process in Indigenous health discussions? Which minister attends or takes the ownership?

**Senator Scullion:** The Minister for Health would be primarily responsible in those areas.

**Senator MOORE:** Is this part of Minister Nash's—

**Senator Scullion:** Indeed—well, it would involve us both. To what extent, I would have to get back to you. I really do not know and cannot predict exactly what the level of representation will be, but I am happy to get back to you.

**Senator MOORE:** It seems to me that this COAG process is reaching a new level in terms of importance. We have heard all this evidence about what is going to happen next, in terms of what happens in the future, the role, and who is going to be there and the ownership, we would really like to know that.

Minister or the department, are there any other specific health expenditures in the system at the moment for MJD apart from the ongoing relationship through the previous arrangements with the ABA?

**Ms Edwards:** Senator, if I may, I have a list we have gathered together of the funding to the MJD Foundation; it may not be entirely exhaustive.

**Senator MOORE:** If we can get that that would be very useful, but I am also interested whether there is any other form of funding for MJD. The point being, and Senator Peris was raising that, that the MJD relationship with their clients is much wider than just service provision for therapeutic activities. Going back to the discussion we had earlier around the \$500,000, the \$500,000 is for therapeutic activities, as we pointed out, and the foundation is much wider than that.

**Ms Edwards:** Senator, we can provide details on all the funding to the foundation on notice, if you prefer.

**Senator MOORE:** Good.

**Ms Edwards:** In relation to other services for MJD, my Health colleagues may have something to add, but untangling exactly what was what may be difficult because obviously all sorts of disability services and health services, acute care and so on may well be made available to various sufferers at different times. So you are after specifically directed at MJD as opposed to the whole of the health area?

**Senator MOORE:** Yes.

**Ms Carroll:** Senator, perhaps I can just give a summary and then hand over to the Health colleagues. As I think we have already discussed this morning, there was the original grant of \$1.7 million.

**Senator MOORE:** Yes, and we had those answers.

**Ms Carroll:** In addition to that, we understand, and Health can talk to this, there was \$371,000 from the Department of Health to MJD. We understand that there has also been a grant from Groote Eylandt enterprises of about \$1.1 million, as well as a grant of the National Disability Insurance Scheme of \$185,000, again to help with the development of understanding the links with the National Disability Insurance Scheme. So they are a set of things that we are aware of.

**Senator MOORE:** And that is all involved in the data you are going to provide for us?

**Ms Edwards:** That is all in the list.

**Senator MOORE:** So it is all listed. Minister, did you meet with the MJD Foundation to discuss this issue before the decision was made not to—

**Senator Scullion:** No, I did not. As the person making the decision, I decided that that was not appropriate.

**Senator MOORE:** Have you met with them subsequently?

**Senator Scullion:** No, but I have on the public record an open invitation to meet with them and I expect to do so. In relation to your question, could I just say there are two different areas that the MJDF provide. One area, to a lesser degree thus far, is in clinical and therapeutic applications under which that was their clear intent with the funds that may have been allocated and those funds that we have dealt with this morning. There is also another area which involves general advocacy and dealing with issues and providing services that are beyond the therapeutic and clinical process.

**Senator MOORE:** Community and individual support.

**Senator Scullion:** Along with the original \$6 million, they have access to other philanthropic contributions, as a foundation should. It is probably best to talk to the foundation in order to confirm, but I would assume those other services would be met out of the \$6 million. As Senator Peris indicated, the funds we provided are identical to the interest that would have been drawn down off the additional \$10 million. The \$6 million is outside of that, and I would have assumed that those other services would be provided from that.

**Senator McKENZIE:** Chair, the coalition will put further questions on health on notice.

**Senator SIEWERT:** I can put some questions on notice as well, but I do particularly want to follow up renal services and dialysis. Thank you very much for the briefing expecting that we would be raising this. First off, I am wondering whether you have—and hoping you have—the report from EY that Western Desert Services have provided?

**Ms Palmer:** Yes, that is right.

**Senator SIEWERT:** You have seen it?

**Ms Palmer:** I have seen it, absolutely. I have quite regular engagement with Sarah Brown.

**Senator SIEWERT:** I figured that you probably had seen it. What I am keen to follow up, obviously, is first the \$10 million.

**Ms Palmer:** Yes.

**Senator SIEWERT:** I know that I have been pursuing this, and I will continue to pursue it. I also note that one of the first things said in the briefing paper is that dialysis is a state and territory government responsibility. I think we all agreed to differ a bit on that for the time being. However, what I want to know at the moment is what progress is being made in further negotiating the expenditure of that \$10 million, and I am seeking assurances, again, that it has not gone back into what I would call consolidated revenue and that it is, in fact, still there to be spent on infrastructure.

**Ms Palmer:** The funding is still there at present. We have not received any viable project proposals from any of the states for renal dialysis projects to use that funding in central Australia at the present time.

**Senator SIEWERT:** What do you define as 'viable' projects?

**Ms Palmer:** A project that is consistent with the Central Australia Renal Study and the recommendations associated with that.

**Senator SIEWERT:** What processes are you going through at the moment to try and progress the development of those projects?

**Ms Palmer:** As you know, we have spent quite a lot of effort over the course of the last year in working with the states, seeking proposals in relation to that. It was very clear from WA and from NT that they were not going to put forward any proposals where there was recurrent funding required from those states. We had not received anything further from them at that time. South Australia put forward a proposal, but it was not viable because it was not actually to extend service delivery. It was—

**Senator SIEWERT:** This is the one that we discussed last time?

**Ms Palmer:** Yes, sorry. It was in relation to the bus. Since we last met, of course, South Australia has completed and launched its renal bus, which also means that the bus that it was using, which was one that the Commonwealth funded from the NT, has now been able to be returned to the NT, and the NT can consider how it might use that bus and go into service with that bus. I understand informally that they are working with Wooden Whippet in relation to the potential operation of that bus that has now come back from South Australia, which is good. We actually do have something else which has just come along. If I can ask my colleagues from Acute Care, we actually have something quite new in this space.

**Ms Smith:** Part of my responsibilities is the Health and Hospitals Fund. That is the \$5 billion health infrastructure investment fund that has been around for a few years now. One of the projects in that fund which we are very close to finalising with Western Australia is bringing renal dialysis and support services closer to home. That is a \$45.77 million project and the core project outputs will be 17 renal dialysis chairs, consulting rooms for regional renal support teams and renal patient accommodation across a number of areas in Western Australia: the Kimberley, Pilbara, Gascoyne and Goldfields-Esperance areas. Phase 1 of this project should be executed very soon. If all goes well and the weather does what the weather should do—staying dry—then they expect to do the concept planning for phase 1 by around September this year and then commence construction a little bit this year, in October-November.

**Senator SIEWERT:** Who is that working with? The WA Country Health Service?

**Ms Smith:** We have a negotiation with the Western Australia government and it will go to country health. Phase 1 will involve hostels at Derby with 20 beds, a hostel at Kununurra with eight beds, a hostel at Fitzroy Crossing with 20 beds, four dialysis chairs at Fitzroy Crossing, seven chairs at Kalgoorlie and further accommodation at Geraldton, Kalgoorlie and South Hedland. That is in phase 1 of the project. As I say, we are hoping we will start that one this year, all going well. There is a second phase to the project. The concept planning will be finished this year, but construction will commence later. Those are for hostels at Broome for 20 beds, Carnarvon for five beds, Kalgoorlie for 19 beds, and two dialysis chairs at Esperance and four chairs at Roebourne. And there will be some further accommodation at Broome as well. So that is the full scope of that project for the total of about \$45 million.

**Senator SIEWERT:** And is that the finalisation of the money that was announced, I think, two budgets ago—or is this completely separate?

**Ms Smith:** No, this is part of the health and hospital fund, which was initially started in about 2009. This is a round 3 project. It has taken a while to have this project finalised. Western Australia needed to find the recurrent funding for this project. It is a large project; you could imagine that would have a significant impact on Western Australian resources. They have worked their way through that. The other part they had to do was to finalise the locations. They have done that in consideration of their total approach to renal dialysis and renal care across Western Australia. That is why it has taken a little while to get to this point.

**Senator SIEWERT:** That is really good news for my home state. But I still want to know what is happening with the \$10 million in the central desert. I will take you back to the Ernst & Young study, which seems to indicate—and I am using the words 'seems to indicate' because I am aware a more full cost-benefit analysis needs to be done—that they can deliver in the community and meet the national efficient price. So I am wondering whether you are interested in, or are thinking of engaging in, looking at further work there to complement the work that EY has done in terms of doing the full cost-benefit analysis.

The second question is: no-one is denying that we need to invest that \$10 million. It seems to me that that is a given, yet we still have not managed to find a way through this. Are you looking at other ways that that money can be invested—particularly as this report is showing the benefits of in-community dialysis that is actually being delivered in those remote locations at the national efficient price?

**Ms Palmer:** It is fantastic to see that work done, and we were really pleased to see that report done for WDNWPT. Because service delivery of renal dialysis is a matter for the Northern Territory, we are pleased to say that the Northern Territory is engaged with WDNWPT. Of course, we fund WDNWPT. We give money to the Northern Territory to fund WDNWPT, and have done for some time, so we are clearly supportive of that model.

**Senator SIEWERT:** I understand that the Northern Territory government is looking at further investment because they are recognising the need; and I understand the frustrations from the Commonwealth perspective. But while that frustration is going on, the fact is that the situation is getting worse. So, what innovative ways are you looking at to drive the project so that I am not back here in May asking exactly the same questions?

**Ms Palmer:** I have spent quite some time talking to Dr John Boffa from the Central Australia Aboriginal Health Congress, and in the past six months or so congress has signed an MOU with the NTG. That MOU has seen congress now providing care plans and primary care support for the 240 patients who are getting renal dialysis services in Alice Springs, which is obviously really important to their improved health outcomes. That MOU allows congress staff to go into the dialysis unit—onto NTG property—to do that work, so it is fantastic to see that. But what has also happened there in the past few months, which I think has been a fantastic show of how the system can work together, is that the congress has transferred all of these patients on to the Indigenous PIP, and is now able to write Close the Gap scripts for them. This now means that all of the cost of the medicines that the NTG were paying for those patients, is now being paid for by the Commonwealth.

Dr Boffa estimates that that frees up about \$1.5 million annually, which the NTG can then invest in further service delivery. In terms of an innovative way of trying to improve patient care, take on more of that cost and support the NTG to expand service delivery, I think that has been a fantastic effort from the Central Australian Aboriginal Health Congress. And it is fantastic to see the Northern Territory government working in that strong partnership to deliver that activity.

In talking to Dr Boffa yesterday, he indicated that his data shows that demand for renal dialysis has plateaued in the Top End, and there has been some other research from Wendy Hoy, Professor of Medicine at the University of Queensland. She has done a study which was published in the *BMJ* which seems to show that the rates of the need for renal replacement therapy, or dialysis, is stabilising quite significantly. Her conclusion is that the investment in prevention, early intervention and chronic disease management strategies which has been occurring is now starting to pay dividends. It is very positive to see that come out only very recently, since we were last talking. If we are looking in that space, I can see that, in talking and engaging with Sarah Brown, there has been more extension of service delivery from Wooden Whippet. They are rolling out more services. They are working with WA Country Health Service to work on a recurrent operating model, hopefully with WA Health, for the expansion that they are doing into that state, and they are certainly getting a lot of philanthropic support for expanded service delivery there as well.

**Senator SIEWERT:** I have one last question, and I also want to follow up the issue about the PBS. In terms of the money that has been freed up in the NT, it seems to me that it is a classic time to say, 'You've got some money there. How about complementing the \$10 million.'

**Ms Palmer:** That is correct. That has been raised twice at the Aboriginal health planning forum that occurs in the NT. The NT was asked to commit to use the money that has been saved through the transfer of expenditure to

the Commonwealth to progress that. The Kidney Action Network is very focused and working on this, as you would expect. There is a push, and we are trying to find what I think are innovative ways to support that.

**Senator SIEWERT:** That is great, and I look forward to some even more positive news in May. Do you remember two or three years ago the Community Affairs committee did an inquiry into PBS arrangements under section 100 of the National Health Act?

**Ms Palmer:** I have only been in this job for 18 months. I do not remember it.

**Senator MOORE:** Ms Palmer, it is essential reading!

**Ms Palmer:** I will absolutely read it when I get back to the office!

**Senator SIEWERT:** It is gripping! There has not been a formal government response to that report. Is there likely to be one? You may need to take that on notice.

**Ms Palmer:** Yes, I think we will have to take that on notice.

**Senator SIEWERT:** It is not big headline stuff, but it is important for health outcomes in Aboriginal communities, and we have not had a response. I am not having a go. I am just asking if you could look at whether one is imminent, because I do want to follow it up.

**Ms Palmer:** Certainly.

**Senator SIEWERT:** Thank you. I do have questions regarding petrol sniffing, most of which I can put on the agenda, but I would like to know how the supply is going in the Darwin tank. I am looking forward to some more positive news.

**Mr Shevlin:** I can advise that we have contracts in place and work is underway on the construction of the bulk storage facility in Darwin.

**Senator MOORE:** Is concrete being poured?

**Mr Shevlin:** At the moment, we have made two milestone payments and off-site construction is underway. A lot of the site preparation work has been commenced, but the pouring of concrete on the site and the relocation of the tank—because we are moving an existing tank and refurbishing it—is being progressed after the wet season to avoid any disruption. We are on target for that tank being available and operational in September.

**Senator SIEWERT:** Thank you.

**Mr Shevlin:** We have new contracts in place with BP to develop the longer term storage facility in Kalgoorlie. So that work is being progressed as well.

**Senator SIEWERT:** Thank you. I have got other questions there, but I will put them on notice.

**Senator Scullion:** Just for your information, on Wednesday I was in Palm Island and attended a community meeting there. Opal fuel is being made available on Palm Island—

**Senator SIEWERT:** I saw that.

**Senator Scullion:** and we have the same issues there that we have everywhere when we roll this out—concerns about it breaking lawnmowers and those sorts of things. But I have to say the community was very supportive of having an intervention like Opal fuel on the island. The community was very supportive of that. We have built on all that information we provided from Central Australia. I think it is now a lot easier for communities to have technical confidence in terms of using this fuel in cars and those sorts of things, so we will not have the same challenges in the rollout that we had in Central Australia.

**Senator SIEWERT:** I have some questions around the further rollout but I will put them on notice.

**CHAIR:** Thank you very much.

### **Indigenous Land Corporation**

[11:06]

**CHAIR:** Welcome. Mr Dillon, would you like to make an opening statement?

**Mr Dillon:** No, thank you.

**Senator McLUCAS:** Mr Dillon, when the ILC last appeared before this committee, in November, there was some discussion about correspondence between the ILC and former ministers. My recollection is that the ILC took on notice the question of whether letters from former ministers Wong and Macklin warning the ILC against the purchase of Ayers Rock Resort could be tabled. We received an answer which gave a table listing letters, but I am very keen to see a copy of those letters. Do you have them with you and can you table them, please?

**Mr Dillon:** I have them available and I am prepared to table them.

**CHAIR:** As there is no objection to those documents being tabled, it is so ordered.

**Senator McLUCAS:** Thank you for that; I look forward to reading those. In the November hearing the committee also heard evidence that the ILC chair had expressed concerns about the due diligence process used by the previous board in purchasing the Ayers Rock Resort and had asked for a public inquiry by the Parliamentary Joint Committee of Public Accounts and Audit. Can you advise who the ILC chair approached requesting a public inquiry?

**Mr Dillon:** There were a range of letters to the government seeking, amongst other things, a parliamentary inquiry. The corporation has written, since the change of government, quite a number of letters to the government. The letters that seek a parliamentary inquiry, from memory, are as follows. There was a letter to the Prime Minister dated 14 November 2013; a following letter to the Prime Minister dated 16 December 2013; and a letter on the same date, 16 December 2013—the same letter, essentially—to the minister, Senator Scullion. Then, on 5 January 2014, the chair of the corporation wrote to Minister Scullion, again seeking a parliamentary inquiry. On 8 January, three days later, she wrote to the Prime Minister; the parliamentary secretary, Mr Tudge; and the Finance minister, attaching her letter to Senator Scullion of three days earlier, again seeking a parliamentary inquiry. We have, in response, received from Senator Scullion two letters, on 16 December and 20 December, where he indicated that he was writing on behalf of the Prime Minister and the government did not propose to proceed with a parliamentary inquiry into the issues raised at that previous hearing. I should provide some context.

**Senator McLUCAS:** Please.

**Mr Dillon:** Things have moved on a bit since much of that correspondence was written, because you will recall the corporation was requested to undertake an end-to-end review of the events surrounding the acquisition, and that review was initiated. There are two components to the review. It is a little bit counterintuitive, but the first component is looking forward, and that is yet to be completed but a draft has been received. The second component looked back at the acquisition, and that was completed first. That was released in December 2013. It is available on the ILC's website. But that review raises, and confirms in many respects, many of the concerns raised in correspondence to ministers.

In response to Minister Scullion's letter indicating that the government did not propose to undertake a review, the chair wrote and made the point that there were a series of unanswered questions that still required consideration and answers. They go to fundamental issues about accountability for the use of government funds, appropriate behaviour of directors and officers of a Commonwealth statutory corporation, due process and transparency. So there are a whole host of issues there. This is a very complex series of events—and I apologise for its complexity; I am doing my best to synthesise it down to headlines.

**CHAIR:** Thank you, Mr Dillon. You would be conscious that we have a very, very tight time frame, so anything you can do in regard to conciseness would be much appreciated.

**Senator McLUCAS:** Mr Dillon, you said that Minister Scullion responded to you in December of last year. I take your point that things have moved on since then, but is it appropriate for you to table that answer to the correspondence from the ILC? I might seek Ms Carroll's guidance here too.

**Ms Carroll:** We do not have copy of that correspondence with us, Senator.

**Senator McLUCAS:** Mr Dillon, do you?

**Mr Dillon:** Yes, I have a copy of the correspondence. The department would have access to the letter, I think.

**Ms Carroll:** Yes. We have it but we do not have it with us.

**Senator McLUCAS:** But it would be in order to table that correspondence?

**Ms Carroll:** We will take that on notice.

**Senator McLUCAS:** All right. We will seek your advice about tabling it and then, if that is in order, you can advise the ILC to table that.

**Ms Carroll:** Yes.

**Mr Dillon:** Just for clarity, that letter is dated 5 January 2014—to assist my colleagues from the department.

**Senator McLUCAS:** Then I would take you, Mr Dillon, to the end-to-end review. My recollection is that that is the McGrathNichol report. Is that correct?

**Mr Dillon:** That is correct. That is component 2 of the McGrathNichol report.

**Senator McLUCAS:** Right. And I think you said that the forward-looking part of the work is still in draft—

**Mr Dillon:** That is right.

**Senator McLUCAS:** but the backward-looking report—that doesn't sound very good!—the rear-view report, was published. Can you take the committee through the findings of the review in relation to the purchase of the resort and particularly the board's due diligence process?

**Mr Dillon:** The previous board spent \$6 million on due diligence. There are hundreds, if not thousands, of pages on that due diligence into the acquisition. I cannot really summarise that but the McGrathNicol report went through all these documents in great detail. There are 25 headline findings of concern. I can table a document that lists those. I might just pick up the top six or seven.

To contextualise this, as I reported at the last estimates, the board purchased this asset for around \$300 million. The asset has been written down already by \$62 million. It is now worth \$250 million. We are doing a further evaluation at the moment which may lead to a further write-down. It is clear the board paid too much for this asset—potentially between \$50 million and \$100 million too much. In addition, the board took out borrowings—debt finance—for the acquisition. The outstanding debt that the ILC is carrying in a consolidated fashion is close to \$200 million. The justification to the board by the director who drove the negotiations was that the asset would cover the debt repayments and the repayment of the principal in due course. The projections that went to support that have not been met since the acquisition took place. Now, to go to the findings—

**CHAIR:** Mr Dillon, it is important to be concise. I do not think it ought distract from your argument but if you could be concise in response to Senator McLucas's questions that would be much appreciated.

**Mr Dillon:** I am being precisely concise.

**CHAIR:** Excuse me, if you could be as concise as you can that would be much appreciated.

**Mr Dillon:** The first point to note from McGrathNicol was that the CBRE valuation that the board had available to it when it made the acquisition was 17 months old. McGrathNicol did some calculations. They indicated that had they had an up-to-date valuation the value of the resort would have been in the order of \$250 million—not \$300 million. That goes to the point of paying too much. A further key finding was that the due diligence, which cost over \$6 million was on a success-fee basis. There was no appropriate selection processes around the selection of due diligence consultants. Grant Samuel received one per cent of the purchase price, which—

**Senator SESELJA:** So the higher the purchase price the more the person would receive?

**Mr Dillon:** Absolutely.

**Senator SIEWERT:** Is that usual? I am not an expert on due diligence but—

**Mr Dillon:** We understand there are precedents in the industry about this but—

**Senator McKENZIE:** Which industry?

**Mr Dillon:** The due diligence industry for real estate acquisitions—hotel acquisitions.

**Senator SESELJA:** It was effectively an incentive for the individual or company to value it at a higher rate because they would get more of a success fee.

**Mr Dillon:** Exactly. That is the concern that McGrathNicol raised.

**Senator SIEWERT:** It is bizarre.

**Mr Dillon:** We are not talking about a small amount of money. The purchase price was \$300 million so the fee was \$3 million. The cheque was written—

**Senator SESELJA:** Was that part of the \$6 million that you are talking about—the success fee of \$3 million?

**Mr Dillon:** The \$3 million was part of the \$6 million that was spent. Another headline finding from McGrathNicol was that capital expenditure projections used in the modelling were based on essential capital expenditure only, whereas the projections, going forward, projected optimistic occupancy rates going forward. To get those occupancy rates you require not just the minimal level of capital expenditure but you need to maintain the asset going forward. The Yulara resort is complex of five hotels. It is a small town. So it is a big financial exercise. McGrathNicol found that the occupancy projections appeared to be 'overly optimistic'. They were projected to grow, notwithstanding a long-term decline in visitation.

**CHAIR:** Excuse me, Mr Dillon, Senator McLucas. We do have questions from other senators in regard to the ILC on other issues, not particularly this one. We are also going to deal with Indigenous Business Australia and I am conscious of keeping on time. If at any point you think you might be able to direct the responses by way of questions, that would be helpful.

**Senator McLUCAS:** Thank you for your kindness, Chair. Mr Dillon, you said you also have the recommendations—I think you said there were 24?

**Mr Dillon:** Twenty-five.

**Senator McLUCAS:** Twenty-five recommendations from the report. To accommodate the chair's reasonable request, if you tabled those recommendations—and you did say that report is available somewhere.

**Mr Dillon:** On the ILC website. Here I have summarised the 25 key concerns—they are not recommendations. We have extracted them from the report.

**Senator McKENZIE:** Just to be clear, they are not recommendations.

**Mr Dillon:** They are key findings.

**Senator McKENZIE:** In the key finding around the decision, which seems to be not an advisable decision to have made—

**Senator SESELJA:** That is an understatement, Senator McKenzie.

**Senator McKENZIE:** Were there any outcomes related to Indigenous employment, around how the resort would work?

**Mr Dillon:** When the resort was acquired, it employed two Aboriginal persons. In the period since 2010, that number has gone to just under 200 Aboriginal employees and trainees. So it is an extraordinary success. The resort is managed exceptionally well. There is a lot of debate about whether the ILC has, in a sense, denigrated the resort. The ILC has not. We believe the resort is exceptionally well managed and the ILC itself, over and above the purchase price in the last 2½ years has invested over \$9 million in Indigenous employment at the resort. It is a huge success story. The minister himself has been on the front page of the *Australian* extolling the benefits. We are all on the same page here. The current ILC board has done a terrific job in driving Indigenous employment. The vision was with the previous board. No-one disputes that, but that is not the real issue here. The real issue is the ILC, a statutory corporation, purchased an asset for 300 million which was probably worth just over 200 million and borrowed way beyond its financial capacity to repay. The ILC will live with the consequences for the next 10 or 20 years.

**Senator SIEWERT:** And the consequences are?

**Mr Dillon:** The consequences are that the interest repayments are around 11 million a year and, were we to pay down the 200 million at 10 million a year that would take us 20 years. So there you go: \$20 million a year for the next 20 years, roughly.

**Senator SIEWERT:** That is overall?

**Mr Dillon:** Back of the envelope—out of a \$50 million budget from the land count, so basically 40 per cent of our funding. I should qualify this because, if we can trade out of this—

**Senator McKENZIE:** I have other questions.

**CHAIR:** Thank you.

**Senator McLUCAS:** This is actually the answer.

**Senator McKenzie:** Is this—

**CHAIR:** Excuse me, Senator McKenzie. There has been lots of information in Mr Dillon's presentation. Much of it is difficult for people to digest if there is no opportunity for other questions. Senator McLucas, can you ask Mr Dillon a question because other senators do have questions on other issues for the Indigenous Land Council?

**Senator McLUCAS:** I note you have made changes to the Audit and Risk Management Committee. There was some commentary about that as well. I also note that the minister, in his role as the shadow minister, was critical of changes to the audit management committee. I think you have given us a context as to why the audit management committee had to be reviewed. Can you confirm, in a short sentence, why the ILC changed their—

**Mr Dillon:** The audit risk committee should have had a key role in over sighting the transaction. The transaction was driven by Director Baffsky. Director Baffsky chaired the Audit and Risk Management Committee. The review notes that the audit and risk committee did not give adequate attention to the transaction. Director Baffsky had been on the audit and risk committee—I do not have the exact figure—for somewhere in excess of 10 years. The Audit Office guidelines say two terms, five years or thereabouts, and another member of the audit and risk committee, Director Jeffries, had been on the audit and risk committee for nine years. So the committee had been locked in place for too long, and the review found that that was a key corporate governance issue that the ILC should address. Of course, when the new board was appointed in October 2011, they immediately took action to renew the audit committee. That was when, suddenly, conflict emerged within the board.

**CHAIR:** I need your consent to table a document, Mr Dillon; it is the recommendations.

**Senator Scullion:** Just for clarity, Mr Chairman, the actual report and its recommendations were tabled on 18 December, so they are available on the public record.

**Senator SIEWERT:** Minister, I just missed where you said they were tabled.

**Senator Scullion:** They were tabled on the ILC website on 18 December.

**CHAIR:** Senator Siewert, do you have any questions of the ILC in regard to this specific issue?

**Senator SIEWERT:** Senator McLucas is asking questions that I might following up on. So if I need clarity I will throw something in.

**CHAIR:** Senator McLucas, I would like to go to Senator McKenzie at 11.30 and then come back to you.

**Senator SIEWERT:** Chair, can I clarify: will we get copies of the letters that Mr Dillon tabled?

**CHAIR:** Yes, they are being photocopied now.

**Senator McLUCAS:** I want to go to another inquiry. Last month there was a media report referring to another review of the purchase of the Ayers Rock Resort, which had been conducted by Aegis Consulting Group. My understanding—and I can be corrected—is that this report was commissioned by previous ILC board and Voyages board directors. Did the ILC pay for this report?

**Mr Dillon:** Senator, the answer is no.

**Senator McLUCAS:** I then assumed that this was paid for in their personal capacity—but you would not know the answer to that. Are you aware of that report?

**Mr Dillon:** I am only aware of it by virtue of the media reports.

**Senator McLUCAS:** Do you know why the report was commissioned? You might not be able to answer that question.

**Mr Dillon:** No, I do not know why the report was commissioned. There was no contact with the ILC regarding the report, seeking information—nothing.

**Ms Carroll:** Senator, perhaps the department has been provided with a copy of that report as has the Department of Finance, and we are currently considering the report.

**Senator McLUCAS:** It is not yours to publish though, is it?

**Ms Carroll:** No, Senator.

**Senator McLUCAS:** Do you know who commissioned it, Ms Carroll?

**Ms Carroll:** I will just have to check if I have got that specific information.

**Senator McLUCAS:** Could you also find out, if you can, who paid for this report and why it was commissioned.

**Ms Carroll:** I would not be able to tell you why it was commissioned. All I can tell you is that it was provided to the department.

**Ms Edwards:** Senator, I am informed that on the face of the report it is not clear exactly who commissioned it.

**Senator McLUCAS:** So the department has it at the moment. Has it been provided to the minister at this point?

**Ms Edwards:** It was provided to the department under a direct letter.

**Senator McLUCAS:** Have you provided it to the minister?

**Ms Carroll:** Not at this stage. We are talking to the Department of Finance about it.

**Senator McLUCAS:** Minister, have you seen the report?

**Senator Scullion:** No, I have not seen the report, but I am aware of its existence.

**Senator McLUCAS:** Simply through media commentary?

**Senator Scullion:** Yes, it first came to my attention through media commentary, but I am also aware of its existence through conversations with the department—'Where is it up to?' sort of thing, and they said it was with Finance.

**Senator McLUCAS:** Have you had other advice—

**Senator Scullion:** I have not had any other briefings or advice in regard to—

**Senator McLUCAS:** or conversations with other people about the report?

**Senator Scullion:** No, I have not.

**Senator McLUCAS:** Chair, my next question moves along a little bit.

**CHAIR:** It being 11.30, I would like to go to Senator McKenzie and then we will come back.

**Senator McLUCAS:** Okay. But I do have further questions.

**CHAIR:** Senator McKenzie, on the Indigenous land council.

**Senator McKENZIE:** My question relates to the Northern Territory land councils and the Aboriginals Benefit Account. Could you outline for me the increase in Commonwealth funding over the last five financial years, please?

**Ms Edwards:** Can we just clarify—we are in the section talking about the Indigenous Land Corporation. I am not clear on the question. Could you repeat it?

**Senator McKENZIE:** That question might be more appropriate for PM&C—is that right?

**Ms Edwards:** Yes.

**Senator McKENZIE:** My apologies. I have a question for ILC around the acquisition of the Koori Job Ready program. Can you confirm that the National Centre of Indigenous Excellence Board approved, around June 2013, a \$50,000 per annum pay rise to its CEO, backdated for a year? What was the basis of that approval?

**Mr Dillon:** I cannot confirm that, but I am happy to take it on notice.

**Senator McKENZIE:** Okay. Was the ILC Board informed of the acquisition of the National Centre of Indigenous Excellence of Koori Job Ready from the CFMEU?

**Mr Dillon:** I do not think this was an acquisition from the CFMEU.

**Senator McKENZIE:** It was purchased from the CFMEU. It was an acquisition by NCIE of Koori Job Ready. That program was acquired from the CFMEU. I want to know what the board knew about the acquisition and I want to know when they knew it, and then I want to go to the approval processes.

**Mr Dillon:** I think we need to get some clarity about what it is that happened.

**Senator McKENZIE:** I would appreciate that.

**Mr Dillon:** This was not an acquisition of anything. The NCIE, which is a wholly owned subsidiary of the ILC, took over a program that was previously run by the New South Wales government. It is an employment program for Indigenous staff. It is very similar to the National Indigenous Training Academy that we run at Ayers Rock but it works with local people in New South Wales particularly. Koori Job Ready was a program that was created in 2006 by the New South Wales government. It was previously located at the Australian Technology Park in Sydney, in my understanding.

It has been funded with Commonwealth money from IEP and also with New South Wales government money. NCIE took this program over. The two programs are the Les Tobler centre for construction industry training and the Yaama Dhiyaan program for the hospitality industry. It provides an integrated solution for people seeking training and provides assistance in finding and maintaining employment. There was no acquisition; there was just a transfer of the program, if you like. It was previously auspiced by the New South Wales government. It then went to the NCIE with New South Wales government funding and ongoing Commonwealth funding.

**Senator McKENZIE:** When did that occur?

**Mr Dillon:** That occurred last year.

**Senator McKENZIE:** Month?

**Mr Dillon:** So—

**Senator McKENZIE:** What date did that change of auspicing arrangements—

**Mr Dillon:** It was 1 October 2013.

**Senator McKENZIE:** When was the board made aware of the change in auspicing arrangements?

**Mr Dillon:** Which board—the NCIE Board or the ILC Board?

**Senator McKENZIE:** ILC.

**Mr Dillon:** I would have to take that on notice. It was probably around that time.

**Senator McKENZIE:** Before or after the—

**Mr Dillon:** Before.

**Senator McKENZIE:** It was made aware before—

**Mr Dillon:** Yes; that is my understanding.

**Senator McKENZIE:** of the change in auspicings arrangements?

**Mr Dillon:** I would like to check it. My understanding is that it was before, but I will check that for you.

**Senator McKENZIE:** What were the approval processes of deciding to actually start auspicings this program?

**Mr Dillon:** They would have been undertaken by NCIE. They would have had discussions with the New South Wales government and done some assessment as to what was involved. And I was—

**Senator McKENZIE:** And then what would have happened?

**Mr Dillon:** I was not privy to those discussions.

**Senator McKENZIE:** So NCIE decides that they do not longer want to be auspicied by the New South Wales government?

**Mr Dillon:** No. Koori Job Ready, which was its employment program, was under the New South Wales government, and it came under NCIE.

**Senator McKENZIE:** Right. So the NCIE made the decision?

**Mr Dillon:** That is right.

**Senator McKENZIE:** That 'We want to go and auspice this program'?

**Mr Dillon:** Exactly.

**Senator McKENZIE:** And then went to the ILC for approval of that?

**Mr Dillon:** That is right.

**Senator McKENZIE:** Before the auspice arrangements changed. Okay. We were talking about the \$6 million done earlier: what due diligence was undertaken by NCIE prior to the acquisition?

**Mr Dillon:** I would have to take that on notice.

**Senator McKENZIE:** We had \$6 million from an acquisition that we heard a great deal about over the last half an hour, but we do not have any idea about the due diligence that was done by NCIE around the change of an auspicings arrangement that they clearly had discussions about. You will take it on notice?

**Mr Dillon:** Well, I was not privy to discussions, so do not wish to chance my arm and say things that I do not know anything about. So I guess I will have to take it on notice.

**Senator McKENZIE:** Was there any due diligence undertaken by the ILC, then?

**Mr Dillon:** No. The ILC has subsequently had a look at it in an informal way—the transfer of this responsibility—the reason being that because NCIE is a fully-owned subsidiary, we, in a sense, stand behind them. And—

**Senator McKENZIE:** Yes, you back them.

**Mr Dillon:** We back them, and so we want to get a handle on what the ongoing liabilities are here.

**Senator McKENZIE:** Would it not have been useful to know that before the decision was taken to auspice it—to have an understanding of liabilities? We have had a big debate over the last half hour about decisions around taking on liabilities. This is quite a recent decision to take on more liabilities, but we did not do any assessment as to what they might be.

**Mr Dillon:** When I talk about liabilities, I am really talking about—

**Senator McKENZIE:** Yes, I would like to know what you see them as.

**Mr Dillon:** I am really talking about recurrent funding—the wages, the whatever.

**Senator McKENZIE:** Do we have an understanding of what the magnitude of that might be?

**Mr Dillon:** One, we are not talking assets; we are talking an intangible program that is located in Redfern. But the funding here is in the hundreds of thousands, not the hundreds of millions. So to compare the two discussions, I think, is slightly—

**Senator McKENZIE:** It goes to the principle, surely? We are talking about recommendations around governance, and if you get the governance right it does not matter if you are talking pennies or pounds—good decision making is good decision making.

**Mr Dillon:** Absolutely, I could not agree with you more.

**Senator McKENZIE:** All right. I am aware that Rohan Tobler, the NCIE general manager, was formerly employed by Koori Job Ready. Is that correct?

**Mr Dillon:** It sounds correct to me, but I would have to check and take it on notice.

**Senator McKENZIE:** Correct, and also the CFMEU? Did he personally advocate for the Koori Job Network's acquisition? Could you outline the conversations that may have been had by Mr Tobler around this issue?

**Mr Dillon:** I do not have any knowledge of any conversations.

**Senator McKENZIE:** Okay. Does the NCIE and the ILC have any liabilities relating to the unfortunate death of the 23-year-old Indigenous man on 9 January 2014 at the Barangaroo construction site in Sydney?

**Mr Dillon:** My understanding is that the answer is 'no'.

**Senator McKENZIE:** Your understanding is that the answer is 'no'?

**Mr Dillon:** Because the person was not employed by NCIE or Koori Job Ready. He was a previous trainee of Koori Job Ready.

**Senator McKENZIE:** Right. He was then placed to work in Active Labour after his pre-employment training. Is that right?

According to the ABC's 7.30, Active Labour is a company that has been reported to associate with outlaw biking gangs such as the Comancheros. Is that true?

**Mr Dillon:** I do not know.

**Senator LUNDY:** Chair, she is impugning associations, and I think it is unreasonable.

**Senator McKENZIE:** No, I am actually reporting on the report of the ABC's 7.30.

**Senator LUNDY:** Yes, but the tone of your question is impugning something when it is just speculative.

**CHAIR:** Order! If I heard Senator McKenzie's question correctly, she was making reference to an ABC media report.

**Senator McKENZIE:** How does the acquisition of Koori Job Ready relate to the ILC's function, given that, as you said earlier, it is located in Redfern—it is not on Indigenous held land? And, if there is no relation to the ILC's land management function, was the purchase contrary to the ILC's statutory remit?

**Mr Dillon:** There was no purchase of an asset. We took over a program.

**Senator McKENZIE:** With recurrent funding liabilities.

**Mr Dillon:** That is right. The NCIE operates from a site in Redfern. It has a broad remit to work with the Redfern community and has broad support from the community. Koori Job Ready has a location in Redfern and NCIE—

**Senator McKENZIE:** Yes, you have said that. My question—let me make sure you are really clear on what it is—was whether it has no relation to the ILC's function, specifically the ILC's remit with land management function. If it does not, is the decision to auspice this body therefore contrary to the ILC's statutory remit?

**Mr Dillon:** I have not taken legal advice on this.

**Senator McKENZIE:** Could you?

**Mr Dillon:** I would just point out that I operate out of a leased office here in Deakin. It is not Aboriginal owned land but it is within our statutory functions for me to operate out of that office. So I think—

**Senator McKENZIE:** You are the CEO; you are not running an employment program.

**Mr Dillon:** It is the same in that it is ILC operations. There has to be a link to Aboriginal land, but only a broad link, not a direct link. I think, if we did seek legal advice, we would find that there was a broad link.

**Senator McKENZIE:** My final question goes to an earlier question I asked Ms Carroll. Seeing that you are at the table, you might be able to clarify whether or not you are a friend, former colleague and co-author of a book—

**Senator McLUCAS:** Chair, that is out of order.

**Senator McKENZIE:** with the chairman of the MJD Foundation, Mr Westbury.

**CHAIR:** I think that question might have been asked of Ms Carroll earlier.

**Senator McKENZIE:** And they took it on notice. Seeing he is here, I thought I would ask him.

**Senator McLUCAS:** You are continuing this line of impugning the reputation of various persons. We have seen that before—

**Senator McKENZIE:** If I co-authored a book with someone and was a former colleague and friend of theirs, I would be happy to state that that was the case.

**Senator McLUCAS:** Well, you are talking to the CEO of the ILC in his capacity as the CEO of the ILC—

**Senator McKENZIE:** In your capacity—

**Senator McLUCAS:** You might want to ask everyone else if they have a friend as well!

**CHAIR:** Excuse me, Senators. Mr Dillon, in earlier evidence, the Department of the Prime Minister and Cabinet said that they would take that question on notice. Would you like to answer the question or take it on notice?

**Mr Dillon:** I have not taken it on notice. It is not appropriate for me to in my role as ILC CEO. If the committee gives me permission to—

**Senator McKENZIE:** Did you co-author a book?

**Mr Dillon:** answer in my personal capacity—

**CHAIR:** Mr Dillon, would you like to answer Senator McKenzie's question—yes or no?

**Mr Dillon:** Only if I can speak in my personal capacity.

**CHAIR:** I will take that as a no. Thank you very much, Senator McKenzie. Before—

*Senator Siewert interjecting—*

**CHAIR:** Excuse me! Before we go back to Senator McLucas, I want to get advice from Ms Carroll. The question that I heard Senator McKenzie asking with regard to the Northern Territory land council goes to the issue of the Aboriginals Benefit Account. Where is that best placed in today's program, or have we passed over it?

**Ms Carroll:** I think we have passed over it. Most of those questions happened in the first session.

**CHAIR:** My apologies, Senator McKenzie.

**Ms Carroll:** We will take that on notice.

**Senator LUNDY:** Chair, before we proceed, my colleagues are still concerned that Mr Dillon did not refuse to answer the question; he asked if he could speak in a personal capacity. Can I suggest that the committee have a brief private meeting at lunchtime to discuss this?

**CHAIR:** I am happy with that.

**Senator LUNDY:** Obviously there are concerns about the line of questioning and the way it was responded to.

**CHAIR:** We will have a private meeting. Senator McLucas.

**Senator McLUCAS:** I now want to go to the Ernst & Young review of the ILC and the IBA and some questions to the department. The minister announced a review of the ILC and the IBA in December last year and then announced that the review would be conducted by Ernst & Young. Was Ernst & Young selected through an open tender process?

**Ms Edwards:** Ernst & Young was selected from an existing panel of providers through the former department DEEWR, which came into PM&C. So we had access to that panel. That panel was put together through an open selection process.

**Senator McLUCAS:** How much will the review cost?

**Ms Edwards:** \$300,000.

**Senator McLUCAS:** Who did the department and/or the minister consult on the terms of reference for that review?

**Ms Carroll:** The department consulted with the minister to finalise the terms of the review.

**Senator McLUCAS:** Were there any changes to the terms of reference during the course of the review?

**Ms Edwards:** No.

**Senator McLUCAS:** Minister?

**Senator Scullion:** Not that I am aware of.

**Senator McLUCAS:** The review was announced in December—and they started work when?

**Ms Carroll:** They started work in early December, as soon as the contractual arrangements were put in place.

**Senator McLUCAS:** When did submissions close?

**Ms Edwards:** 24 January.

**Senator McLUCAS:** It is always important to do reviews but it is always difficult over Christmas. What was the need for the haste with this review?

**Ms Carroll:** We did not want the review to drag on. While it started in December, certainly the consultants met with a wide range of people and also had the process for people to put in presentations to the review. We acknowledge that that happened over December and January, but there was a process by which people could put in public submissions.

**Senator McLUCAS:** Are you sure there was not a change to the terms of reference?

**Ms Edwards:** Yes.

**Senator McLUCAS:** Were there requests for extensions to the deadline for making submissions to the review, given that it was over the Christmas break?

**Ms Edwards:** I received a couple of informal calls for extensions—the ones that I am aware of were primarily from representatives of state governments. The answer given was, 'There isn't an opportunity for extending the deadline, but send us your material anyway.'

**Senator McLUCAS:** Was the material sent to the department and then passed on to Ernst and Young?

**Ms Edwards:** The public submission process material came to an email address that was set up, departmentally auspiced, and then provided to Ernst & Young.

**Senator McLUCAS:** How many people made submissions?

**Ms Edwards:** 26.

**Senator McLUCAS:** To break them into categories, how many were states and territories?

**Ms Edwards:** Very few. We can take that on notice. We think it was perhaps a couple.

**Senator McLUCAS:** That is a bit of a concern. Did those states and territories that expressed a desire to receive an extension actually send anything in?

**Ms Edwards:** One has.

**Senator McLUCAS:** Of the remaining 24 submissions to the review, how can they be categorised? I do not want to know the names of the submitters, but what sorts of organisations or individuals were they?

**Mr Matthews:** Broadly, they were from a wide range—native title representative bodies, private individuals and interested parties. They varied quite a bit. I would not say there was a general theme.

**Senator McLUCAS:** Will all those submissions be made public?

**Ms Edwards:** That is a matter for government.

**Senator McLUCAS:** I asked that question in another committee the other day and the answer I was given was that, because we did not tell the people when we asked for submissions that they were going to be made public, we cannot make them public. I am a little bit concerned about this theme that is appearing. I have not heard these sorts of answers previously.

**Ms Carroll:** What has happened in the past, certainly when I have been involved in processes like this, is that sometimes it is very explicit up-front that people's submissions will be made public and they often go on a website in a particular amount of time. When that has not been made public, what would normally happen is that, once the government has made a decision about what it wants to do with the review document, we would contact any of the people that made a submission and ask if they were happy for their submission to be released as part of that. That would be part of a general process.

**Senator McLUCAS:** Minister, do you want those submissions to be public?

**Ms Carroll:** In this instance some of the people who put in submissions expressly asked that their submissions not be made public. That is one of the reasons we did not make them public.

**Senator McLUCAS:** Absolutely, if someone says they want to tell you something but not be public, you do not publish that. Minister, in general do you want the submissions to be public?

**Senator Scullion:** I do not think we deal with this in a different way than the government would normally consider the reports. We would obviously have to consider whether people want them to be made public, or not. Invariably, the convention of government is to respect the wishes of people who want them published and those who do not. I imagine this would be no different.

**Senator McLUCAS:** You usually start from a position of publishing first unless someone says do not publish. That has historically been the view.

**Senator Scullion:** I think that is what my answer was. I just said the convention in the past was that you have to respect the wishes of those who do not want their submission published. But I do not have any intimate knowledge of that.

**Senator McLUCAS:** Has the report been received yet?

**Ms Carroll:** Yes.

**Senator McLUCAS:** When was that?

**Ms Carroll:** 17 February.

**Senator McLUCAS:** Where is it now?

**Ms Carroll:** The department has received it. We have had a look at the report and we have recently finished a brief to the minister. I do not think it has actually landed on his desk yet, but it is on its way.

**Senator McLUCAS:** And then you will make a decision, Minister, about when to publish?

**Ms Carroll:** That would be the normal process.

**Senator McLUCAS:** But that decision has not yet been made?

**Senator Scullion:** No.

**Senator McLUCAS:** Has any further work in the area of the review of the ILC and the IBA been commissioned from anyone else?

**Ms Carroll:** No. We have not gone out to commission any work outside of that.

**Senator McLUCAS:** Was the ILC consulted on the terms of reference before the review was announced?

**Mr Dillon:** Yes.

**Senator McLUCAS:** The terms of reference ask reviewers to consider 'how to structure arrangements to ensure appropriate powers of ministerial direction of government control'. How does that fit with the fundamental way the ILC was established historically? Frankly, I do not really understand that. My understanding is that the ILC is an independent entity. Frankly, there should be no ministerial intervention or government control. I want you to go to what your act says.

**Mr Dillon:** I think that is correct. The ILC was established in 1995 following the passage of the Native Title Act. The Native Title Act said there will be a Land Fund. In 1995, legislation was introduced to establish the ILC and the Land Fund, now known as the Land Account. In essence—and this is a major concern of the ILC board—this reflected the compact, the settlement, the grand bargain that was put in place following the passage of native title. In return for the resolution of native title claims across the country—the certainty given to non-Indigenous Australians—Aboriginal people got access to a claims process under the Native Title Act. But many Aboriginal and Torres Strait Islander people have lost access to their traditional lands. The government at the time took the view that there should be an extra mechanism that in a sense provided partial compensation for the lands that had been dispossessed. There was a grand compact—the so-called social justice package.

You will find that the Land Account funds the ILC. The ILC was established with a primarily Indigenous board. The idea was that Aboriginal and Torres Strait Islander people would allocate the proceeds of the Land Account in land related ways. Land management and land acquisition were the two primary functions of the ILC. The concern shared deeply by the ILC board is that this is being placed at risk by any suggestion of an amalgamation or greater ministerial control over the operations of either the ILC or the IBA—but particularly the ILC. The ILC is unique among Commonwealth statutory corporations. It has greater independence than most, if not all, for that very reason—that it was deliberately put in place as a compensatory mechanism.

**Senator Scullion:** Thank you, Mr Dillon. I would like to clarify something for the record. I would not want to have any confusion over the last iteration from the witness. The terms of reference specifically set aside any consideration of the Land Account so that those concerns did not arise. The review was not to consider any aspects of the Land Account because that was absolutely sacrosanct, as the evidence indicated. But they were in the terms of reference specifically to avoid the sorts of concerns just brought up by the witness.

**Senator McLUCAS:** I want to understand in both a legal and a practical sense what would be the effect on the Land Account—accommodating Minister's Scullion comments just then—

**Senator McKENZIE:** It was not part of the review.

**Senator McLUCAS:** I note that—and I note what the minister said.

**Senator McKENZIE:** Just clarifying.

**Senator McLUCAS:** What would be the effect on the Land Account of an amalgamation with the IBA in a legal sense and also in a practical sense?

**Senator Scullion:** This is normally a question that would be seen to be speculation, an opinion. There has been a comprehensive report to deal with all these matters. Whilst the witness has already given evidence, and

certainly the ILC has given evidence, I do not think it is appropriate that we reiterate here what we are going to read in the report.

**CHAIR:** The minister's comments are quite insightful. If we could avoid speculation, that would be much appreciated.

**Senator McLUCAS:** It is not speculation. There has been commentary about the potential to amalgamate the ILC and the IBA.

**CHAIR:** I can only make a judgement on my interpretation of what I think I have heard. If we could steer clear of speculation, it would be much appreciated.

**Senator McLUCAS:** I have asked in a legal sense and in a practical sense, not a speculative sense.

**CHAIR:** But it is a hypothetical question, isn't it?

**Senator McLUCAS:** If the ILC and the IBA were to be amalgamated, what can we predict would be the complexity—

**CHAIR:** The speculation arises around the word 'were'.

**Senator McLUCAS:** No, this goes to due diligence. A government needs to think about what road they are walking down if they are going to contemplate amalgamating the ILC and the IBA. From my non-legal understanding, I am asking whether people have put their mind to the practical and legal implications in terms of the management of the Land Account—and I think that is a reasonable question.

**CHAIR:** Have you been asked to put your mind to the management of the Land Account?

**Senator McLUCAS:** If there was an amalgamation—

**Senator Scullion:** As I indicated earlier, certainly in terms of the context of questions about this review, the review specifically excised any questions of that nature because we wanted to embargo and quarantine the Land Account, and the mechanisms of the Land Account, from any changes that were possible. For that particular reason, we excised that. I certainly would not like the questions specifically about particular governance changes and amendments to how we went about business to be predicated on an opinion from the ILC or others.

**Senator McLUCAS:** Minister, if the ILC and the IBA were to be amalgamated, that would be quite legitimate. You know that there are many things that are delivered with funds from both the ILC and the IBA. The IBA will do the business end and the ILC will be doing some purchase work. I want to know how you construct an entity where the Land Fund is separate. I think that is a question we need to contemplate before we potentially go down the road of amalgamating these two entities.

**Senator Scullion:** That is not the question you were asking.

**Ms Carroll:** The terms of reference were trying to take into account the fact that the ILC and the IBA are different in their current powers et cetera and there is a range of options available. This was asking the review for some advice. It might be that the advice, and the decision of any government if there were to be a change, could be to leave things as they are or to make a change. So there is a range. The point of having it in the terms of reference was to seek some advice from Ernst & Young about the possibilities going forward, thinking about that and the consultation process that they went through. They spent an amount of time with the ILC and the IBA separately to think about, in any recommendations they brought forward, the implications and what would happen. There was a clear intent to surface that issue and understand the options going forward. As we have already indicated, we have only recently received the report and it is under consideration.

**Senator McLUCAS:** I will leave it at that, but I will look forward to receiving that report in the short term. I have some questions for the IBA but I will defer to others.

#### **Proceedings suspended from 12:03 to 12:10**

**CHAIR:** I would just like to note that the committee has had a private meeting and note that the witness did not refuse to respond to the question. The committee is keen to finalise this matter and will be in contact with the witness shortly.

**Ms Carroll:** Right at the beginning, Mr Dillon asked about tabling some letters for the minister. We have shown those letters to the minister. We are happy that they are tabled for the committee.

**CHAIR:** I call representatives of Indigenous Business Australia.

**Indigenous Business Australia**

[12:11]

**CHAIR:** I welcome Mr Chris Fry, chief executive of Indigenous Business Australia, and officers. Mr Fry, would you like to make an opening statement?

**Mr Fry:** No, thank you.

**Senator McLUCAS:** Has Indigenous Business Australia made a submission to the Ernst & Young review of IBA and ILC?

**Mr Fry:** The IBA made a submission to the Ernst & Young review.

**Senator McLUCAS:** Is that then published?

**Mr Fry:** It is currently on our website. It is a public document.

**Senator McLUCAS:** Does it canvass any concerns about potential amalgamation of ILC and IBA? Just for the record, if you could give us the flavour of your submission.

**Mr Fry:** The board has put forward a view. It is, in my estimation, a considered view. Us, as management, have written the review. I think it is a representation that ACLEI reflects the board and that has been signed off by the board. If I was to speak to it as I understand it, there might be five points that the board wish to get across about that review. Do you wish me to go through those?

**Senator McLUCAS:** Yes.

**Mr Fry:** In no particular priority order, the key points from the review submission by the board that I have identified: (1) the IBA board's view is that IBA continues to deliver strong results, (2) the IBA and ILC are mature organisations and have different purposes, (3) a merger would dilute the commercial focus that IBA has as its core, (4) there are only minimal savings associated with any merger and (5) the minister has already strong control over IBA through a general order power.

**Senator McLUCAS:** Is that called a general direction or a general order?

**Mr Fry:** General direction. You are correct. Thank you for that.

**Senator McLUCAS:** Tell me how that is exercised, because I think it is different from the ILC.

**Mr Fry:** If I could refer that to our general counsel.

**Ms Gowans:** It is a power of general direction. The minister can give a direction and that direction would be tabled before both houses of parliament. So it operates a bit like a disallowable instrument.

**Senator McLUCAS:** Is it often used?

**Ms Gowans:** It is never been used in the case of Indigenous Business Australia.

**Senator McLUCAS:** I have not read the act, but it is there for the minister to provide direction on a specific event or a specific issue. Give me the flavour of it.

**Ms Gowans:** It is not a specific power of direction, so, for example, it would not be saying, 'Do not invest in this particular investment.' It is a general power. For example, in our case it might be, 'Do not invest in the tourism industry,' which would be a general direction. A specific direction would be, 'Do not buy that business.' It has not been used in IBA's case and it is complementary to other powers of oversight that parliament has at the moment—like those under the CAC Act, general policy orders and so forth—to ensure that IBA delivers consistently with Commonwealth objectives.

**Senator McLUCAS:** Going to the department: is there any work currently being undertaken about IBA in terms of its structure and arrangements from the department's perspective?

**Ms Carroll:** Senator, as I indicated before, we are just looking at the review and looking at a response to the review.

**Senator McLUCAS:** To the department again: could IBA explain its home loan program and how it is going? I have heard some great stories.

**Mr Fry:** The IBA home loan program is established to provide home loans to Indigenous people that are otherwise unlikely to get finance from the wider banking sector. It is only available for Indigenous clients. We have a goal over our program that our clients will get into home ownership through the home repayment process, so that in time they will transfer to the full banking system. Our program has been running for many years and we have collectively done approximately 16,000 home loans over that time.

**Senator McLUCAS:** With the tenure changes that have been occurring in the last few years, has interest in the home loan program increased?

**Mr Fry:** With regard to what we call emerging markets, which is home loans on Indigenous lands, for many years these have been worked on to overcome the land tenure issues. Last year we approved three loans in what we call emerging markets—two were in the Northern Territory, one was in Queensland in Hopevale. So far this year, so for the past six months to date, we have approved 10 loans, we are currently assessing two and we have undertaken 28 visits to emerging markets across Queensland and the Northern Territory.

**Senator McLUCAS:** Fantastic. I know the one in Hopevale; it is a good news story. To the department: have there been any conversations in the department about the future of the IBA home loan program?

**Ms Carroll:** Not specifically about the future of the home loan program. Obviously we are regularly looking at programs across the suite of programs within Prime Minister and Cabinet. In regard to IBA specifically, we are obviously focusing on looking at the review at this point in time.

**Senator McLUCAS:** So no consideration of changes to the way the IBA home loan program will operate?

**Ms Carroll:** Not at the moment, Senator, but that is really a decision for government as we go forward.

**Senator Scullion:** If I could just assist, I think we have heard as a committee evidence over time that one of the impediments was the nature of land tenure. We have certainly had a focus on accelerating the changes to land tenure where we can. Certainly in Gunbalanya—as I said, I was in Palm Island the other day, where, while they did not access HOIL, the fact that a DOGIT was able to go from a DOGIT to a 99-year lease in Queensland shows that there is another form of land tenure, which in the past has been an impediment, which has changed. It is very much a priority for this government to ensure that we accelerate the land tenure process, because that was identified as the biggest impediment to access funds like the HOIL provides.

**Senator McLUCAS:** Just for the record, that was also the focus of the previous government.

**Senator SESELJA:** Your annual report for 2012-13 shows that the IBA had, I think, \$127 million in cash and term deposits worth \$150million. Is that correct?

**Mr Fry:** I will ask our chief financial officer to come forward and be quite specific on that, Senator.

**Senator SESELJA:** Great.

**Mr Kumar:** The financial statements do state that we have \$127 million in cash and cash equivalents on a consolidated basis; that is, IBA and subsidiaries included.

**Senator SESELJA:** And term deposits worth \$150 million; is that right?

**Mr Kumar:** Yes.

**Senator SESELJA:** Are you able to explain—that seems a lot in terms of holdings—what is the purpose of having so much in cash holdings at the moment?

**Mr Kumar:** One of the constituents of the cash and the cash equivalents and deposits is that in 2008 we sold a significant asset—the Foxleigh coal mine—and the proceeds of that are under the investments program, and are targeted to be reinvested into various businesses and assets, which is what the investments program does. So that accounts for a substantial part of these funds.

**Senator SESELJA:** At the moment you are holding a lot of it in cash. Is the plan then to convert it into other assets which will then yield revenue for the IBA to be able to deliver for Indigenous people? Is that broadly the plan?

**Mr Fry:** I can reply to that. At any one time our investments program may have somewhere between six and 12 investments where we are currently undertaking a form of due diligence. We have an audit and risk committee and a finance and investment committee that potential investments go through. As a consequence we need to maintain a prudent cash balance, so that if those investments are proved through the due diligence process we can actually execute them. Within the existing policy, those investments can be in the order of \$5 million to \$25 million.

**Mr Viswanathan:** We are certainly very active in trying to be as proactive as possible in investing as much of the surplus as is prudent. So in addition to the pipeline that Mr Fry mentioned, through our acquisitions team we are also constantly in dialogue with Aboriginal and Torres Strait Islander organisations and private sector partners about investment opportunities.

**Senator SESELJA:** Question on notice number 185—the response from previous estimates: you said, I think, that \$40,712 was spent on taxis between 7 September 2013 and 9 December 2013. That is a pretty high figure in a couple of months; is there a reason why so much was spent on taxis in a couple of months?

**Mr Fry:** Within the broader context: we have ongoing monthly oversight on our travel expenses, including taxis. Within the last two financial years taxis have been one of the operating overheads. We have also been able to drive down our overheads as a percentage of total costs from 28 per cent to 21.9 per cent currently, as at the end of the last financial year. I can assure you that cost control, particularly in overheads, is an area that we focus on at the executive on a monthly basis, and throughout the programs.

We do have a range of clients right across the country and as a consequence our footprint is very broad. We make decisions on whether it is best to use taxis as opposed to hiring a car on the day when, for example, visiting our Cairns office.

**Senator SESELJA:** Is that an indicative number or a high number for a period of a couple of months? How does that compare to the rest of the year, or recent years?

**Mr Fry:** We may need to take that on notice and look at how it compares with the previous 12 months. It is at a level of detail that I just do not have at my fingertips at the moment.

**Senator SESELJA:** You say you are making decisions—what is the decision in the Cairns office? Is that a decision between taxis and a hire car?

**Mr Fry:** For example, I recently went to Cooktown and then went off to Hopevale. That was a visit last month. In that circumstance we did the analysis and it was financially more beneficial—more prudent—to hire a car for the day as opposed to taking a taxi. We have a team of 235 people across the nation in 17 offices, and as a consequence our people are out there and we are making the call on which is the best way to do it.

**Senator SESELJA:** How many of those 235 would be regularly using taxis? Is it a small proportion or is it most staff?

**Mr Fry:** Broadly speaking, about 50 per cent of our total workforce is working out in the regions but we have people from our national office travelling out and vice versa—our regional staff coming in for special events. So I am not trying to avoid the question; I just do not have the level of detail at my fingertips to be able to answer you specifically.

**Senator SESELJA:** Perhaps you could take that on notice.

**Mr Fry:** We will take it on notice.

**Senator SESELJA:** Thank you. I understand the IBA funded a major upgrade at the Tjapukai Aboriginal Cultural Park in Cairns. How much is the cost of the upgrade?

**Mr Fry:** I might defer to our chief operating officer, who has oversight of this particular aspect.

**Mr Bator:** The IBA board undertook a redevelopment of Tjapukai and it made a decision that it would put roughly \$12 million into that redevelopment, and that redevelopment is based on bringing that resort or park, which has been in existence since 1995, into a more current state so that it can continue to attract larger numbers of tourists. At the moment we have spent in our early works program, which is an external program, about \$1.1 million and we have spent a further \$3 million in the total project thus far. The project has been awarded to a company up there in Cairns which has a large Indigenous force, and out of that they have also put out a tender which was awarded to a local Aboriginal company for air conditioning and other services to that. The redevelopment is really around trying to ensure as much Indigenous employment as possible.

**Senator SESELJA:** What is the value of Tjapukai?

**Mr Bator:** The current valuation of Tjapukai is based on the land value and the alternative use, which is around \$1.4 million. That valuation, I would have to say, is based on an alternative use and is primarily based on land because there are not too many other comparators that we can use, so at the moment that is the most effective measure that we can use.

**Senator SESELJA:** Are you able to provide a summary of the overall financial situation of the cultural park?

**Mr Bator:** In terms of its current trading?

**Senator SESELJA:** Yes.

**Mr Bator:** Its current trading would suggest that we have had an increase in the number of visitors to that. Our budget for this year was for around 80,000 park entries for the full year and we are well on our way to achieving that. The clientele we are having are largely from Chinese background and therefore the spend is lower than we would have anticipated, but certainly from the point of view of members and visitors to the park we are ahead of budget.

**Senator SESELJA:** So the IBA is effectively running the park? Is that right?

**Mr Bator:** No.

**Mr Viswanathan:** I might answer that.

**Senator SESELJA:** You just referred to it as 'we', so I was not quite sure.

**Mr Viswanathan:** IBA is the ultimate beneficial owner of the park but we have in place a subsidiary that is responsible for overseeing the day-to-day management of the park, which has its own board. Reporting to that subsidiary there is a management structure within the business which includes all the standard management functions one would associate with that type of business.

**Senator SESELJA:** I have been made aware that some of the local Indigenous people have some concerns at the direction it is going. I will just put some of those to you and you can respond or others can respond. I understand that some of the local Indigenous community are complaining that they are not being consulted and that the original concept for the cultural park of showcasing local Indigenous culture has been abandoned. Are you able to respond to that?

**Mr Fry:** Senator, I will respond to that if I may, but I may call on some of my colleagues who are closer to it. As outlined by my colleague, we have an independent company that is running the day-to-day management. We have oversight through boards that we have established to make sure that proper strategic directions and the management of the company is carried out. As part of that, there is a cultural committee combining of management, some external people, and also the deputy chair of one of the local Indigenous organisations, Djabugay. Their role is to work together under a formal agreement that has been in place for many years to develop cultural content and how that is delivered. IBA continues to work within that framework in the local community. My understanding is that the committee, which included the local Djabugay representative, who is deputy chair, signed off and accepted the local content, approximately six or seven months ago. There is ongoing monthly engagement, as I understand it, between the senior management of Tjapukai and the Djabugay people to make sure that continues. The chair of IBA and I met with the Djabugay approximately three weeks ago. We have another meeting with them on 19 March. We acknowledge continued dialogue is a positive thing and some finetuning from time to time is required.

**Senator SESELJA:** Have you had any of these concerns put to you?

**Mr Fry:** We have received a letter from Djabugay outlining that they would like further discussions and that they have some concerns. Those discussions were held at the last meeting with the chair and me. We have continued to make progress, and we have made some commitments that we would return and continue to work through it.

**Senator SESELJA:** What are some of the concerns that have been raised?

**Mr Fry:** Broadly speaking, Senator, it is in regard to two aspects. The first aspect is that, when local traditional dance is put forward, Djabugay are keen it is acknowledged at the start of the performance that this is Djabugay cultural importance and that the people who are not of Djabugay and Tjapukai who are performing the dance acknowledge that it is a Djabugay-Tjapukai dance and they are not from that particular group. We accept that and believe that cultural integrity is very important.

The second aspect is the introduction of a wider showcase of Indigenous culture through other exhibitions and dance, which may include Torres Strait, because there is a significant Torres Strait community up there. Again, this process of how that has been introduced has gone through the cultural committee and has been signed off by those members.

**Senator SESELJA:** There are some other concerns that I am aware of, and I am interested to know whether you are aware of them. Cultural insensitivity, I suppose, is touched on in your answer and is one of the concerns about management toward local employees. There is also bullying, threatening tactics, and sexual and verbal harassment. I do not know the strength of any of these allegations, but I am aware that they exist. I am interested in whether anything like that has been put to you and whether you have any response.

**Mr Fry:** Can I defer that to the Chief Operating Officer

**Senator SESELJA:** Sure.

**Mr Bator:** We have received no formal complaints. I think one of the important things—

**Senator SESELJA:** Just before you continue: a formal complaint is one thing, but have any of these issues been raised in any way?

**Mr Bator:** I just want to go through the process there. The Tjapukai have a staff handbook. They also have an agency agreement, which has very specific responsibilities, roles and conduct around the notification of any misconduct or any grievance. Those are well understood, and that is part of the induction process. We have a highly skilled HR manager there, and she is available and is part of the process to ensure that people can bring

grievances forward. We are also aware that part of the agency agreement there was to bring salaries and conditions up to award conditions. The other part of it was that, in return for an increase in salary and conditions, there were going to be some productivity improvements. Part of that productivity agenda was that people would be multiskilled. Of course that change process does create stress for some people. We are aware that there have been some concerns about that work change process and the matters that come from that.

In terms of any particular grievances, we are aware that there are some allegations. As our general manager for investments has pointed out, Tjapukai is a separately run enterprise and has its own board. That board receives reports every month on any formal grievances, injuries or other matter that are coming to it and it has told me that it has not received any formal complaints.

**Senator SESELJA:** So there are no formal complaints, but you are aware of some of those broader issues being raised with management. Is that a fair assessment? Even though they have not lodged a formal complaint, these concerns have been communicated to management in some way.

**Mr Bator:** Yes, and management are working through them to ensure that people understand the formal processes that are available to them. Of course before we get to anything like that we try to make sure that we all understand the roles and responsibilities. As I said, we have an experienced HR manager and experienced CEO there, and they constantly look for those things and work to improve management styles and the understanding of the work changes that are necessary to achieve the productivity improvements that we want from Tjapukai.

**Senator SESELJA:** Do you believe there is anything in those allegations or do you think they are just grievances of disaffected staff?

**Mr Bator:** I think it is really important not to speculate on whether they are real or not; they are only allegations. We have formal processes—

**Senator SESELJA:** So what is the process now? Is there any process now, or is there no formal process because there is no formal complain?

**Mr Bator:** Unless there is a formal complaint, there is just an allegation.

**Senator SESELJA:** Given that you are aware of concerns, are you doing anything proactive to try and get to the bottom of it to see if there are any cultural or management issues that are of concern?

**Mr Bator:** As Mr Fry has pointed out regarding the issues you referred to about authenticity and respect for the dance, the IBA chair and CEO have been up there. They are going to visit there again—Mr Fry can talk about that—but they are certainly alive to those issues that have been formally written about to us.

**Mr Fry:** Senator, if I could provide some further context? I think you might be referring to one issue and, if that is the case, I have spoken to the family myself, but not to the staff member because, at this stage, the staff member has not made a complaint as we understand it. I have encouraged that family member that we take complaints of any nature very seriously and would therefore like to engage in the formal process so that we can investigate it. I understand that in the last number of days a letter has gone from the management running the operation of Tjapukai to the individual staff member expressly putting that in writing and has been delivered to her home.

**Senator SESELJA:** Who has the letter gone to?

**Mr Fry:** To the staff member.

**Senator SESELJA:** Setting out the process?

**Mr Fry:** No, encouraging the staff member that, if there are any concerns, we start to—

**Senator SESELJA:** Go through a formal process.

**Mr Fry:** Yes, and engage in a discussion of what they may be so that we can start investigating if there is anything there and try and work it through.

**Senator McLUCAS:** Can I interpose at this point?

**CHAIR:** I would prefer to let Senator Seselja continue—

**Senator McLUCAS:** It is about Senator Seselja's questions.

**CHAIR:** and then invite you to come back at the end of his questioning on this particular section.

**Senator McLUCAS:** Can I urge care, please?

**Senator SESELJA:** Certainly. This is on a different issue: what is Indigenous Business Australia's involvement with the Lhere Artepe Aboriginal Corporation?

**Mr Fry:** Just for clarity, is this in relation to Lhere Artepe out of Alice Springs?

**Senator SESELJA:** I believe so. I am told it is pronounced 'lara tippa'; it is spelt quite differently.

**Mr Fry:** That is okay, I was just asking for clarity to make sure I am responding appropriately.

**Senator McLUCAS:** A bit like Seselja really.

**Senator SESELJA:** Seselja is quite phonetic.

**Senator McLUCAS:** Not when Senator Fifield says it!

**Mr Fry:** There are several structures and different companies within the group, so, if you allow me, I will respond in the general more than in the specific for this particular answer.

**Senator SESELJA:** Sure.

**Mr Fry:** We have a relationship through a business loan with one of the entities of Lhere Artepe.

**Senator SESELJA:** So the extent of the relationship is a business loan with an entity of Lhere Artepe?

**Mr Fry:** That is my understanding.

**Senator SESELJA:** What is the size of that loan and the nature of that arrangement?

**Mr Fry:** Within the ATSI legislation, I am not at liberty to divulge information of that nature, but it is relation to, if I speak more broadly, helping fund three supermarkets in Alice Springs.

**Senator SESELJA:** So it is for three supermarkets. Are you aware that the former CEO of Lhere Artepe Aboriginal Corporation entered into an agreement to purchase what I think was an almost insolvent civil engineering company?

**Mr Fry:** I have seen some material around that. I have not investigated that particular aspect, but I am aware that there has been some commentary around that from some members of the local community. I would not like to make comment beyond that because I have not seen the forensic evidence to make a call on it.

**Senator SESELJA:** Is there a reason that has not been investigated?

**Mr Bator:** We do not investigate clients. We have a loan out with them for supermarkets. Other activities that other people who might be involved with them are those other people's activities.

**Mr Fry:** I suppose what I am trying to say is that it may have been investigated by third parties not related to the loan.

**Senator SESELJA:** So is there no further obligation when you issue these loans if there are concerns about the financial situation of the entity that you are loaning the money to?

**Mr Fry:** No. I would say that we do due diligence in each and every instance on the financial standing of the applicant of the loan. The due diligence includes getting context and background so that we understand how the position arose and what the challenges and issues are for that particular business. That goes into the matrix of issues that we look at to decide whether we approve or decline a loan.

**Senator SESELJA:** Are the loans for the supermarkets the bulk of the money that is needed or are they only one part? I understand that there was also a Commonwealth grant for these supermarkets. Is that correct?

**Mr Fry:** I would need to take that on notice. Unfortunately, I do not approve the overall loans myself and get to that level of detail, but we can come back to you after we have had an investigation if it is of material interest.

**Senator SESELJA:** Are there liquor stores associated with the supermarkets in question?

**Mr Fry:** Yes, there are liquor outlets, as I understand it, associated with the supermarkets. I think they are IGA supermarkets. In relation to your further inquiry, my understanding is that the issue you raised has been mentioned with a previous CEO of Lhere Artepe. My understanding is that that occurred well before our involvement with the business loan to the supermarkets.

**Senator SESELJA:** Are you aware of Lhere Artepe's current financial situation?

**Mr Fry:** In a broad sense I would say that I have some oversight, but I would need to take the specifics on notice. I cannot recall, for example, the trading figures and where they are sitting at.

**Senator SESELJA:** In a broad sense are you able to, without giving all the detail of the trading figures, say whether it is in good financial health or not?

**Mr Fry:** My understanding is that it continues to trade profitably.

**Mr Viswanathan:** If I could just add that, as with any prudent investor, in both our investments area and our enterprises area, which deals with business loans, there are detailed processes in place for ongoing management and review of those investments or loans. So in addition to the due diligence that happens upfront, there is a lot of

work that goes on regularly thereafter which includes ongoing visibility and monitoring of those investee companies or borrowers.

**Senator SESELJA:** Is there any concern or danger here that there is going to be a loss to the IBA? Are you satisfied that this is a loan that will be able to be repaid, or do you have concerns around that?

**Mr Fry:** Again, I am not across the individual loan in detail, but my understanding is that the company we are lending to continues to trade profitably and continues to meet our interest payment.

**Senator SESELJA:** There is one other aspect, and I am not sure if you will be able to answer it, but we will see, because there are few elements to it. I understand that the former CEO negotiated a loan of \$3.5 million with a finance company and then attempted to reduce the loan by selling blocks from the company's Mount Johns residential real estate development. Are you aware of those transactions?

**Mr Fry:** Again, this occurred before we got involved with the supermarkets. I am aware that there is another entity with Lhere Artepe which is involved in a subdivision. I believe that subdivision blocks continue to be sold. I would not like to make comment as to the initial scope of where that subdivision was, the number of blocks and so forth, but I understand that the subdivision has been completed and blocks continue to be sold. In fact, I had a look at one of the blocks the last time I was in Alice Springs to understand the wider group interests. They seem to be well marketed and in a good location. It is a new subdivision of significant homes.

**Senator SESELJA:** Maybe you could check some of the detail you are not able to comment on now and take on notice whether or not you have any further detail on that.

**Mr Fry:** Certainly.

**CHAIR:** Just before we suspend for lunch, I seek senators' agreement that correspondence between the Indigenous Land Council and the minister be tabled. That is agreed. We will suspend now until 1.30 pm, when we will move onto education and employment.

#### **Proceedings suspended from 12:47 to 13:31**

**CHAIR:** I welcome back officers of the Department of Prime Minister and Cabinet for the session on education and employment. Senator Peris.

**Senator PERIS:** Thank you, Chair. This question is for the minister. Just recently the Prime Minister outlined a new Closing the Gap target in relation to school attendance. Truancy officers aside, are you concerned that the cuts to teachers in remote schools are going to be counterproductive to achieving your target?

**Senator Scullion:** I am assuming this is in regard to the Northern Territory.

**Senator PERIS:** Yes.

**Senator Scullion:** The matter for teachers are entirely a matter for the Northern Territory government. I note that there has been a threat of industrial action, I think on next Tuesday. There has been some media about the effects of kids turning up at school. All I can say is to reiterate that I have had a personal assurance from every Premier and the Northern Territory Chief Minister that, when the children turn up at school, there will be the level of amenity that is expected by mainstream, whatever that number is—I think there is a particular number of children per teacher. I have said that when these kids turn up at school it is the responsibility of the jurisdiction to ensure that they have a first-class education.

**Senator PERIS:** You say you have spoken to Mr Giles, but you have not written to any of the state and territory ministers responsible, asking them to increase teaching positions?

**Senator Scullion:** No, I have not had any indications from those jurisdictions that there is necessarily a demand for increased teacher numbers. We have heard about the nature of the behaviour. I have read media articles about that but I have not had any submission from a state or territory about teacher numbers. I think this has been an assertion by the union recently. I do not think it has been about the numbers; it has been about the behaviour of the new attendees.

**Senator PERIS:** I have been to a number of communities where they are concerned that they have a number of students now coming to school because of the truancy officers. If schools are going to be writing to you saying they cannot handle the intake of kids because we have had cuts to teacher numbers, is that something you would take very seriously in terms of approaching the Northern Territory government to look at these issues?

**Senator Scullion:** The education is entirely a matter for the Northern Territory government or the other jurisdictions. If a school has a challenge with the number of students against their number of teachers then that is a matter for the Northern Territory government. But, certainly, if the Northern Territory government gets in touch with me about these matters I will deal with those areas as they come to bear.

**Senator PERIS:** Okay, thank you. Are you concerned that state and territory governments may use the provision of truancy officers as an excuse to cut their own funded positions—and, if so, have you sought their formal agreement that this will not occur?

**Senator Scullion:** I would have to check on the formality of the agreement. I have had conversations with each of the jurisdictions under which this program is being rolled out and I have assurances—verbal assurances, which I take as a given—that this process with the truancy officers will be in addition to. I have to say I have been pretty satisfied as I have moved around the country. In Queensland there are truancy officers who are working alongside Commonwealth school attendance officers and there are some arrangements about how they interact, so there is no visibility about them moving out of the space. As I said, I have certainly had discussions and have received assurances that our truancy system will not simply see the existing truancy system walk away. Our truancy system is to work alongside the existing truancy provisions. Certainly, I know that is the case in Western Australia, the Northern Territory and Queensland—there have been no indications that truancy provisions by the state and Territory jurisdictions have moved away. But I have not had any specific indication that that is the case.

**Senator PERIS:** Will the Commonwealth give priority to teachers or teaching assistants who have been sacked by the state or territory governments for truancy officer positions?

**Senator Scullion:** The truancy officers have been recruited or have been identified and are still going through the last of the checks. There are provisions of course that they have to be Aboriginal people and they have to be from the community. If teachers meet those requirements then no doubt they will be considered. But I suspect we have fully recruited and, even if they are not working at the moment, there is a natural person waiting for an approval—for example, for a working with kids certificate or whatever the approval process is—before they are engaged. So we do not have a particular number of jobs available; we have identified the full number—428, I think, but I could be corrected on that. The indications are that the full number have been recruited or are in the pipeline and are just awaiting approval—and they are all natural persons.

**Senator PERIS:** Do you identify people or is there a process under which they can apply to be a truancy officer?

**Ms Carroll:** Senator, perhaps we can explain a little bit about what happens on the ground with the school attendance officers.

**Senator PERIS:** Yes, thank you. That was to be one of my questions: can you describe the roles and responsibilities of a truancy officer.

**Ms Carroll:** In each of the communities there are school attendance supervisors as well as school attendance officers. The idea is that the school attendance supervisors, obviously, supervise the work of the school attendance officers. We have a contract with an organisation in that local community who do that recruitment of the school attendance supervisors and the school attendance officers. They work through the processes, making sure the people have working-with-children checks, have done whatever training might be needed et cetera, and also meeting the framework that the department has put around that such as that they are local Aboriginal or Torres Strait Islander people et cetera.

**Senator PERIS:** Am I able to obtain the selection criteria? You have stated that truancy officers will be local—which is great because outsiders, as we well know, do not have the confidence and engagement with communities. However, I know—and you would probably agree, Minister—that there are also many local people who lack the authority to do stuff, and that is evident in a lot of situations in remote communities. So can you table the selection criteria in relation to the sustainability of truancy officers?

**Ms Hosking:** Senator, the agreements that address what we are trying to achieve in each community are largely contained in the funding agreement with the provider who is doing the employment. The actual process will be tailored to each community. They work very closely. There is not a single set, as I understand it, of selection criteria that would be applied in all circumstances; it is tailored very much as a community discussion—looking particularly for people in the supervisor role who have local cultural authority and can definitely provide the leadership and direction to the school attendance officers, many of whom will be people who, for example, were RJCP participants and did not have a lot of history of formal employment but still have the potential and cultural authority to perform that role.

**Ms Carroll:** If I can just add: the way the model is designed—and this goes a little bit to your previous question to the minister about, for example, staff who may already be on the ground employed by the Northern Territory government et cetera—is such that, in each community, exactly what the school attendance officers do is slightly different and depends on what other people in that community already do. So, if there is already a breakfast program that operates through the Northern Territory government, the school attendance officers may

not operate the breakfast program—because it already exists—but they may do something else. So that is the tailoring at the local level. But there are a broad range of activities that we could provide you that go to the breadth of activities that school attendance officers undertake. They range from walking around the community, to driving the bus, to breakfast programs and to different kinds of things. But we could give you the broad list, if that would be helpful.

**Senator PERIS:** Yes. So will you also be investing in transportation as well—for example, if a community needs a troopie or a bus? I know that recently in Alice Springs there was a town camp that had their bus service taken off them.

**Ms Hosking:** Yes, depending on the need of the community that is definitely the case—we have money to fill in whatever gaps in support are required in the communities. In some communities that has been a bus; already in some communities a bus has been leased or other arrangements put in place to provide transport and back-up. In other communities it may be uniforms, it may be school lunches and breakfasts that are the gap. The role of the school attendance supervisor working with the officers is really to identify what those gaps are, and there have been resources and support allocated as part of the strategy to fill the gaps.

Not every community needs a new bus—many already have a bus—so in those cases that would not be a requirement, but in other cases a school bus has been exactly what has been identified and we are working with the communities on that.

**Senator SIEWERT:** Can I just ask on that note: how much money is available for that?

**Ms Hosking:** Basically, the total cost of the strategy, as you know, is \$28.4 million over two years. We are working on the basis of incidental funding based on an average of around \$180 of assistance per child. That is to cover a range of things, whether it be uniforms, breakfast, lunches et cetera. On top of that we have approximately \$72,000 per community for needs such as buses and office accommodation.

**Senator SIEWERT:** So there is the money that is paying the officers, there is \$180 per child and then there is \$72,000 per community.

**Ms Hosking:** Yes.

**Senator SIEWERT:** Thank you.

**Senator PERIS:** Minister Scullion, following on from what you said before: because the truancy officers will be dealing with children, I assume that they would be compliant with the Northern Territory legislation and they would require an Ochre card?

**Senator Scullion:** That is correct.

**Senator SIEWERT:** Is that the same in WA?

**Senator Scullion:** It is called something different.

**Ms Carroll:** Senator, in every state they have to comply with the working-with-children checks—whatever is required in each state or territory. The minister talked earlier about having people in the pipeline. One of the things about the people in the pipeline is that some of those are going through that process of getting working-with-children checks et cetera. In some states or territories people can actually start work—they can get an exemption period while the formal processes are going. That does not exist in every state and territory but we are complying with whatever is required.

**Senator PERIS:** So they will have an Ochre Card before they start?

**Ms Carroll:** Yes.

**Senator PERIS:** Okay. Can you describe the roles and responsibilities of a truancy officer when confronted with a child or family who is not compliant with a direction to attend schools.

**Senator Scullion:** I will just say that these are school attendance officers, and that is what they like to be called. They have requested that. So that we are not mistaking, for example 'truancy officers' with the state and territory organisations. This particular program refers to 'school attendance officers'.

**Senator PERIS:** Okay.

**Ms Hosking:** And, Senator, if I might add, following from what the minister said: the school attendance supervising officers are very much focusing on providing support in the community and providing support to getting to school, as distinct from the state truancy officers, who would actually be dealing with compliance around the state based truancy legislation.

**Senator PERIS:** So they would have set powers that they work under? Is it like before school, during school and then after school?

**Ms Hosking:** It would depend on the needs of each community, but that is right. In many of the communities there is a big focus on the first couple of hours of each morning in terms of getting kids to school. The school attendance officers are generally employed on a part-time basis, with an average of around 15 hours a week—some more, some less. It would be agreed as to when is the appropriate time in the day where the support in the community is needed to ensure school attendance.

**Senator PERIS:** Can you provide details of how many school attendance officers have been employed to date and where they are?

**Ms Hosking:** They are in each of the 40 communities. I will get you the most up-to-date numbers—they obviously go up every day.

**Ms Carroll:** I will get you the numbers. One of the things is that we are confirming the numbers every day. As I indicated before, there is the pipeline that the minister mentioned—so, as the working-with-children checks come in, more officers get added in a formal sense. But we can get you the numbers.

**Senator Scullion:** One of the processes we are alert to is that we are losing a few. I have to say I am quite happy to lose them to the department of education. We lost three in Palm Island, who are now fully employed by the department of education. I guess our vision of this is as a bit of an incubator, when people are engaged. People can say, 'This is fantastic: we have looked to engage people and these people are engaging very well.' So other organisations see an opportunity to employ them. So we have backfilled those positions.

**Senator McLUCAS:** Just in terms of the numbers—

**Ms Hosking:** The numbers have gone up slightly since the minister announced the numbers the other day. There are now 326 supervisors and officers directly engaged in activities and another 105 in the pipeline. The pipeline is always a bit bigger than the total number because we need to have more people in that because of movement and people who may not pass all the check and so forth. But those are the current numbers.

**Senator McLUCAS:** Can I just get on notice the locations, the organisations that have been contracted to manage the program at each location, the number of school attendance supervisors at each location, the number of school attendance officers at each location and the activities that you were describing that may be different at different locations. Thank you.

**Senator PERIS:** I am not too sure whether you answered this question before. How are these positions advertised?

**Mr Fordham:** The process around selection is essentially that most of them are coming off the participant list, so they are RJCP participants coming into full-time or part-time work. They have gone through the recruitment processes that they have chosen themselves. We have encouraged in most cases that they work closely with the schools and with community panels and, if there have them, school councils and education consultative groups be involved. Again, that varies from community to community as to how they want to run that process, but we have made sure it is as transparent as possible.

**Senator PERIS:** What sort of training do they have prior to engagement?

**Mr Fordham:** There is a training package that has been put together for them. The basic induction package is really just around the basic OH&S and a student attendance officer package that we put together depending on what job they want to do in that community and how they are going to roll it out. If they are running a breakfast club, that is a very different sort of training package to the person who is driving the bus and so on. So it does vary a bit as to what they are doing but the basics are OH&S, child safety training; we are doing some courses at the moment in the APY Lands, for example, around behavioural issues—in partnership with the education department in South Australia. Again, that varies from state to state. The education departments have been pretty cooperative around this stuff and they are having a say in that training as well.

**Ms Hosking:** And we do provide information for providers both on what is compulsory in terms of the required induction training and on optional induction training—for example, a drivers licence if you are driving a bus. And there are some optional additions depending on the nature of the role, which can lead to accredited certified training.

**Senator PERIS:** Okay. So the job service provider for RJCP are the people. Is that what you said?

**Ms Carroll:** In most but not all communities. When we give the list of the schools and who is the provider we can give you the providers and we can identify on that list which are the RJCP providers of that community, if you like.

**Senator PERIS:** If you could. Recently I attended a couple of communities where there were five teachers aides who had their jobs cut because of the cuts to teachers right across the Northern Territory. The principal

basically said that there were two officers, one being a senior Aboriginal man who had been at the school for 25-plus years. His hours went from 8.30 to 3.30 down to 8.30 to 11.30. So the school had to use their additional resources to top his wage up because they cannot afford to lose a person like this. This school does not have a truancy problem—their attendance is up around 90 per cent. Could he then go to the RJCP provider and apply for one of these positions so that the school does not lose its resources?

**Ms Carroll:** If it is a community that has the Remote School Attendance Strategy he certainly could go to the provider. As I think the minister mentioned, we are hoping that people will move through and get other jobs in the community; but it will be dependant on what that flow looks like as to how quickly a person could be picked up in a role.

**Senator Scullion:** Could I just say more generally on recruitment: we have relied very much, as you would be aware, on the community to make much of that selection because they have indicated to us that they are best placed to know those people who would have that degree in Gunbalanya—they know everything. So we were guided very much by who the community thought were the best people with the spread of knowledge to make sure that they knew that particular part of town or they were involved in that faction. So we were relied very much on the community to provide advice about the selection as well.

**Senator PERIS:** Yes. I do not have any more questions on school attendance.

**Senator SIEWERT:** I do. Sorry, I was a couple of minutes late so, if you answered this before, I will go and read the *Hansard*. There have been reports that, in relation to the additional number of children who are going to some of the schools, they are not used to attending school and they are a number of years behind their age cohort. What is being done in terms of the provision of additional resources? Do you have (a) reports about where that is occurring and (b) whether there is the physical provision of infrastructure but also support for those children.

**Ms Carroll:** I think some of this was covered before you came in. Essentially, because the number of teachers and all of those things are state and territory responsibilities, if we hear things on the ground—and people are out there every day—we have discussions and would immediately take things up with the state or territory government if we hear about issues that might be occurring. Whether they are behavioural issues, teacher issues or whatever, we pass that through to the state or territory government very quickly. There have been good relationships developed through this process because, obviously, even though the supervising school attendance officers are technically working outside the school, they are working with the principal of that school and we are feeding that information through as much as possible.

**Senator SIEWERT:** How many reports have you had about those issues? I am not talking now about desks and space and those sorts of things

I am talking about the impacts it is having on the school community and the provision of additional support for those children that need catch-up.

**Mr Fordham:** Other than what you have probably read in the media, there have been a couple of instances of people on the ground that have been giving us those reports. We do have pretty close relationships with the education department, so we are trying to keep across the issues as much as possible. They range from anecdotal—I think quite good—instances where some of our people have been bailed up in local car parks by people saying, 'There are all these extra kids going to the local school, and what are you doing about it?' to some issues that have been raised by teachers and so on. So we are trying to work closely with the departments to deal with it.

**Senator SIEWERT:** So how many—

**Mr Fordham:** In terms of your numbers you are talking two or three, so it is not many at all.

**Senator SIEWERT:** Rather than relying on reports, are you actively engaging with the schools to find out in a more systematic way how that is going?

**Mr Fordham:** Yes, we are, absolutely. That is at least weekly at an officer-to-officer level, but to be honest with you it is probably almost daily that we would be in touch.

**Senator SIEWERT:** I understand you already have the attendance figures, but could you provide the committee with information about what surveys have been undertaken to identify how many children are there below their age group—for example, kids that should have been in grade 3 having to be in grade 1. Do you have an accurate understanding of all the children that are attending and what grade they are entering?

**Ms Carroll:** One of the really clear things we have been doing is a clear separation, so issues like the ones you are raising are things for the principal and for the state or territory government. I understand the issue that we have encouraged these children to come to school through the school attendance supervisors and school

attendance officers, but we have been working, and we obviously hear about things but at the end of the day we do not get those. The states would not give us that regular reporting, and that is between the principal and the teachers or the principal and the state government. So the state governments are still responsible for what is going on inside the school and how they manage the education levels.

**Senator SIEWERT:** In theory the states are still clearly responsible for attendance, so is just getting bums on seats all you are trying to do? That is not what education is.

**Senator Scullion:** I have iterated publicly a number of times, and I am happy to do so again, that our motivation is not just to get kids to school; it is to get them education. I appreciate your comment on that.

**Senator SIEWERT:** Why not follow through?

**Senator Scullion:** I do not accept that we are not. First of all, in terms of the funding, the states are paid on a formula that fundamentally involves the enrolment, so we are certainly not up at that enrolment level. I think they would all acknowledge that there is a sufficient capacity within that to deal with the number of kids they are actually being paid to educate.

The second part of your question is an important area: how are we connecting with the education system to go and work things out? We are not a department of education, but we think it is absolutely essential that we receive concise advice on the matter, so we have engaged Chris Sarra, a very respected person in Indigenous education, to act as a go-between.

**Senator SIEWERT:** I know him.

**Senator Scullion:** He will be talking to and mentoring the principals through these issues and being able to become a communicator between the principals of these particular schools and us. If you like, he will be able to translate the needs and those particular matters. If I think that the states really are not doing the right thing, from my perspective it is important that I will be talking directly to that jurisdiction about those particular challenges. So that is what we have done thus far. It has not been going particularly long, but that is what we have put in place to ensure that we can have that feedback and respond to it.

**Senator SIEWERT:** But don't we need an understanding of the size of the issue? It may be that there are only a few kids who are behind, but I suspect not. So don't you need an understanding of the size of that cohort of children that are significantly behind their year group?

**Ms Carroll:** I think that the key is that we are in regular contact with the education department. As Mr Fordham said, we hear anecdotally from the parents as well as teachers, principals et cetera. But it has only been going a few weeks and we are in regular contact with the state or territory education departments as well. We certainly want to understand those issues that you described—how many children are turning up, do they have the sorts of education levels to go into the right class and all of those things. We certainly want to understand what those issues are.

Separate to this particular strategy is the broader COAG strategy which was announced out of COAG last year. State and territory governments have all agreed to look at school attendance and school attainment and to work with the Commonwealth in helping to understand what works and what does not work. So as well as the Chris Sarra process there is also a broader COAG process about understanding that. But for these particular 40 schools, we certainly will be interested in understanding the issues and looking at what we can do about them over time. It is one of those things that are new, and so we are seeing the issues as they come up and then working with them.

**Senator Scullion:** I just make the point that we inherited something across government that we know the NAPLAN tests are telling us: that so many of these children are well behind anyway. The new cohort of people coming to school might be slightly further behind, but I think we could reasonably say that there are an awful lot of children existing in the system now who have been very challenged.

I know people have their different interpretations of the NAPLAN tests. Certainly, I give them sufficient credibility to say that the results are appalling. This may be because of the episodic nature of attendance. Some may attend some of the time, but we know that it is about getting them to attend regularly enough to actually get an education. That is the important factor. So we are not only capturing people who have not been there, but we are ensuring that those people who are attending occasionally start to get into the culture of attending regularly enough to get an education, and for that to be normal. No excuses, no choices: every day you have to go to school.

I do not think that this is the only demographic of kids who are behind. I think the entire demographic in most of these schools that have such low attendance rates were that way beforehand. But certainly, we will be working with the schools and taking their advice, and ensuring that the jurisdictions that are responsible make sure that they are held to account.

**Senator SIEWERT:** Thank you for that. I have one more question around it. As you know, I take a particularly keen interest in the hearing of the younger cohorts of Aboriginal children going to school. Is there any feedback about, or process to look at, that new cohort of kids going into school and identifying whether they have any hearing problems? I would like them all to be identified overall. But, as you know, there is some evidence that children with hearing problems are not attending school, or having trouble in school, so they are a particular cohort. On top of everything that you just said, is there anything in place to address that particular issue?

**Senator Scullion:** I will get pulled up if I am incorrect, but I suspect not. But it is a great suggestion. We will try to sort through that and I will report back to the committee out of session to see what more we can do about that in terms of hearing tests and making sure that they get access to the audiologists and the sort of support systems that are available. Thank you for that suggestion.

**Senator PERIS:** I have one more question. I have just seen a press release that came through with regard to the teachers in the Northern Territory, who are striking on Tuesday. The headline says, 'Territory teachers to strike as student number pressure builds in remote areas schools':

Northern Territory teachers say they are being put under pressure by new truancy officers bringing more students in to remote schools.

I agree that getting kids to school is fantastic, as is addressing the issues of these young kids who are so far behind. But you have to agree that unless the schools have adequate resources and teaching we are not going to address the issue. Would you now put pressure on the Northern Territory to look at what is happening currently?

**Senator Scullion:** First of all, it is a matter for the union; if they seek to withdraw teachers from the education of children on Tuesday, that is a matter for them. I have to say that I have visited, as you have, a number of schools. The issue that has been put to me is there has been some difficulty with individual children and the nature of the demographic, and we have talked about some of those things today. But an issue that has not been put to me is that the numbers are somehow too large for teachers to cope with. There was one example where there were two kids beyond what they considered was the limit for kids in the classroom, and we did something there because it was on the day. Apart from that, we have had no feedback from that at all.

In that particular media release, the union spokesman said that not all teachers have the capacity to deal with this sort of matter. He did not have confidence in the teachers having the capacity to do what I and everybody else would think is a normal thing to do. I do not think that is a particularly good reflection on teachers, but it is certainly not what I have heard from teachers. I have not met a teacher yet who does not think that this is a good program. They have reflected and provided advice about some of the support they needed, particularly with behaviour, but thus far that is not the case. I was actually at a school the other day where, out of 130 children, 15 were attending—it had the full complement of teachers, of course. I think it is indeed a matter for the unions if they think the teachers are being over-taxed, but that is not something I have heard from the teachers. I would have to say, considering the difficulties of the children, I have been so impressed by the quality of the teachers and their determination to ensure that these kids get an education.

**Senator McLUCAS:** I want to move to the School Enrolment and Attendance Measure. At last estimates it was indicated that SEAM was going to be rolled out in 23 communities across Australia. Can you update the committee briefly about the progress to achieve that?

**Ms Hosking:** There is a five-stage rollout being progressed in the Northern Territory. We had the initial schools, which I think were 10 communities, rolled out in term 1 of 2013; then we had an additional five schools in term 3 of 2013; then Gunbalanya's rollout was brought forward to the beginning of this year, so it has rolled out in term 1 of 2014. The next lot of schools will be rolled out in term 3 and the final lot will be rolled out in term 1 of 2015.

**Senator McLUCAS:** So how many are going to be rolled out in term 3?

**Ms Hosking:** Five schools.

**Senator McLUCAS:** And term 1 next year?

**Ms Hosking:** Two schools: Maningrida and Tiwi Islands—two communities. I should say communities rather than schools because sometimes there is more than one school involved.

**Senator McLUCAS:** And that adds up to 23?

**Ms Hosking:** Yes, 23 communities.

**Senator McLUCAS:** And the model for the rollout of SEAM in Cape York Peninsula?

**Ms Hosking:** There is no rollout of SEAM in the Cape York—

**Senator McLUCAS:** It is not SEAM there; it is done through Cape York Welfare Reform.

**Ms Carroll:** That is right.

**Senator McLUCAS:** And that is basically given to Cape York Welfare Reform as part of their model.

**Ms Carroll:** So in Cape York we still have the Family Responsibilities Commission, and one of the things they particularly focus on is school attendance. There were some discussions with Cape York early on about if they also wanted SEAM. Those discussions are ongoing. In the cape, the Family Responsibilities Commission had asked for an increase in the level of income management to 90 per cent and that has been granted.

**Senator McLUCAS:** Sorry, the level of—

**Ms Carroll:** Income management. Normally a lower level is income managed.

**Senator McLUCAS:** I understand.

**Ms Edwards:** If children are not attending school, that is one of the triggers which would refer that family to the Family Responsibilities Commission. Then the Family Responsibilities Commission will conference with the family, perhaps refer them to various services, and has a capacity to recommend income management of that family. So not exactly like a SEAM model, but a different model.

**Senator McLUCAS:** How many families are on income management through school non-attendance in the five communities that are being run by the FRC?

**Ms Edwards:** We would have to take those figures on notice. That part of the measure is run out of DSS, but we could take it on notice and respond quite quickly.

**Ms Carroll:** That question should probably be given to DSS.

**Ms Edwards:** We could pass it to DSS.

**Senator McLUCAS:** Thank you. FRC is funded until when?

**Ms Edwards:** The Commonwealth has announced funding until the end of 2015?

**Senator McLUCAS:** Calendar year?

**Ms Edwards:** Calendar year.

**Senator McLUCAS:** And the state?

**Ms Edwards:** The Queensland government has so far committed to the end of this calendar year and we are in continuing discussions with them.

**Senator McLUCAS:** Trying to encourage them to increase to the end of 2015.

**Ms Edwards:** About all sorts of things

**Senator SIEWERT:** The Commonwealth funding for that next that the Queensland government has not committed to, does it still proceed if the Queensland government does not commit to it?

**Ms Edwards:** It is currently included in the forward estimates.

**Senator SIEWERT:** What happens if the Queensland government—I know there has been this to and fro about when they commit the resources—

**Ms Edwards:** We might be in a hypothetical landscape, but we are committed to continuing through 2014 working productively with the Queensland government and we will certainly shape our initiative so that it can continue.

**Senator SIEWERT:** My point is that Commonwealth funding will continue regardless and is not dependent on the Queensland funding.

**Ms Edwards:** Exactly how it is rolled out is a matter for government, but it is in the forward estimates.

**Senator McLUCAS:** Can I move now to early childhood education. The funding for the 38 children and family centres is delivered through the National Partnership Agreement on Indigenous Early Childhood Education. Is that correct? What is proposed for that? Can I have an understanding of the funding model for the children and family centres? Is it capital and recurrent? How do they run?

**Ms Carroll:** The national partnership was about the capital funds for the children and family centres. The funds, as you know, through the national partnership are given to the states and then they work out what the final decision is about how those funds are spent, and they provide the Commonwealth with some information through the implementation plan. So it will vary across each of the sites. For example, in some of the sites where the physical construction has not happened yet there are some services being provided.

**Senator McLUCAS:** And are you saying the services are funded by the state?

**Ms Edwards:** That is primarily the funding model.

**Ms Carroll:** Or they access other money through other programs.

**Ms Edwards:** Commonwealth funding is for the establishment of the centre over the initial period and some of that money is not directly just for bricks and mortar but to help establishment, but the funding of the various services is primarily a matter for the state.

**Senator McLUCAS:** Ms Carroll, you say they are not all built yet but are they on track to be built? There will be no change to the funding allocation?

**Ms Carroll:** No, we have had assurances from all jurisdictions that the outstanding ones will be completed by 30 June.

**Senator McLUCAS:** Now I would like to move to the 311 budget based funding services.

**Ms Carroll:** They have not come to the Department of Prime Minister and Cabinet. They stayed with the Department of Education

**Senator McLUCAS:** All of them, all 311?

**Ms Carroll:** Yes. They fund the services, which have stayed with—

**Senator McLUCAS:** We could not get clarity on that.

**Ms Carroll:** That is my understanding.

**Ms Edwards:** We have been in discussion about some of them potentially being managed when they are Indigenous specific.

**Ms Carroll:** Some of the playgroups have come over but it depended on whether they were a childcare centre or a playgroup.

**Senator McLUCAS:** Thank you. That is what we were trying to get to. Some of them are accredited childcare centres and available to access CCB et cetera.

**Ms Carroll:** Some of the budget based funding services were childcare centres that are not CCB accredited but they are still effectively a childcare centre. They have a long history of being in existence.

**Senator McLUCAS:** Bamaga might be one of them?

**Ms Carroll:** I could not tell you exactly the names but some of the playgroups, not the childcare centres, did come to Prime Minister and Cabinet.

**Ms Edwards:** There are nine Indigenous-focused creches, as we call them, which are now funded under the Stronger Futures package, and 23 Indigenous playgroups which PM&C is looking after.

**Senator McLUCAS:** If you subtract that figure from the 311, that is the number left in Education?

**Ms Carroll:** Yes.

**Senator McLUCAS:** With the funding model for the ones that are remaining in education, has there been an assurance that the funding will continue to ensure they will be operational?

**Ms Carroll:** You would have to ask the Department of Education those questions, sorry.

**Senator McLUCAS:** Why didn't they come across to PM&C?

**Ms Carroll:** At the point of the change of government, there was already a review process in place for the budget based funded services, so there was an agreement that that would finish and then there would be a reconsideration of whether they stayed with the Department of Education or came over. Because a process had already started before the change of government, the intent was to complete that and, once that was completed, to make another assessment about what would come over. As I understand it, part of that process was to try to get some of those services to be childcare benefit services, in which case they would stay with the pool in education. But that will be considered by government over time.

**Senator Scullion:** Senator, if you have any questions that you would normally have put here but you now find that you have made a mistake in doing so—I understand the MOG has changed some of those things around—and you want to put those questions on notice, I will ensure that the education department gets them and is able to answer your questions.

**Senator McLUCAS:** It is more the structure of the program; but thank you for that offer, Minister. Maybe if I could get a list—not of the names of them but the types of services that they are and where they are—that might start me off for next time.

**Ms Carroll:** We can probably give you a list of the services that are funded and where they sit—whether they sit with us or sit with the Department of Education—and that way that will clear it up for future questions.

**Senator McLUCAS:** And also a list of the child and family centres.

**CHAIR:** I think Senator Siewert has a question in the same area.

**Senator SIEWERT:** I think I may be asking in the wrong area, but I would like to know about the Wyndham Early Learning Activity Centre, which I think was built under the program. Their programs are about to run out of funding soon. My question is about the ongoing viability of these centres. I appreciate what you said about state funding, but here you have a group of people who are working really hard with families and they are going to run out of funding again. Are you looking at how to keep these centres viable once they are built and start operating? At the moment they are getting drip-bits of funding.

**Ms Edwards:** Just to confirm: my list of the 38 centres does not include one at Wyndham, so we would have to go and have a look at how that one fits in and who looks at it.

**Senator SIEWERT:** It definitely got Commonwealth funding, and it has a number of programs. I asked about it last year. It got funding for another 12 months and that is about to run out. Obviously, I want to see them keep going, but my question is a bigger picture one about how we keep these centres going, because we all acknowledge they are important.

**Ms Carroll:** Perhaps when we give the split-up of the different centres and the different services, we can also take on notice that broader question against the different categories.

**Senator SIEWERT:** If you could, that would be really appreciated.

**CHAIR:** If I could just get some direction at this point. This section of education and employment is due to finish at 2.30 pm. Am I correct to assume there are no employment issues?

**Senator McLUCAS:** Not in this section, Chair.

**Senator McKENZIE:** I have one question.

**CHAIR:** Still in education?

**Senator McKENZIE:** Yes.

**CHAIR:** Senator Siewert?

**Senator SIEWERT:** I have employment questions, but I will put them on notice.

**CHAIR:** We will stay with education, then. And before we finish at 2.30 pm, Senator McLucas, I might ask Senator McKenzie for her question.

**Senator McLUCAS:** Well, if we finish education, why don't we have Senator McKenzie's questions and then Senator Peris has employment questions.

**Senator McKENZIE:** I would like to say congratulations to the minister: after decades of a lot of money and a lot of talk, in four months we have some real action in closing the gap. All of us around this table want to see a halving of the gap in numeracy and literacy, which is actually very difficult to do if you are not at school. This is the first step, admittedly, in actually taking some real and tangible action on Closing the Gap, which is what everyone around this table actually wants to do.

**Senator Scullion:** Just as a brief response, I have to say—whilst thank you for your congratulations to me—that all the credit goes to the communities. This is a community-based initiative. It is the people from the communities who have not only made the selection but strongly supported this. This is, I think, evidence of when you have a strongly community supported process. Whilst I am sure that it will have its bumps in the path, it is a much better genesis than we have had in the past.

**Senator McKENZIE:** I just want to go to the schools themselves. I understand that most remote schools have 31 per cent of their students meeting the national minimum standard for reading. Are all of the schools in the RSAS program in that category of being considered remote, where the need exists?

**Ms Hosking:** Yes. For the 40 communities, I think they are all in the remote category, including the New South Wales schools. Mike Fordham will answer that in two seconds. They were particularly selected on their attendance rates. So using the attendance rates reported on the MySchool website on a yearly basis by all schools, we looked particularly at those that consistently over a five-year period had been achieving an attendance rate of less than 70 per cent. Most of the communities are in that category. There are a small number that are between 70 and 80 per cent. That is particularly so in the New South Wales case, where they actually had better attendance overall but still had some areas of need.

**Senator McKENZIE:** So it is quite targeted. I am just wondering, I had heard that there was particularly good examples of how the program was working at the Doomadgee and Borroloola schools.

**Ms Hosking:** That is exactly right. Mr Fordham can give you some more information; they have had some great success at those schools.

**Senator McKENZIE:** It is the end of a long estimates week. I would love a good news story.

**Mr Fordham:** My colleague, Matthew James, is the data guru who may provide the latest data figures. I think that most of the success, as the minister has pointed out, in Borroloola and Doomadgee has just been around the amount of community involvement in the scheme.

**Senator McKENZIE:** So they were very engaged in it.

**Mr Fordham:** They are very engaged and they signed up really quite quickly to get going. Despite, in some cases, those communities having various sort of issues like flooding, deaths and so on. They have come to terms with a lot of issues in some of those communities and seem to be quite behind the strategy.

**Mr James:** This was in the press release put out yesterday: the attendance rate in Borroloola is 17.4 per cent higher so far this year than in term one last year.

**Senator McKENZIE:** Fantastic.

**Senator Scullion:** Possibly Senator McLucas will pull me up on my pronunciation, but one of the schools in Palm Island—Bwgcolman—actually operated in the week prior to when I got there at 98 per cent. It is not a small school, so I think that it is just an incredible achievement for that school and that community, because certainly the trends are in front of what the mainstream would expect.

**Senator McKENZIE:** Fantastic. Thank you so much.

**Senator PERIS:** This is for the minister. One of the Closing the Gap targets that is lagging is employment. How many Indigenous people will lose their jobs as a result of the Gove refinery closure?

**Senator Scullion:** I can only reflect on this. I may be corrected by conversations that I have had with Rio Tinto about that matter. I have been assured—due to the arrangements that Rio have in place, whether it is resettlement or whatever—that there are none who will lose their jobs who have not already been looked after. But perhaps we can have some more details from somebody else who has just come to the table?

**Mr Eccles:** The information that we have is that employees of the Gove refinery who will become redundant will receive redundancy packages. They are looking to redeploy them, as far as possible, in other aspects of their mining enterprise—so in other parts of the mine. We understand that the job losses are being phased in throughout 2014, so it is not all at once. We have got some of our staff on the ground, doing some work around the Indigenous employment people. The department is taking a close interest in this, obviously. At this stage, they are looking to redeploy all the people who are going to lose jobs.

**Senator PERIS:** When you say redeploy, they will be the people who actually work in Rio Tinto in the refinery area?

**Mr Eccles:** That is the intention. Where possible, Rio's intention—as they have explained it to us—is that wherever possible they will be relocated to other parts of their broader enterprise.

**Senator PERIS:** My understanding is that a lot of those employees are not Aboriginal people. Have you been to Gove?

**Mr Eccles:** No, I have not.

**Senator PERIS:** It is probably the fourth or fifth biggest town in the whole of the Northern Territory. It has a population which is rapidly declining from 4,500. I think close to 1,000 have already left the town. What I am getting at is that this town is actually a service hub. It is a regional town to more than 17,000 people in that region. There are almost 10,000 Aboriginal people throughout the whole of the East Arnhem Land region who actually need Gove for education and health. It has got facilities there. Rio Tinto has been part of their life for almost 35 or 40 years now. Minister, have you been to Gove recently, since the election?

**Senator Scullion:** I have.

**Senator PERIS:** Have you had discussions with many of the people with regards to what is happening in Gove?

**Senator Scullion:** We have had ongoing discussions not only with Rio but also with the Aboriginal people and their representatives and with the business sector in Nhulunbuy.

**Senator PERIS:** Has there been any discussion of an urgent structural adjustment package? I am open to anyone here.

**Senator Scullion:** No, nobody has put such a suggestion to me.

**Senator PERIS:** My understanding is that by July—I have heard that the Prime Minister is in Darwin at the moment and only an hour away from Nhulunbuy—they will require 400 families to keep the town afloat. Has that been mentioned to you at all by anyone?

**Senator Scullion:** I am sorry, could you just ask that last question again? I am sorry, I missed it.

**Senator PERIS:** I was saying that I am aware that the Prime Minister is currently in Darwin. Is he going to go to Gove? Has that been discussed?

**Senator Scullion:** I am not aware.

**Senator PERIS:** I have been told that by June or July this year, when there is talk of him going to Gove, almost 500 families would have left Gove. Has there been any talk of replacing what Rio Tinto brought to East Arnhem Land with something else, like through the means of Defence or relocating a Northern Australia policy unit in Gove? Just something that is happening that could occur straight away?

**Ms Carroll:** I am not trying to be difficult, but things like structural adjustment packages and those sorts of things would be directed to the Department of Industry, who has the lead on structural adjustment across Australia.

**Senator PERIS:** I did ask that question on Monday. I did not have much luck with many people. I guess from an Indigenous perspective, where this falls under, you are going to have 10,000 East Arnhem Land people who have for 40 years relied on this town as a service town. What is the relief? What are they going to have? That is the question.

**Senator Scullion:** I do not think it is reasonable to characterise this as a complete loss of services. Certainly, as you would be aware, the Department of Education is not closing the schools in Nhulunbuy. The hospital is not closing in Nhulunbuy. The post office is not closing in Nhulunbuy now. I share with you the great remorse and tragedy that a mining company has decided to leave Nhulunbuy, but I think it is not reasonable it to characterise it in the way that all the services are departing and the 10,000 people who are reliant on those services will not have any anymore. It is just simply not an accurate characterisation.

**Senator PERIS:** What you are saying is that you guarantee, in some way, that those services like the health and the education are not going to be impacted?

**Senator Scullion:** I am not saying anything of the sort. What I have actually said is that there have already been assurances that the school is not closing down, there is no indication that the hospital is going to close and there is no indication—as far as I know—that any of the services of the Commonwealth makes available are closing. There will still be sufficient people in that region to need those services.

I know your questions are directed particularly around the Indigenous issues. My discussions with Rio have been very focused on those particular employees, not only those ones in the mine—which I acknowledge are very small, only a handful. They are talking about the 100 or so whose jobs are going to be directly affected. I know they have put a lot of effort into ensuring that not only have they been paid the proper redundancies and all of those sorts of things but they have also been given particular opportunities to stay in the Rio family. That is not only around Australia but also in the ongoing mining operations. That is what I have been told by Rio and I can only just repeat that in good faith.

**Senator PERIS:** With the closure of the Gove refinery, Indigenous employment is forecast to decline. You have mentioned the RJCP is prominent around the Northern Territory. In the meantime, what steps are you taking in the meantime? I know you met with Glenn Aitchison, who was the chair of the Gove Community Advisory Committee and also the CEO of the Yolngu Business Enterprises. They rely heavily on Rio. Is this all being looked at to actually counteract the big gap that is going to be left with Rio leaving?

**Mr Eccles:** What is the question, again?

**Senator PERIS:** What are you doing? Come June or July, 500 families are going to go.

**Mr Eccles:** We have got nine staff in Nhulunbuy and we have got another 10 around the region who offer the sort of support that we are talking about. They are working with the individuals who are affected. They are obviously working with Rio to try and make sure that the transition to other work takes place. We do know that there are discussions with the Northern Territory government that are being led out of another department, the Department of Industry. We could get an update from them and come back to you. We do know that the Northern Territory government is also taking a very close interest in it.

It is absolutely a matter of priority for our on-the-ground staff to work with those people who are affected. They are just starting to come into the system, if you like. The intention was that it would be sometime this month

that the people who are being made redundant start to leave their employment. I know that our staff there are taking a particularly close working role with those guys.

**Senator PERIS:** Just recently, the Minister for Infrastructure and Regional Development, Warren Truss, and Minister Warren Entsch announced a Cape York region package to the community. It is something in the excess of \$210 million. That was for the Cape York region, where there is a significant amount of Aboriginal communities in that area. East Arnhem Land has, again, almost the same amount of Indigenous people. That is around the Northern Australia development. Is anything going to be offered of that sort to developing the north?

**Senator Scullion:** I am not sure if you have actually put those questions to the right area. As I said, that is certainly not the area of expertise in terms of infrastructure. It was not an Indigenous initiative; it was an infrastructure initiative that I vaguely understand. I am happy, as I have said with Senator McLucas, if this is the wrong place I will—if you can put a question on notice—make sure that they get put through to the officers responsible. But they are certainly not in this room.

**Senator PERIS:** Going back, if I can draw a line to the Indigenous side of things and the development of Northern Australia. I was asking whether there is anything that you have heard of that could be coming towards to the northern part of Australia to help with economic development and jobs?

**Mr Eccles:** There is certainly the Northern Australian white paper that the government has announced is under development. I believe that is being led out of another part of our department, but not the Indigenous affairs side. We are talking to them. It is on the government's radar and they certainly intend to do something around Northern Australia's economic development, but I do not have the details at the moment.

**Senator PERIS:** The Aboriginal art organisations, including ANKAAA, which is the Association of Northern, Kimberley and Arnhem Aboriginal Artists, do not have their funding guaranteed beyond June this year. This severely impacts the capacity to plan and progress their businesses. What analysis have you undertaken in relation to the impact this will have on Indigenous employment?

**Mr Eccles:** The indigenous arts program is with the Ministry for the Arts, which is in the Attorney-General's portfolio.

**Senator Scullion:** Again, being Friday, if you give the question on notice, we will make sure it gets to the Attorney for an answer.

[14:35]

**CHAIR:** We will now move to Indigenous housing and sport.

**Senator SIEWERT:** You will probably have to take this on notice, but I am interested to flip around the debate on the focus of the National Partnership Agreement on Remote Indigenous Housing. Do we have an idea of how many houses in remote communities have not been refurbished—in other words, the size of the job still to go?

**Senator Scullion:** It might be required to be on taken notice.

**Senator SIEWERT:** Are you aware if anybody has done that work?

**Senator Scullion:** I am sure it is available.

**Ms Carroll:** We will take that on notice.

**Senator SIEWERT:** Thank you. Has the work been done and, if so, how many by community in the NT? Let us start there. Is that okay?

**Ms Carroll:** Yes, Senator.

**Senator SIEWERT:** I am interested to pursue the issue around tenancy agreements, as identified before in the NT. Has this issue been resolved? Do we have a time line for when it will be resolved?

**Mr Stacey:** Are you asking whether or not we have found a way as part of NPARIH to introduce tenancy agreements across all remote jurisdictions?

**Senator SIEWERT:** In terms of making them comply with the Residential Tenancies Act?

**Mr Stacey:** I can say that those reforms, particularly around property and tenancy management, and particularly around getting tenancy agreements in place, have been progressing well across jurisdictions. In the order of 90 per cent of tenancy agreements are in place for new or refurbished houses. So 90 per cent of the housing stock, new or refurbished houses under NPARIH, now have tenancy agreements in place.

**Senator SIEWERT:** And how many of those are in the NT?

**Ms Campbell:** As at 31 December, 97.2 per cent of the houses in the NT have a tenancy agreement in place.

**Senator SIEWERT:** Okay, but do they comply with the act?

**Ms Campbell:** Yes.

**Senator SIEWERT:** That is just under three per cent. Is it intended that they in fact will be concluded? Are those three per cent intended to be finalised so that they meet the requirements as well?

**Ms Campbell:** The Northern Territory government would be required to continue to put in place the tenancy agreements.

**Senator SIEWERT:** In terms of ongoing tenancy advice for Aboriginal clients in the Northern Territory, I am aware that there was a recommendation that in fact better support needs to be put in place for tenants. Has there been any work done in progressing that?

**Ms Campbell:** The Northern Territory government report to us through their joint steering committee on their progress with property and tenancy management reforms. They have made substantial improvements with the tenancy management system. They report to us that their rental receipts have increased by 40 per cent since April 2012 and they are continuing to work to improve their systems and the education that is rolled out to tenants as they take up their tenancy agreement.

**Senator SIEWERT:** Thank you. I am also looking at it from the other perspective—that is, provision of support to tenants from their rights perspective. I am wondering whether there has been any progress in support from that perspective.

**Mr Stacey:** This is something we have pursued with all jurisdictions to make sure that it is part of the reforms we are pursuing to the national partnership agreement, that we are setting up for tenants the same sorts of support, the same sorts of opportunity to complain as any other public housing tenant would have. In the case of the Northern Territory, I have had a number of discussions with senior officials in the NT government over the past couple of months and consistently ensured that they have put in place the system that is in place for anybody else who is in a public house in the Northern Territory.

**Senator SIEWERT:** I might put on notice: how assured are you with their assurances and what, in concrete, do you have which shows that they are meeting those requirements beyond their assurances to the Commonwealth?

**Mr Stacey:** We will take that on notice.

**Senator Scullion:** I will make another assurance. My views have not changed since I sat next to you on the other side. It is not only whether they have tenancy arrangements in place; the agreements and arrangements are treated as we would any other house. Across the vast majority of the jurisdictions in the area, particularly the very remote areas, it is a very light touch. I will continue to have very focused discussions with the various jurisdictions on their responsibilities in regard to tenancy management.

**CHAIR:** For the interests of senators, I confirm that coalition senators have no questions in housing and sport.

**Senator McLUCAS:** I want to start at the beginning with the Aboriginal Housing section. In the machinery of government changes, what parts of housing—I use the broader definition of housing—came across to PM&C from the old FaHCSIA?

**Mr Stacey:** In effect, what is referred to as that National Partnership Agreement on Remote Indigenous Housing has come across into Prime Minister and Cabinet. Mainstream housing and in particular other various COAG arrangements for mainstream housing are in the Department of Social Services.

**Senator McLUCAS:** And who is responsible for what? The National Affordable Housing Agreement—

**Ms Carroll:** That stayed with the Department of Social Services.

**Senator McLUCAS:** I know. How much of the work out of the NAHA actually happens in Indigenous communities? Is there any element of that which—you make the point, Mr Stacey, it is a mainstream program—was identified as being Indigenous specific?

**Ms Carroll:** The only Indigenous specific thing, as Mr Stacey said, was NPARIH, and then just as we do in health and in some of the other areas, we work back closely with the Department of Social Services to ensure that, in the mainstream areas through the National Affordable Housing Agreement et cetera, there is a broad understanding and attention paid to Indigenous issues as they are thinking about housing more generally and there is a range of mechanisms which I think we spoke about at the last estimates hearing. Certainly at a departmental level we meet with officers from the Department of Social Services. Also there is a secretaries group, which the secretary of Prime Minister and Cabinet chairs, and the Secretary to Social Services is on that group.

**Senator McLUCAS:** Thank you. What I am trying to get to is: was there ever any part of NAHA that was to be allocated specifically to Indigenous people, I dare say in communities that are mainstream communities?

**Mr Stacey:** Perhaps, Senator, I will say how I have understood all this. So, NAHA is an overarching agreement?

**Senator McLUCAS:** The old CSTHA, or whatever it was called—

**Mr Stacey:** In part—but in any event, I will leave that part to one side, sorry! I have a National Affordable Housing Agreement, an overarching agreement, reached by COAG in 2008. Underneath that there were a number of national partnership agreements designed to give effect to what was in NAHA. One of those was the National Partnership Agreement on Remote Indigenous Housing.

**Senator McLUCAS:** Thank you. You have answered my question, because that was what I have not able to track. So it does sit under NAHA?

**Ms Campbell:** Yes.

**Senator McLUCAS:** Do the reporting arrangements through NAHA capture any reporting systems that will happen in the remote Indigenous housing NPA?

**Ms Campbell:** The reporting arrangements for the national partnerships are defined in the national partnership itself. So each of the reporting arrangements are defined in the agreements.

**Senator McLUCAS:** And they are quarantined from the overall NAHA reporting?

**Ms Campbell:** Yes.

**Senator McLUCAS:** Okay. That is good.

**Ms Campbell:** And one example is that we get way more reporting through NPARIH than we do in the NAHA.

**Senator McLUCAS:** Yes. That is a good thing. So going to that reporting: can we get an update for the current status of the overall agreement about the number of dwellings, the number of refurbishments and the locations of all those that have all been agreed? What is the status report on progress? Is there a document that you produce on a reasonably regular basis that can inform the committee on progress?

**Ms Campbell:** I can give you an update on the progress to 31 December.

**Senator McLUCAS:** Okay.

**Ms Campbell:** The capital works targets for NPARIH for new houses for the 10 years was 4,200 across the jurisdictions, and refurbishments were 4,876. Delivered as at 31 December 2013: for new houses, 2,303, and refurbishments, 6,314.

**Senator McLUCAS:** So you have overdone the refurbishments?

**Ms Campbell:** Yes

**Mr Stacey:** Yes, Senator. In fact, it is 130% of the target

**Senator McLUCAS:** Well done; that is good. Now for the new houses to be completed, the 4,200 by 2018: do you have a way of tracking completions, and are you on track?

**Ms Campbell:** Yes. All jurisdictions report that they are on track, and they report to us regularly.

**Senator McLUCAS:** Is there a list of where these new houses are going to go? Is that a public document?

**Ms Campbell:** It is not a public document. Some of it is through a competitive bid process.

**Senator McLUCAS:** Okay

**Ms Campbell:** Some of it is that each of the jurisdictions identify and put through an implementation plan and then there is a separate competitive bid process. So it is a combination of all of that.

**Senator McLUCAS:** Within the state? So the competition is within the state for locations?

**Mr Stacey:** No, it is a competitive bid. Part of the NPARIH provides for a competitive bids process bi-annually, every two years, for each jurisdiction to make bids around capital works that they propose to carry out over the next two years. We go through a process of assessing those for every jurisdiction and ultimately come to an agreement about how much funding we want to give against those bids for each jurisdiction. We also have as part of it that if a jurisdiction has not met its target in the previous two years then that could potentially impact on the funding.

**Senator McLUCAS:** Queensland did not meet their target most recently, I understand. I am not following you though, Mr Stacey, about the competitive nature of the—

**Mr Stacey:** I was trying to say that it is not within each jurisdiction; it is not within each state. It is meant to be a process across each state, allowing us on a national basis to make a decision around which jurisdiction should get the funding to the amount they want to do capital works.

**Senator McLUCAS:** What is the competition about?

**Ms Campbell:** Maybe the competitive name is slightly misleading, but it can be competitive when there is extra money due to one of the jurisdictions being penalised for not meeting their targets.

**Senator McLUCAS:** So the excess money is competitive?

**Ms Campbell:** Yes. In the competitive bid we set the next two years work program and they provide us with a summary of their scope of works. They make a case for community need and put out which communities they plan to go to; they provide information about their method of procurement and delivery; they talk about where they are up to and the status of tenure for each community that they are planning to go to; they cover employment opportunities. A very important element of the competitive bid is around value for money and the cost of the work they are proposing to do. They also talk about community engagement. Through that process we set key milestones and time frames for the next two-year period.

**Senator McLUCAS:** And a side issue—Torres Strait. Is that part of the NPARIH or is that through TSRA?

**Ms Campbell:** Torres Strait is in the scope for the Queensland program of work.

**Senator McLUCAS:** So that does work through that. Can I now go to the Indigenous employment target. I want to get a real understanding of how the reporting works and how you scrutinise the reports you receive from the states and territories about the level of Indigenous employment that is delivered through the NPARIH.

**Ms Campbell:** As part of their reporting, each of the jurisdictions has a target of 20 per cent employment within the capital works element of the program. So along with their report of progress for capital works, they report their progress against that target of employment.

**Senator McLUCAS:** How do you receive that report? Is it basically 'achieved/not achieved'? How do you verify the report that you have received?

**Ms Campbell:** They would give us a percentage of employment of the workforce. That does vary by jurisdiction. Some will report on the total number of hours and as a percentage of Indigenous employment within the total hours; others may look at the workforce. It is not reported consistently by each jurisdiction.

**Senator McLUCAS:** So some people will drill down to say, 'This piece of work was done in 92 hours by an Indigenous person and that adds up to that part of the proportion of the 20 per cent or more,' but others will say, 'Of the people employed on this project, 22 per cent of them were employed'.

**Ms Campbell:** It does vary.

**Senator McLUCAS:** Is there a desire to make that consistent across the program?

**Ms Carroll:** There certainly is a desire. Some of it goes to, as you have indicated, the way the state or territory collects the data and information and also how they collect it from the people they have contracted, how they can bring that together. It is certainly our desire to try get as much accuracy as we can in that.

**Senator McLUCAS:** On notice, can you give me a list of the states and territories and some commentary about the way they report? I am not asking you to do a massive amount of work, but just the methodology they use. As well as that—this may not be able to be done—which states and territories are meeting the 20 per cent target. Do you have that now?

**Ms Campbell:** We can confirm that they are all meeting and exceeding that 20 per cent target.

**Senator McLUCAS:** But then we go to the next question: how do we know that the report is valid? What sort of checking system does the department employ to verify the report?

**Mr Stacey:** A key way we have is by setting up in each jurisdiction a joint governance structure known as a joint steering committee. That is the way we make sure that we are together—the Commonwealth and the relevant state government—monitoring implementation plans and achieving the different milestones, including those relating to the target on Indigenous employment. It is right that to a significant extent we do rely on data being provided by state and territory governments. I do not think, so far, we have come across a situation where we do not think that the data we have been given is accurate. We also of course have our own people on the ground—

**Senator McLUCAS:** Sorry, Mr Stacey, can you say that again?

**Mr Stacey:** I do not think so far we have come across a situation where we think that a jurisdiction has given us information that is not accurate—not as far as I know.

**Senator Scullion:** Senator McLucas, just trying to be helpful without verballing you: are you asking whether, because there is a possibility of companies providing their 20 per cent in different ways, how do we rationalise those different ways of providing information into the one thing?

**Senator McLUCAS:** Yes.

**Senator Scullion:** I do not think we have had a comprehensive answer, but I can take that on notice. I am not sure if we can find any examples, and we will perhaps see how that steering committee deals with that. If we can, if there is any further information, we will provide that to you on notice.

**Senator McLUCAS:** I suppose the concern I have is the different methodologies that are being used. That is an historical issue and just the way it is.

**Senator Scullion:** I accept that. We will have a look at how that is rationalised, if it is, and see if we can get some information too.

**Senator McLUCAS:** Mr Stacey, is there any data collected in whatever form—probably not—that talks about the number of apprenticeships that have been achieved through this housing program? I daresay it was not requested as part of the original reporting methodology, but if you did then it would be great to know.

**Mr Stacey:** I think we will have to take that one on notice.

**Senator McLUCAS:** Thank you. The other program I would like to know about is the Indigenous Housing and Infrastructure Program. Where does that sit?

**Mr Stacey:** We can take questions on that.

**Senator McLUCAS:** So is that in the housing part of what came over from FaHCSIA? Where did you come from?

**Mr Stacey:** Yes, it is.

**Senator McLUCAS:** And what is the purpose of the Indigenous Housing and Infrastructure Program?

**Mr Sowry:** Senator, the purpose is to provide funding and support for infrastructure and housing related infrastructure to remote communities. There are a number of different activities that are under that appropriation: Indigenous housing, municipal and essential services, the National Jobs Creation Program and the NT jobs program. A longstanding one is the Army Aboriginal Community Assistance Program.

**Senator McLUCAS:** So this is overarching, and these all sit under—

**Mr Sowry:** Yes, it is a very similar sort of construct.

**Senator McLUCAS:** All right. Going to the allocation announced yesterday or the day before, of the \$6 million to complete the seawalls in the Torres Strait: what sub-line did that come out under?

**Mr Sowry:** That came out of its own sub-line. There is an element that we have for what we internally call high-need support programs or activities, and that \$6 million of funding came out of that area—and it is over two years: this financial year and next financial year.

**Senator McLUCAS:** So that is the money that Minister Macklin announced?

**Senator Scullion:** Yes.

**Senator McLUCAS:** As part of the commitment from FaHCSIA to the sea walls?

**Senator Scullion:** That is right.

**Senator McLUCAS:** That is fantastic. And it is over two years—how much is in this year?

**Mr Sowry:** \$2.5 million this year.

**Senator McLUCAS:** When I say that I mean this current year.

**Mr Sowry:** Correct, yes.

**Senator McLUCAS:** And then the rest will be in next financial year?

**Mr Sowry:** Yes, in next financial year.

**Senator McLUCAS:** And that money goes to TSIRC or TSRA?

**Mr Sowry:** Our funding goes to TSRA.

**Senator McLUCAS:** And you have signed a contract with TSRA for the delivery?

**Mr Sowry:** We are negotiating. In fact, we had our first involvement in the project consultative group yesterday afternoon, and that topic came up. That is the next stage. We need to negotiate the funding agreement with them, and our commitment is that we will have that complete by the end of March.

**Senator McLUCAS:** Thank you. I will put some on notice, back to the seawalls: can I also get that list of where and who and what? Not by location, but can I get an understanding of the number of people who are in the blue card—that is what we call it in Queensland; I think Senator Peris calls it an ochre card—and who are in the exempt period? So, people who have applied for their card but who, properly, are going through that process to get that card, but have been employed?

**Ms Carroll:** For the people who are employed, we do not employ them until they actually have the card.

**Senator McLUCAS:** Did I misunderstand you?

**Ms Carroll:** No, but as part of the total number we have three rough groups: we have the people who are actually employed and who already have their card; we have a group that are engaged, so they actually might be doing the activity with someone else and they are in that period, so we can give you the definition of—

**Senator Scullion:** With the RJCP provider; not with kids.

**Ms Carroll:** So we can give you the number of those. Then there is the other group, those who are in the pipeline.

**Senator McLUCAS:** So they are engaged, but not employed.

**Ms Carroll:** That is right.

**Senator Scullion:** Because they do not have their working-with-kids check. So they are engaged by the RJCP provider, often doing the occupational health and safety and the prevocational work. Invariably it is a very short period of time. When they say 'imminent' there has been an awful lot of work done to get the working-with-kids material done over Christmas. The jurisdictions have done very well, but there is a short period of time under which they are engaged by the provider. So that is why there is another category, because we will not allow them to work with kids unless they have the working-with-kids card.

**Senator McLUCAS:** Thank you. If you could give me those three figures?

**Ms Carroll:** We will give you the definition for the three groups.

**Senator MOORE:** I am very apologetic to any officers who have been sitting here waiting to share with us their knowledge of the sport area, so could I put my apologies to anyone who would be in that? Rather than waste their time for five minutes, I will just put the questions on notice.

**CHAIR:** Again, thanks to those officials who were coming to address sports concerns.

#### **Proceedings suspended from 15:03 to 15:04**

**Ms Carroll:** I can provide an answer to a question on notice which was about the supplementary legal assistance. There are six organisations that receive the supplementary legal assistance. The funding is in the forward estimates under the Stronger Futures program through to 2022. As we described, the funding agreement finishes on 30 June 2014, and we will soon be in discussions with those organisations about the future. But many of these receive funding from Attorney-General's as well, so we are also working out how best to do that funding agreement to minimise red tape for those organisations.

**Senator SIEWERT:** Thank you very much.

**Ms Carroll:** The other one that I had a quick answer on was that there were some questions from Senator Seselja on congress, about sitting fees et cetera. I understand there are no sitting fees and that the co-chairs and directors are on salaries of some form, part- or full-time. The board meets monthly. In 2012-2013 a bit over a million dollars was spent on board remuneration. I just wanted to clarify that congress reported in a media release that they had 35 staff as at February 2014.

**CHAIR:** There being no other business we will adjourn the additional estimates cross-portfolio hearing for the Finance and Public Administration Legislation Committee. Thank you all very much, and our special thanks to the committee staff.

**Committee adjourned at 15:05**

M C Dillon

18 March 2014

Senator Cory Bernardi  
Chair  
Senate Standing Committee on Finance and Public Administration  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Bernardi

I refer to the Committee Secretary's letter to me dated 6 March 2014 inviting a response to questions asked by Senator Bridget McKenzie during the Estimates Hearings on 28 February 2014. For reasons set out below, I am responding in my personal capacity and not as Chief Executive Officer (CEO) of the Indigenous Land Corporation (ILC).

In relation to the questions asked by Senator McKenzie (both to the Department of Prime Minister and Cabinet and to myself) regarding the decision by Indigenous Affairs Minister, Senator the Hon Nigel Scullion to retrospectively cancel a publicly announced decision of the former Minister to grant the MJD Foundation \$10 million from the Aboriginals Benefit Account in the Northern Territory, I can ascertain no link between this decision and the ILC. Accordingly, there is no basis for me to respond to the question in my capacity as ILC CEO. I made that point in my evidence on the day. Accordingly, the following comments are made in a personal capacity and refer only to material that is in the public domain.

Senator McKenzie's questions appear designed to infer or create an imputation that the fact that I am a friend, former colleague and co-author of a book with Mr Westbury, the Chair of the MJD Foundation, in some way taints the processes surrounding the original decision to approve the grant by former Minister for Indigenous Affairs, the Hon Jenny Macklin MP.

I categorically refute any such inference or imputation.

The questions by Senator McKenzie adopt almost identical words to assertions by Senator Scullion in an undated letter to then Minister Macklin received 6 June 2013 and in a speech in the Senate on 24 June 2013; a speech in which he alleged I played an inappropriate role in relation to the appointment of ILC Directors and the removal of a former ILC CEO. As a public servant at the time of his speech I was not in a position to refute those allegations. I do so now.

These recent inferential criticisms appear to be a continuation of a series of attacks by Senator Scullion in the Parliament (under Parliamentary privilege) and in the media against the character of individuals associated with the ILC and its subsidiaries since the renewal of the Board in October 2011. I don't propose to list every individual and every instance, but note that individuals criticised

include: the ILC Chair, Dr Dawn Casey; the previous Acting ILC CEO, Mr Bruce Gemmell; ILC Director Neil Westbury; and, by implication, all ILC Directors appointed by Minister Macklin.

For present purposes, I will limit myself to giving a few examples relating primarily to myself and Mr Westbury.

On 15 February 2013, Senator Scullion used the Estimates Hearings to pursue a series of questions relating to the engagement of a facilitator for a one day workshop at a cost of around \$5500. The Senator indicated he had a particular interest in conflict of interest provisions and their application in procurement processes. He then went on to ask whether any Board members had been involved in prior discussions relating to the engagement of the facilitator, and in particular asked whether there had been an indication that 'a close personal relationship' had been notified. He then asked in relation to Mr Westbury 'Did he declare that he knew the facilitator and probably should not be talking to you about things like that?' The matter was pursued in further Questions on Notice. There was no substance to this line of tendentious questioning as Mr Westbury did not previously know the consultant.

On 19 April 2013, *The Australian* published an article where Senator Scullion criticised the fact that I had been recommended as the CEO of the ILC, (information not in the public domain at that time) alleging political interference by Minister Macklin in the process. The article quotes Senator Scullion saying 'With the blessing of the minister and his good friends, the chair of the ILC Dawn Casey and board member Neil Westbury, Michael Dillon will be in charge of a \$1.7bn outfit'. Senator Scullion placed the article on his website, and thus must be taken to have endorsed the content. I refute the inference that I was not appointed through an independent process and on merit.

In an undated letter received on 6 June 2013, Senator Scullion wrote to Minister Macklin and copied to a third party raising allegations about my 'apparent role' with regard to the appointment of the new ILC Directors, the removal of the previous ILC CEO Mr David Galvin and the proposal to appoint a new CEO (for which I was an applicant). Attached to that letter was a copy of the selection report for the appointment of the ILC CEO. The selection report was circulated only within the ILC Board. It is not clear how that report came to be in the hands of Senator Scullion. The unauthorised dissemination of this information was likely a breach of the Crimes Act by the person who provided it to Senator Scullion's office.

Senator Scullion subsequently tabled his letter and the selection report in Parliament on 24 June 2013, an act which I regard as a gross breach of my privacy (and that of the two unsuccessful candidates shortlisted for the position). I understand Minister Macklin subsequently responded to Senator Scullion based on advice and inquiries made by her department refuting his allegations that I had acted inappropriately either in relation to my application to the CEO vacancy or in relation to the appointment of the ILC Directors. Senator Scullion did not table her response nor did he make any apparent effort to correct the record.

On 7 June 2013, in Estimates, Senator Scullion questioned the qualifications of the new ILC Board members appointed by Minister Macklin (which included Mr Westbury as an ordinary member) and he noted that past Boards have included people with experience in financial and business management and 'perusing the board's CV's, only David Baffsky fits that criteria...'.

At the same Hearings, Senator Scullion mentioned again that I had been recommended as incoming CEO of the ILC and in a lengthy exchange with the Department inferred that I had been involved (while employed in the public service) in the removal of the former CEO, Mr David Galvin, an individual Senator Scullion has publicly praised and clearly regards highly. The decision to remove the former CEO was made by the then ILC Board and I had no role in their decision. Accordingly there is no substance to Senator Scullion's suggestion and I refute the inference.

On 24 June 2013 in an Adjournment speech to the Senate, Senator Scullion again made the comments I refer to above regarding my alleged inappropriate involvement in the appointment of the new ILC Directors and the termination by the Board of the former CEO based on my alleged friendship with ILC Board members Dawn Casey, Olga Havnen and Neil Westbury. While I knew each of the three individuals named, only Neil Westbury could be described as a friend rather than an acquaintance. I understand Mr Westbury took no part in the decision regarding my selection as CEO of the ILC. These allegations are simply without basis, and reflect a vexatious fiction promulgated by Senator Scullion.

On 22 November 2013 I appeared before this Committee at Estimates Hearings, and outlined a series of concerns regarding the ILC's acquisition of the Ayers Rock Resort in October 2010 for a price of \$300 million. Senator Scullion took exception to comments I made regarding responses by the then Chair of the ILC, Ms Shirley McPherson, to correspondence from both former Minister Macklin and the former Minister for Finance, Senator the Hon Penny Wong. Minister Scullion's criticism of my comments was reported in the media. An exchange of correspondence ensued which is on the public record and speaks for itself.

For present purposes, I merely note that my concerns about the acquisition of the Ayers Rock Resort have been vindicated by the publication in December 2013 of the McGrathNicol report which found that the due diligence undertaken (at a cost of \$6 million) involved serious administrative and accountability deficiencies and adopted recklessly optimistic assumptions. These findings are at odds with the former Chair of the ILC's assurances to Ministers Macklin and Wong regarding the acquisition of the resort. My comments were also vindicated by the ILC Chair's public announcement on 13 March 2014 that an independent full speaking valuation of the resort values it at around \$200 million, as against the purchase price of \$300 million. As has been already placed on the public record in the most recent Estimates Hearings, a range of unanswered questions remain regarding the probity and financial appropriateness of this transaction.

The examples listed above demonstrate Minister Scullion's sustained pursuit of current ILC Directors and others such as myself who have diligently and professionally dealt with the adverse commercial consequences of the former ILC Board's acquisition of the Ayers Rock Resort.

What is of significant concern and disappointment is that at the same time as attacking the character of individuals associated with the current ILC Board, Senator Scullion has seemingly failed to pursue any of the serious accountability issues arising from the acquisition of the Ayers Rock Resort while in Opposition, and now in his role as Minister. Instead, Minister Scullion has gone out of his way to indicate his support (including via praise in the Parliament) for the former ILC Directors and CEO who were responsible for negotiating and driving the transaction which involved numerous accountability deficiencies, has been valued at more than \$100 million less than its purchase price, and involved

potentially unsustainable debt financing arrangements of around \$200 million. The cumulative impact on the ILC and its capacity to fulfil its statutory functions is potentially disastrous.

The Minister has also refused to initiate a public inquiry into the acquisition of the resort, which in the circumstances would be a reasonable and prudent course of action relating to the loss of public funds of this quantum.

In conclusion, it is my contention that the most recent questioning by Senator McKenzie is a continuation of a sustained and deliberate attempt by Minister Scullion to use the privileges of the Parliament to attack my character and intimidate me, along with current ILC Directors involved in dealing with the severe adverse consequences for the ILC stemming from the Ayers Rock Resort acquisition. In my view this amounts to an abuse of parliamentary process and requires remedial action by the Parliament.

Accordingly I formally request that the Committee rule the questions asked by Senator McKenzie of both the Department of Prime Minister and Cabinet and myself out of order. I also formally request that the Committee refer the matters raised in this letter to the Privileges Committee of the Parliament for examination.

In relation to the MJD Foundation grant matter raised by Senator McKenzie, I note that in introducing an alleged link between Mr Westbury and the ILC and inferring that Mr Westbury's friendship with me is somehow inappropriately relevant to the approval of the grant, Senator McKenzie has in effect raised the possibility that the real reason for the Minister's decision to retrospectively terminate the grant relates to Mr Westbury's involvement in the MJD Foundation and not the merits of the grant itself.

Were it the case that Minister Scullion or his office arranged for Senator McKenzie to ask the questions she did, it would confirm that Mr Westbury's role as both ILC Director and his role as MJD Foundation Chair was an element in the Minister's decision to overturn the previously approved and announced grant.

This possibility is made more likely by the fact that Senator McKenzie is a Victorian whereas Minister Scullion is a Northern Territory senator and the MJD Foundation operates in his electorate. It is reinforced by Minister Scullion's previous assertions in his June 2013 letter to Minister Macklin and in his comments in the Senate on 24 June 2013 in almost identical terms to Senator McKenzie's question. The rationale given by the Minister for his rather extraordinary retrospective action in cancelling the grant to the MJD Foundation is both confused and unpersuasive, but is consistent with the sustained patterns of behaviour involving vilification of current ILC Directors and officers outlined above. I consider this is a matter which the Standing Committee on Finance and Public Administration should consider further.

I request that this letter be published by the Committee.

Yours sincerely

M C Dillon



**STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION**  
**Legislation Committee**

20 March 2014

Mr Michael Dillon

Dear Mr Dillon

Thank you for your response to the committee dated 18 March 2014 which relates to matters which arose out of your appearance on 28 February 2014 before an Additional Estimates hearing of the Senate Finance and Public Administration Legislation Committee (committee). The committee sought to clarify those matters by writing to you under its power to consider the performance of departments and agencies allocated to it under standing order 25(2)(a).

You have asked that the committee rule out of order particular questions asked at the estimates hearings. Rulings concerning the appropriateness of questions are generally made by the chair, and ultimately determined by the committee, at the time the questions are asked. Committees apply a broad test in relation to what are relevant matters at estimates hearings: any matters that go to the operations or the financial positions of departments and agencies are relevant matters. Applying this broad test, the committee considers that the questions which were put to you were relevant. You would also appreciate that while, on occasion, questioning at estimates hearings can become quite robust that is not a basis for ruling questions out of order.

Where adverse inferences or reflections are made against a person in the course of committee proceedings, committees are required to provide the person concerned with the opportunity to respond to that adverse material. Such a response is protected by parliamentary privilege. You have taken the opportunity to respond to the matters which you consider were inferred by the questions put to you and you have requested that your response be made public. Consistent with your request, the committee intends to publish all correspondence relating to this matter.

Finally, you have asked that the committee refer the matters raised in your letter to the Committee of Privileges. The committee considers that the appropriate course in this case is the publication, under the protection of parliamentary privilege, of the response you have provided. The committee also draws to your attention the right of reply procedure provided for under Privilege Resolution 5 (attached).

Yours sincerely

Cory Bernardi

Chair

## **5 Protection of persons referred to in the Senate**

(1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate, makes a submission in writing to the President:

- (a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and
- (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
- (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the President shall refer the submission to that the President shall refer the submission to that committee.

(2) The committee may decide not to consider a submission referred to it under this resolution if the committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.

(3) If the committee decides to consider a submission under this resolution, the committee may confer with the person who made the submission and any senator who referred in the Senate to that person.

(4) In considering a submission under this resolution, the committee shall meet in private session.

(5) The committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Senate.

(6) In considering a submission under this resolution and reporting to the Senate the committee shall not consider or judge the truth of any statements made in the Senate or of the submission.

(7) In its report to the Senate on a submission under this resolution, the committee may make either of the following recommendations:

- (a) that no further action be taken by the Senate or by the committee in relation to the submission; or
- (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the committee, be published by the Senate or incorporated in Hansard,

and shall not make any other recommendations.

(8) A document presented to the Senate under paragraph (5) or (7):

(a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and

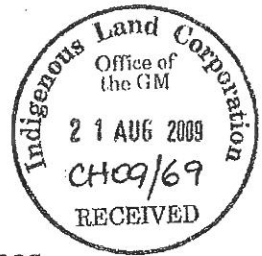
(b) shall not contain any matter the publication of which would have the effect of:

- (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
- (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

Estimates Committee request for a list of the relevant correspondence between Ministers and the ILC Chair in relation to the acquisition of the Ayers Rock Resort in 2010 and the potential for an ANAO audit which was raised in 2013.

ACQUISITION OF AYERS ROCK RESORT	
Date	Details of letter
19 August 2009	Letter from The Hon Jenny Macklin MP to Shirley McPherson ✓
22 September 2010	Letter from The Hon Jenny Macklin to Ms Shirley McPherson ✓
23 September 2010	Letter from Shirley McPherson to The Hon Jenny Macklin ✓
29 September 2010	Letter from Senator the Hon Penny Wong to Shirley McPherson ✓
30 September 2010	Letter from Shirley McPherson to Senator the Hon Penny Wong ✓
1 October 2010	Letter from Shirley McPherson to Senator the Hon Penny Wong ✓
8 October 2010	Letter from Senator the Hon Penny Wong to Shirley McPherson ✓
5 November 2010	Letter from Shirley McPherson to Senator the Hon Penny Wong ✓
1 February 2011	Letter from Senator the Hon Penny Wong to Shirley McPherson ✓
ANAO AUDIT	
14 May 2013	Letter from ILC Chair Dr Dawn Casey to The Hon Jenny Macklin MP
14 May 2013	Letter from ILC Chair Dr Dawn Casey to Senator the Hon Penny Wong
5 June 2013	Letter from The Hon Jenny Macklin MP to ILC Chair, Dr Dawn Casey

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**The Hon Jenny Macklin MP  
Minister for Families, Housing, Community Services  
and Indigenous Affairs**

Parliament House  
CANBERRA ACT 2600

Telephone: (02) 6277 7560  
Facsimile: (02) 6273 4122

MN09-002462

19 AUG 2009

Ms Shirley McPherson  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Ms McPherson

Thank you for providing a copy of your letter dated 29 May 2009 to Dr Harmer, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, regarding the Indigenous Land Corporation's (ILC) proposal to purchase and manage the Ayers Rock Resort in the Northern Territory.

As you would be aware, under section 15(1) of the *Commonwealth Authorities and Companies Act 1997*, the ILC must provide me, as the responsible Minister, with the written particulars of any proposal to participate in a significant partnership, to acquire or dispose of a significant business, and to commence or cease a significant business activity.

I would appreciate you providing me with the written particulars of the ILC proposed purchase and management arrangements for Ayers Rock Resort including but not limited to:

- details of the proposed financial arrangements for the purchase and the impact on ILC's operations and debt levels, including details relating to the projected profit or loss anticipated from the new business activity in coming years and the ongoing financial liability or benefit expected for the ILC; and
- details of the proposed benefits to the local Indigenous people including the particulars of the proposed lease-back arrangement and anticipated training and employment opportunities.

I would also appreciate being advised at your earliest convenience once a deal to purchase the Ayers Rock Resort has been finalised.

Thank you for your assistance with this matter.

Yours sincerely

**JENNY MACKLIN MP**



**The Hon Jenny Macklin MP**  
**Minister for Families, Housing, Community Services**  
**and Indigenous Affairs**

Parliament House  
CANBERRA ACT 2600

Telephone: (02) 6277 7560  
Facsimile: (02) 6273 4122

MN10-001682

22 SEP 2010

Ms Shirley McPherson  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Ms McPherson

The General Manager of the Indigenous Land Corporation (ILC) wrote to me on 10 August 2010 advising of the proposed acquisition of the Ayers Rock Resort by the ILC. You might recall that I wrote to you on 19 August 2009 about this matter.

There is no question that we share a commitment to pursuing robust economic development for Indigenous people and that the Uluru area is an iconic cultural site where innovative tourism opportunities which show case Aboriginal achievements and culture should be supported. You would be aware that increasing Indigenous employment is a key priority for the Government and that the tourism and hospitality sectors provide important opportunities in this regard.

I also fully appreciate that the ILC Board is responsible for making investment decisions on behalf of the Corporation. However, as the responsible Minister for the ILC, I need to share with you my concerns about the impact of such a significant investment on the ILC's ability to deliver outcomes across Australia for Indigenous people.

Firstly, I am unclear as to how the Board proposes to meet its statutory obligations under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) to acquire interests in land for the purpose of granting those interests to Aboriginal and Torres Strait Islander corporations within a reasonable timeframe. Consistent with these obligations I am interested in how the Board intends to divest itself from this significant purchase.

I am also interested to ensure that a purchase of this type, which would be a major focus for the Board, would not limit the ILC's capacity to carry out its functions more broadly. I am concerned that the ILC continue to address Indigenous disadvantage in a variety of locations and continue the important work in relation to the native title settlements. It would be essential to ensure that such a significant purchase does not hinder future strategic investment opportunities that may arise.

I also seek your assurance that the ILC has been clear in dealing with all lenders or potential lenders that the Commonwealth does not guarantee any borrowings the ILC may make.

I am sure you will appreciate that the Government places a high priority on its financial management. The ILC's borrowings to fund the purchase would have a budgetary impact on the Commonwealth's accounts such that the Minister for Finance and Deregulation would also take a keen interest in the proposal.

The scale of the potential acquisition of the Ayers Rock Resort draws attention to the nature of ILC's borrowing powers under Section 193L of the ATSI Act. I would expect you to have regard to the upcoming review of those powers when considering this acquisition and the borrowing arrangement it entails.

As the responsible Minister for the ILC, in accordance with subsection 16(1) of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), I would appreciate your advice on the matters I have raised as well as the information requested in my 2009 letter prior to ILC finalising the agreement. In accordance with subsection 16(2) of the CAC Act, I request that you provide this information to me within 14 days, or at least 7 days before the ILC enters any relevant agreements.

I have copied this letter to the Minister for Finance and Deregulation, Senator the Hon Penny Wong on the basis that she is responsible for ensuring compliance with directors' duties under the CAC Act.

I look forward to your urgent advice and assistance with this matter.

Yours sincerely

JENNY MACKLIN MP

*Letter*  
*Thank you for letter. on this copy of August 2010 at last signed.*  
*→ Melbourne*  
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*- reasonable - allows*  
*- rev. I no "time limit"*  
*all the members*  
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*ownership issues - ALI*  
*No PBS - →*



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

CH2010/57

23 September 2010

The Hon Jenny Macklin MP  
Minister for Families, Housing, Community  
Services and Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

**Commercial-in-Confidence**

Dear Minister

Thank you for your letter of 22 September 2010 regarding the ILC's proposed acquisition of Ayers Rock Resort (ARR).

The ILC Board and I share your strong commitment to the economic development of Indigenous people and the aim of substantially increasing Indigenous employment. The purchase of ARR will be a catalyst for both of these aims, not only at Yulara and the surrounding communities, but also Australia wide. It is the ILC's vision that ARR and Uluru will become the hub for Indigenous tourism across Australia. With this objective in the minds of Directors, an enormous amount of due diligence and care has been undertaken to ensure that the proposed purchase of ARR is compliant with the *Aboriginal and Torres Strait Islander Act 2005 (the ATSI Act)* and the *Commonwealth Authorities and Companies Act 1997*.

On referral in late 2008 from Mr Mike Dillon of your Office and Ms Donna Moody from your Department, the ILC has been working closely with Wana Ungkuntja (WU—an Aboriginal corporation representing communities that surround Uluru). WU proposed to the ILC that we work in partnership to purchase ARR to achieve significant benefits for local Anangu people.

It is unfortunate to note that out of the 670 people currently employed at the Resort, only one is Indigenous. To address this unacceptable situation, the ILC proposes to establish a National Indigenous Tourism and Hospitality Academy at ARR, which will see Indigenous employment grow to 250 by the end of 2015 and to 340 by the end of 2018. The ILC will also work with major hotel operators to place graduates from the Academy into employment, as well as enhance their own Indigenous employment programs, which they advise will boost overall Indigenous employment across Australia by 300 by the end of 2015. The ILC will partner with Nyangatjatjara College (a WU affiliate) at Yulara to provide work experience and school-based traineeships and apprenticeships. It will also work with WU to increase Indigenous employment and economic development through its company Anangu Tours, which is based at ARR, and offer contracting opportunities at ARR to further WU's employment and economic development objectives. The ILC plans a genuine, interactive Indigenous experience at ARR, in partnership with WU, that will in itself provide Indigenous employment for members of the local communities. Additionally, senior executives of the ILC recently met with Mr John Borghetti, Virgin Blue

Office of the Chairperson (Canberra Office)

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ABN 59 912 679 254

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Chief Executive Officer, who advised that, if the ILC purchased ARR, Virgin Blue will commit to continue flying to Yulara for the long term and noted that Virgin Blue's inaugural flight to Yulara on 3 August 2010 was staffed by an all-Indigenous crew.

I note your concerns about the impact the proposed purchase may have on the ILC's ability to provide outcomes across Australia for Indigenous people. I can assure you that in all aspects of due diligence, planning and financial forecasting the ILC Board is ensuring that there will be no adverse impact on the delivery of the ILC's existing operations, including work in relation to native title settlements, further strategic purchases, or expenditure on existing programs as contained in the Portfolio Budget Statements 2010/11. Income received from the Aboriginal and Torres Strait Islander Land Account will continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations. Indeed, based on conservative cash flow projections, ARR, after ten years of operation, is predicted to provide additional net income to the ILC of over \$25 million per year, which will enable expansion of the ILC's programs across Australia. These results have been confirmed by extensive due diligence and expert consultants.

To effect the transaction, the ILC proposes to use a wholly owned subsidiary, ILC Tourism Pty Limited (**ILC Tourism**), as the operating entity. There will be a formal arrangement put in place pursuant to section 191G(1) of the ATSI Act. The ILC understands that ILC Tourism is bound by the same statutory rights and obligations as bind the ILC and ILC Tourism cannot act beyond the ILC's powers. It is proposed that ILC Tourism hold title to the land. The current divestment proposal would see the land granted to an appropriate Indigenous title holding body, consisting of traditional owners, when the secured and unencumbered title is available through discharge of the relevant loan and security. The grant would occur with a lease-back arrangement to ensure the ongoing operation of ARR. This is consistent with the Commonwealth Government's previous grant of ownership and 99-year lease-back model over Uluru-Kata Tjuta National Park. Such a grant fulfils the ILC's obligations under section 191D.

ILC Tourism's board will be independent and contain outstanding Indigenous (including representatives of WU) and non-Indigenous members experienced in business and tourism. As part of the acquisition, ILC Tourism will acquire the Voyages platform, which currently operates ARR. This will ensure a seamless transition of ownership to ILC Tourism, retention of experienced staff and operation of the businesses without interruption during the purchase period. It is planned that ILC Board Director, Mr David Baffsky AO, will be the chair of ILC Tourism. Mr Baffsky has unparalleled experience in the Asia-Pacific tourism industry as the former Executive Chairman of Accor Asia Pacific and was awarded the Asia-Pacific Hotelier of the Year in 2004. The ILC has attracted one of the foremost hotel executives in the world, a recipient of the Asia-Pacific Hotelier of the Year in 2007, to the project. The ILC expects to appoint him to the role of CEO of ILC Tourism (subject to the purchase proceeding). This appointment will also enhance the operations of the ILC's tourism ventures at Home Valley in WA and Mossman Gorge in Queensland, which is planned to be opened next year.

With regard to the ILC's borrowing powers, the ILC is in the fortunate position that the vendor has assisted the ILC to ensure that any external borrowings are minimised. In all dealings with prospective lenders, they have been advised that the ILC is an independent statutory authority and that the ILC is the only guarantor of borrowings.

***Commercial-in-confidence***

The ILC will ensure that eventual lenders are formally advised that the Commonwealth does not guarantee any borrowings that the ILC makes.

The ILC Board is aware of the upcoming review of its borrowing powers and notes the current limit of \$303 million. Having regard to this, the ILC's proposed total direct borrowings for ARR will peak at \$96 million. The ILC will also guarantee the balance of the purchase price of ARR through a deferred payment arrangement negotiated with the vendor. Accordingly the ILC's combined borrowing and guarantee will peak at \$260 million in the first year and reduce to \$100 million in year five.

I have attached for your information a more detailed brief, which includes the ILC's ten-year cash flow projections for ARR, prepared by expert consultants, which underpin a number of the above points.

Finally, it is noted that when you wrote to me on 19 August 2009, the ILC had suspended all negotiations on the purchase of ARR. Consequently, there was no advice that I could provide to you at that time and the ILC's General Manager, Mr David Galvin, informed Mr Dillon of this. On 25 June 2010 Mr Galvin met with Mr Dillon and advised him that the ILC had recently reopened negotiations on the purchase of ARR and provided him with an overview of the purchase. You should note that Mr Galvin wrote to Dr Jeff Harmer on 27 August 2010 offering to meet with either Dr Harmer or yourself on 7 September 2010 to provide a full briefing on ARR.

I wish to advise that the ILC is likely to agree to purchase ARR next Friday, 1 October 2010, and enter into a contract of sale shortly thereafter. I will keep your office informed of these developments. If you require further details I am happy to meet with you.

Yours sincerely

**SHIRLEY McPHERSON**  
Chairperson

Commercial in confidence

## **Ayers Rock Resort: an opportunity to acquire enterprises and create sustainable jobs for some of Australia's most disadvantaged Indigenous people**

### **Purpose**

To illustrate the opportunity to acquire Ayers Rock Resort (ARR) and its businesses to create sustainable jobs for Indigenous Australians.

### **Background**

In late 2008, Wana Ungkuntja (WU—an Aboriginal corporation representing communities around Uluru) approached the Indigenous Land Corporation (ILC) regarding the opportunity to acquire ARR to achieve significant benefits for local Indigenous people.

Mutitjulu and other neighboring communities have been identified as communities in extreme need by Australian Government departments. Around 70% of adults in Mutitjulu receive welfare payments. Unemployment and dependency on passively derived income have been identified as the fundamental cause of many of the problems and the social dysfunction facing the community.<sup>1</sup> Not one Anangu resident of Mutitjulu currently works at ARR.

ARR has been unsuccessful at employing Indigenous people and providing them with the flow-on socio-economic benefits that come with employment. Currently ARR and its operating businesses employ 670 people, of which we understand only one is Indigenous.

### **The ILC Board's vision**

- \* Acquisition of world-renowned tourism destination
- \* Creation of Indigenous jobs
- \* Provision of world-class cultural tourism
- \* Development of Indigenous tourism leadership and capacity
- \* Promotion of Indigenous excellence in tourism
- \* Successful granting of the land to an Indigenous organisation

<sup>1</sup> G. Andrews (2006). Mutitjulu Tjunga Waakaripayi Project 'Working Together' Discussion Paper  
G. Phelps and T. Linn (2002). Indigenous Employment and Training at the Alice Springs Desert Park

## Commercial in confidence

## ILC acquisition of Ayers Rock Resort

The ILC Board believes this is a once-in-a-lifetime opportunity for Indigenous people to own this land and establish a major Indigenous enterprise employing significant numbers of Indigenous staff.

The ILC will create a national Indigenous Tourism and Hospitality Training Academy that produces accredited Indigenous graduates and transitions them to employment at ARR and mainstream tourism and hospitality industries across Australia. Partnerships with Mutitjulu and other local Indigenous communities will focus on educating and training Indigenous youth to facilitate their employment at ARR.

Uluru is viewed as an iconic Indigenous attraction yet there is little to no Indigenous experience for visitors. Australia has failed to deliver high-quality cultural tourism, despite market desire for this product. The ILC plans a genuine, interactive Indigenous experience at ARR, in partnership with WU. This project will ensure that visitors to ARR and Uluru have a significant Indigenous experience.

## Indigenous benefits

- \* Acquisition of ARR on 104,000 Ha of land, including areas of cultural and environmental value
- \* Acquisition of:
  - 8 accommodation choices—five-star to backpackers to camping
  - Visitor's centre
  - Shopping centre and businesses
  - Conference facilities
  - Petrol station
  - Spa and recreation facilities
  - Lease of airport
- \* 670 jobs at ARR, of which only one is currently Indigenous
  - 200 Indigenous jobs by end 2015
  - 340 Indigenous jobs by end 2018
- \* 300 Indigenous jobs by the end of 2015 with major hotel operators elsewhere in Australia
- \* Creation of National Indigenous Tourism and Hospitality Training Academy
- \* Nationally accredited Indigenous graduates
- \* School-based apprenticeships
- \* Transition to employment
- \* Indigenous tourism leadership capability

The ILC aims to employ 200 Indigenous people by 2015 and 340 by 2018. Through the Academy, the ILC would be a source of recruits for the Australian tourism industry's demand for work-ready and trained Indigenous employees. It will develop an Indigenous tourism leadership capability and provide a platform for increased Indigenous participation in the tourism industry across Australia. The Indigenous workforce for ARR will be sourced from across Australia, but special attention will be given to recruitment of local Indigenous people.

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***ILC acquisition of Ayers Rock Resort***

The project will provide real, sustainable jobs and contribute significant flow-on economic, environmental, social and cultural benefits for Indigenous people in regions that severely lack economic development opportunities and that suffer chronic social disadvantage. This will contribute to 'closing the gap' in employment.

The 104,000 Ha of land where ARR and the Yulara township are situated include areas of cultural and environmental value, which will be protected through the acquisition.

**Grant of land to an Indigenous corporation**

The 104,000 Ha of land will be acquired to grant to an appropriate Indigenous titleholding body. This grant will occur when secured and unencumbered title is available through discharge of the ILC's financial and security obligations. The grant will occur with a lease-back arrangement to ensure the ongoing successful operation of ARR. There is already an ownership and 99-year leaseback and management arrangement with Traditional Owners over Uluru-Kata Tjuta National Park. This Commonwealth Government model will be the starting point for discussions between Traditional Owners and the ILC.

**Financial arrangements**

***Details of the proposed financial arrangements***

Acquisition of ARR	\$300m <sup>2</sup>
Capital expenditure for infrastructure/modernisation	\$ 45.0m
Delivery of the employment and training model (capital)	\$ 2.5m
Delivery of the employment and training model (operational)	\$ 1.3m pa
Delivery of school based apprenticeships	\$ 0.2m pa

The ILC, with the vendor's support of the ILC's vision for ARR, has been able to minimise the amount of external borrowings required to fund the acquisition. The ILC, through a wholly-owned subsidiary, will acquire ARR through a tailored program of guaranteed deferred payments to the vendor for the purchase price. The ILC subsidiary will become the owner of ARR on contract completion (the vendor will not retain any equity interest).

The acquisition, capital expenditure on infrastructure, and modernisation will be funded through a combination of the guaranteed deferred payments to the vendor, the ILC's existing cash reserves and bank finance.

As at 30 June 2010 the ILC had \$158m in cash reserves. The ILC will use these cash reserves, where not required for ILC normal operations, to minimise external borrowings. Three of the four major banks have provided credit approval for the bank finance.

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<sup>2</sup> This is an indicative purchase price only—a final purchase price has yet to be settled

**Commercial in confidence**

*ILC acquisition of Ayers Rock Resort*

External borrowings and guarantees will peak at \$260m at year one and reduce to \$100m by year five, with the profit being approximately \$25m per annum. Borrowings are expected to be fully extinguished prior to the end of year 10 of operations.

After the repayment of borrowings, ARR will provide an income of approximately \$25m to the ILC enabling it to significantly expand the benefits it will be able to deliver to Indigenous people, beyond the income it will receive from the Aboriginal and Torres Strait Islander Land Account.

Delivery of the employment and training model and school-based apprenticeships at ARR will be funded from the income derived from ARR. The ILC has had favourable discussions with DEEWR to fund capital infrastructure for the training and employment model.

**No adverse impact on ongoing ILC operations**

There will be no adverse impact on the delivery of the ILC's existing operations, including work in relation to native title settlements, further strategic purchases, or expenditure on existing programs as contained in the Portfolio Budget Statements 2010/11. Income received from the Land Account will continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations.

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ILC acquisition of Ayers Rock Resort

Table 1 - ARR and ILC Consolidated Cash-flow Forecast

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Operating Cash Flows</b>										
ILC (as per Portfolio budget statements)										
Income from Land Account	45.0	45.9	47.1	48.2	49.6	51.9	52.6	55.8	57.5	59.2
Other Income	10.5	9.9	8.1	8.1	8.3	8.3	8.3	8.3	8.3	8.3
Program and admin expenditure	-54.1	-54.4	-53.7	-54.7	-56.4	-58.7	-59.4	-62.6	-64.5	-6.0
<b>ILC EBITDA</b>	<b>1.4</b>	<b>1.4</b>	<b>1.5</b>	<b>1.6</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.3</b>	<b>1.5</b>
<b>ARR</b>										
Operating Revenue	109.2	111.5	124.4	136.4	151.6	164.5	168.6	173.3	178.1	183.1
Operating Expense	-72.9	-74.9	-80.2	-85.4	-92.1	-98.0	-100.7	-103.7	-106.7	-109.9
Head Office	-9.0	-9.5	-9.8	-10.1	-10.4	-10.7	-11.0	-11.3	-11.7	-12.0
Indigenous E&T	-1.0	-1.1	-1.2	-1.3	-1.5	-1.6	-1.8	-1.9	-2.1	-2.4
FF&E Expenditure	-1.0	-1.0	-1.1	-1.1	-1.1	-1.2	-1.2	-1.2	-1.3	-1.3
<b>ARR EBITDA</b>	<b>25.3</b>	<b>25.0</b>	<b>32.1</b>	<b>38.5</b>	<b>46.5</b>	<b>53.0</b>	<b>53.9</b>	<b>55.2</b>	<b>56.3</b>	<b>57.5</b>
Net Interest	-2.8	-1.1	-1.7	0.3	2.8	-3.2	1.6	6.3	8.2	11.3
Tax Expense							-1.9	-4.1	-4.9	-5.3
<b>Total operating cash flows</b>	<b>23.9</b>	<b>25.3</b>	<b>31.9</b>	<b>40.4</b>	<b>50.8</b>	<b>51.3</b>	<b>55.1</b>	<b>57.9</b>	<b>60.9</b>	<b>65.0</b>
<b>Investing Cash Flows</b>										
Contribution to Capital Expenditure	4.0	8.0	8.0	3.0	2.0					
Purchase (Incl deferred payments)	-81.0	-81.0			-155.0					
Capital expenditure ARR	-18.3	-16.9	-4.7	-2.1	-2.3	-5.0	-5.0	-5.0	-5.0	-5.0
<b>Total investing cash flows</b>	<b>-95.3</b>	<b>-89.9</b>	<b>3.3</b>	<b>0.9</b>	<b>-155.3</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>
<b>Financing Cash Flows</b>										
Debt Raised	18.3	16.9	4.7	2.1	54.0					
Debt Repaid						-45.0	-48.0	-3.0		
Interest on deferred payments	-13.9	-8.6	-8.6	-8.6	-8.6					
<b>Total financing cash flows</b>	<b>4.4</b>	<b>8.3</b>	<b>-3.9</b>	<b>-6.5</b>	<b>45.4</b>	<b>-45.0</b>	<b>-48.0</b>	<b>-3.0</b>		
<b>Net change in cash</b>	<b>-67.0</b>	<b>-56.3</b>	<b>31.3</b>	<b>34.8</b>	<b>-59.1</b>	<b>1.3</b>	<b>2.1</b>	<b>49.9</b>	<b>55.9</b>	<b>60.0</b>
<b>Cash Balance</b>										
Opening cash balance	128.2	61.2	4.9	36.2	71.0	11.9	13.2	15.3	65.2	121.1
Net change in cash	-67.0	-56.3	31.3	34.8	-59.1	1.3	2.1	49.9	55.9	60.0
<b>Closing cash balance</b>	<b>61.2</b>	<b>4.9</b>	<b>36.2</b>	<b>71.0</b>	<b>11.9</b>	<b>13.2</b>	<b>15.3</b>	<b>65.2</b>	<b>121.1</b>	<b>181.1</b>

Commercial in confidence

ILC acquisition of Ayers Rock Resort

Table 2 - Financing/ Borrowing Forecast ARR (\$ millions)

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Financing/Borrowing</b>										
ILC*	48.7	39.4	-36.0	-36.9	5.1			-20.3		
Bank Finance*	18.3	16.9	4.7	2.1	54.0	-45.0	-48.0	-3.0		
<b>Total cash requirements</b>	<b>67.0</b>	<b>56.3</b>	<b>-31.3</b>	<b>-34.8</b>	<b>59.1</b>	<b>-45.0</b>	<b>-48.0</b>	<b>-23.3</b>		
<b>Accumulative Bank Finance</b>	<b>18.3</b>	<b>35.2</b>	<b>39.9</b>	<b>42.0</b>	<b>96.0</b>	<b>51.0</b>	<b>3.0</b>			
<b>Accumulative Funding from the ILC</b>	<b>48.7</b>	<b>88.1</b>	<b>52.1</b>	<b>15.2</b>	<b>20.3</b>	<b>20.3</b>	<b>20.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

\*Repayment = -ve

Table 3 – Due diligence conducted

Grant Samuel	Coordination of due diligence and business structure proposal
Business analysis, accounting and financial modeling	Grant Samuel Horwath HTL Beachfame
Property and capital expenditure	Planned Property Management BeachFame
Airport and aviation	Aspirion
Legal due diligence and compliance – including structure, properties and businesses	Baker and McKenzie Solicitors Corrs Chambers Westgarth Lawyers
Environmental due diligence	URS Australia
Hotel management and systems review	Simon Barlow Koos Klein E Horner and Associates
IT and Communications due diligence	E Horner & Associates
Human resources due diligence	HR Strategies
Sales and marketing due diligence	Marlene Poynder



## SENATOR THE HON PENNY WONG

Minister for Finance and Deregulation  
Senator for South Australia

REF:B10/1231

Ms Shirley McPherson  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Ms McPherson

I refer to the letter to you from the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, dated 22 September 2010 and your reply of 23 September 2010, concerning the proposal by the Indigenous Land Corporation (ILC) to acquire the Ayers Rock Resort.

As the Minister responsible for the *Commonwealth Authorities and Companies Act 1997* (CAC Act), and for the Commonwealth's budget position more generally, I am concerned about financial and other risks that could arise from the proposal, and request additional information urgently.

Your reply raises some concerns that the proposal to acquire the Ayers Rock Resort could place the directors of ILC in a situation where they have not complied with their duties under the CAC Act to, among matters, act with care and diligence and act in good faith in the best interests of the ILC and for a proper purpose. I am concerned about the robustness of the financial model as this may affect both the ILC's ability to divest the property and its ability to carry out its statutory functions.

As such, in accordance with paragraph 16(1)(c) of the CAC Act, I would appreciate you providing me with the following reports, documents or information:

- (a) advice supporting ILC's opinion that it can establish a subsidiary to purchase the resort consistent with section 29 of the CAC Act (activities of subsidiaries);
- (b) advice on how the proposed acquisition is consistent with subsection 191D(1) of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), given that no grant of land to an ATSI corporation is proposed until the land is financially unencumbered, which could be many years (potentially 2019 on ILC projections for when the debt will be repaid) or indefinite (if, for example, the Ayers Rock Resort does not generate enough income to repay the debt);

- (c) the latest due diligence report prepared by ILC on the proposed purchase;
- (d) independent sensitivity analysis of the projected revenue and cost projections for ILC;
- (e) information as to how ILC will meet its other statutory obligations if the financial projections are not achieved; and
- (f) an opinion from the directors, and any advice supporting that opinion, as to how the proposed purchase meets ILC's obligations under the ATSI Act and complies with the directors' and officers' duties under the CAC Act generally.

In accordance with subsection 16(2) of the CAC Act, I request that the directors of ILC provide this information with sufficient time for me to consider the information and seek clarification on any issue raised by the information prior to proceeding with the proposed purchase.

I understand that this may require a delay of the proposed purchase date and request that this receive your favourable consideration given the issues of concern.

Should you wish to discuss these issues further the contact in my Department is Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review Branch, who is available on telephone 02 6215 3657, facsimile 02 6267 3200 or email LRB@finance.gov.au.

I have copied this letter to the Prime Minister, the Treasurer, the Minister for Regional Australia, Regional Development and Local Government, the Minister for Tourism and Ms Macklin, for their information.

Yours sincerely

Penny Wong

29 SEP 2010

cc  
cc  
Mark  
Arbela

Enailed  
30/9/10



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

CH2010/59  
Your ref: B10/1251

***Commercial-in-Confidence***

30 September 2010

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 29 September 2010 regarding the ILC's proposed acquisition of Ayers Rock Resort (ARR).

It is of some concern that the Government has been aware of the proposal for almost two years and it is only now that these questions have been raised.

All of the Directors of the ILC Board share a commitment to assisting Indigenous economic development through the ILC's functions and of substantially increasing Indigenous employment. Indeed, the ILC has an enviable record and I enclose some information for you, including our Annual Report.

The purchase of ARR will be a catalyst for both of these aims, not only at Yulara and the surrounding communities, but also across Australia. It is the Board's vision that ARR and Uluru will become the hub for Indigenous tourism across Australia and lead the way in realising genuine Indigenous economic development.

The vision is also shared by Wana Ungkuntja (WU—an Aboriginal corporation representing communities that surround Uluru). WU first approached the ILC in 2008 proposing that the ILC work in partnership to purchase ARR to achieve significant benefits for local Anangu people.

It is unfortunate to note that out of the 670 people currently employed at the Resort, only one is Indigenous. To address this unacceptable situation, the ILC proposes to establish a National Indigenous Tourism and Hospitality Academy at ARR, which is anticipated to see Indigenous employment grow to 250 by the end of 2015 and to 340 by the end of 2018. The ILC will also work with major hotel operators to place graduates from the Academy into employment, as well as

***Commercial-in-confidence***

enhance their own employment programs, which they advise will boost overall Indigenous employment across Australia by 300 by the end of 2015. The ILC will partner with Nyangatjatjara College (a WU affiliate) at Yulara to provide work experience and school-based traineeships and apprenticeships. It will also work with WU to increase Indigenous employment and economic development through its company Anangu Tours, which is based at ARR, and offer contracting opportunities at ARR to further WU's employment and economic development objectives. The ILC plans a genuine, interactive Indigenous experience at ARR, in partnership with WU, that will in itself provide Indigenous employment for members of the local communities. Attached is a more detailed summary for your further information.

With these objectives in mind, an enormous amount of due diligence and care has been undertaken to ensure that the proposed purchase of ARR is compliant with the ILC's obligations under the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act) and the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). My fellow Directors and I are also particularly conscious of our individual and joint responsibilities as directors under the CAC Act.

It is an additional assurance that an outstanding group of individuals who are recognised leaders in their respective fields (including tourism and finance) and relevant to this proposal have agreed to join the board of the operating entity. They are fully aware of the challenges, obligations and expectations and share the passion of the ILC and WU for what is the single biggest opportunity of its nature for Indigenous people in Australia.

The Board has not yet met to consider the final negotiated position on the purchase of ARR or formally resolved to proceed with the acquisition. It will meet this Friday to consider the matter, noting that it has considered the most recent due diligence reports as they have become available at meetings in June and August this year. I am happy to table your letter and this response at the meeting for careful consideration by the Board.

I am also happy to provide the further information you have requested pursuant to section 16(1)(c) of the CAC Act. However, I note your request under section 16(2) to delay the purchase date until you have had time to consider the information and seek further clarification on any issue. The Board will need to carefully weigh that timing request against the statutory independence of the ILC as set out in section 191L of the ATSI Act and the position of the vendor being a public listed company. In this regard, I note the information is voluminous and the commercial sensitivities of the transaction are such that any ongoing delay may jeopardise this unique opportunity for Indigenous Australians.

Ultimately, it is the responsibility of each ILC Director to reach his or her own view as to whether they have acted with the appropriate care and diligence and in good faith and in the best interest of the ILC and for a proper purpose and consistent with the reason for the creation of the ILC as so clearly stated in the Second Reading Speech. Indeed, the ILC is considering using its powers for those

***Commercial-in-confidence***

very purposes. As Chairperson, I am satisfied that I have so acted in relation to the matter in question. I am confident that my fellow Directors hold a similar view. I am equally confident you will see from the following responses to your questions that those obligations have been fulfilled.

- a) The ILC proposes to establish a wholly-owned subsidiary, ILC Tourism Pty Limited (ILC Tourism), as the operating entity. It is proposed that ILC Tourism hold title to the land until it is divested to an appropriate Indigenous organisation representing traditional owners. There will be a formal arrangement put in place pursuant to section 191G(1) of the ATSI Act. The ILC understands that ILC Tourism is bound by the same statutory rights and obligations as bind the ILC and ILC Tourism cannot act beyond the ILC's powers. Accordingly, the ILC is satisfied that the establishment of ILC Tourism and its operation of Ayers Rock Resort will be in compliance with section 29 of the CAC Act.

I attach the following advices from the ILC's external legal advisors confirming that the project is compliant with both the ATSI Act and the CAC Act:

- Letter of Advice of Corrs Chambers Westgarth of 13 August 2010
- Memorandum of Advice from Counsel of 11 August 2010 through Baker & McKenzie

These legal advices attract legal professional privilege and were provided on a *commercial-in-confidence* basis and should be treated accordingly.

- b) The ILC recognises its obligation to acquire land for the purpose of making grants to Aboriginal and Torres Strait Islander corporations in a reasonable time. The current divestment proposal would see the land granted to an appropriate Indigenous titleholding body, consisting of traditional owners, when the secured and unencumbered title is available through discharge of the relevant loan and security. The grant would occur with a lease-back arrangement to ensure the ongoing operation of ARR. This is consistent with the Commonwealth Government's previous grant of ownership and 99-year lease-back model over Uluru-Kata Tjuta National Park.

The ILC is mindful of its obligation to make the grant within a *reasonable time*. This particular provision has previously been the subject of consideration by the Federal Court both by a single Judge (*Bidjara Aboriginal Housing & Land Co Ltd v Indigenous Land Corporation* [2000] FCA 1501) and then by the Full Bench of the Federal Court (*Bidjara Aboriginal Housing & Land Co Ltd v Indigenous Land Corporation* [2001] FCA 138). While those judgements were strictly speaking confined to the facts of the case, it was the unanimous view of all four Justices that the expression *reasonable time* does not prescribe a specifically defined time but must be interpreted by reference to the statutory context and purpose. Justice Kiefel, at first instance, tested the issue against the relevant ILC policies, which she found to be reasonable and found that the ILC had not breached its obligation under section 191D(3). On appeal, the Full

*Commercial-in-confidence*

Bench unanimously endorsed Justice Kiefel's approach and stated, "*The reasonableness of any deferral of a grant will have to be assessed from time to time in the light of all the relevant circumstances.*"

The ILC is of the view that its proposed divestment strategy is reasonable having regard to the following three issues:

- (i) The first issue is to identify an Indigenous corporation with capacity to successfully become the landowner of the property. This has been a recurring issue for the ILC since its establishment and many properties have suffered from being divested prematurely to groups who did not have the capacity to sustainably own them.

The ILC has a number of properties that it has held now in excess of ten years, but it continues to work with the relevant traditional owner groups towards divestment. The ILC considers it will have the same issues in relation to this divestment given the complexities of the land ownership issues.

The fact that the ILC has not yet identified a specific corporation is in no way an impediment to the ILC presently acquiring the land and having a *bona fide* intention to divest to an Aboriginal corporation in the future.

- (ii) The second issue is the fact that the ILC has been able to obtain very favourable terms for a deferred purchase price and will therefore have to grant certain securities over the land component. The ILC considers it reasonable that the land should be granted without encumbrances to an Aboriginal corporation and that it will not be possible to so grant the land until the ILC has had the opportunity to repay the loans and secure unencumbered title.
- (iii) Overriding all of the above, WU, whose Directors and members are largely traditional owners, also support this course of action.

Taking into account the above considerations, the ILC notes that such a divestment proposal fulfils the ILC's obligations under sections 191D(1) and (3) of the ATSI Act.

- c) Due diligence activities have been ongoing over the last two years at a cost of \$3.7 million or 1% of the proposed purchase price. The following independent consultants have provided due diligence reports within their areas of expertise:
  - Business and financial analysis and transition of business—Howarth HTL and Grant Samuel
  - Legal—Baker & McKenzie
  - Legal—Corrs Chambers Westgarth
  - Valuation of ARR—CBRE and Colliers
  - Airport lease and compliance—Aspirion Consulting

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- Sales and marketing—Marlene Poynder
- Environmental issues—URS Australia
- Human resource issues and strategies—HR Strategies
- Property physical condition and capex requirements—Property Planned Management Pty Ltd
- Information and Communication Systems—E Horner and Associates

I enclose a copy of the relevant reports for your information.

- d) I have attached for your information a financial model, which includes the ILC's ten-year cash flow projections for ARR, prepared by Grant Samuel and the ILC, which illustrate projected revenue and expenses. Over the two years of consideration of this matter the ILC has developed a number of financial models that are akin to a sensitivity analysis. Like other similar situations, ARR has just gone through the Global Financial Crisis, which has had a significant adverse affect on the tourism industry, and reported EBITDA of \$26 million for the year ended 31 December 2009 and expected EBITDA of \$24 million for the year ending 31 December 2010. The final financial model has utilised this period of trading as its base. It is noted that actual July and August 2010 tourist numbers have increased substantially above ILC and the vendor estimates.

Please note that three of Australia's leading banks have provided credit approval, after thoroughly examining the cash flow projections and financial model, to provide a \$60 million cash advance facility future capital expenditure, if needed. It should be further noted the model assumes that the ILC may utilise \$45 million of this facility.

- e) All aspects of due diligence, planning and financial forecasting for ARR have had a parallel focus of assuring the ILC Board that there will be no adverse impact on the delivery of the ILC's existing programs and operations, including work in relation to native title settlements, further strategic purchases, or its estimated expenditure on programs as contained in the Portfolio Budget Statements 2010/11.

Income received from the Aboriginal and Torres Strait Islander Land Account will continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations. Indeed, based on conservative cash flow projections, ARR, after ten years of operation, is predicted to provide additional net income to the ILC of over \$25 million per year, which will enable expansion of the ILC's programs across Australia.

The external borrowings and guarantees are secured by a fixed and floating charge over the assets of ARR, the shares of ILC Tourism, the airport lease and a Sydney office lease. The ILC will provide no other security and accordingly its cash and other assets are not put at risk by this transaction.

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There is no evidence from our extensive due diligence that the financial projections will not be achieved. However if a worst case scenario did occur the Board could:

- scale back its capital works program
  - renegotiate the external finance arrangements
  - renegotiate the final payment terms with the vendor
  - sell the property
- f) The attached advice from Corrs Chambers Westgarth illustrates that the proposed purchase meets the ILC's obligations under the ATSI Act and complies with the directors' and officers' duties under the CAC Act.

Finally, the ILC Board is aware of the proposed review of its borrowing powers and notes the current limit of \$303 million. Having regard to this, the ILC's proposed total direct borrowings for ARR will peak at \$96 million. The ILC will guarantee the balance of the purchase price of ARR through a deferred payment arrangement negotiated with the vendor. Accordingly the ILC's combined borrowing and guarantee will peak at \$260 million in the first year and reduce to \$100 million in year five. The ILC Board believes that its proposed responsible use of its borrowing powers is consistent with the very purpose of those powers, namely to operate effectively in the land market to achieve benefits for Indigenous Australians.

Yours sincerely

**SHIRLEY McPHERSON**  
Chairperson

cc: The Hon Julia Gillard MP, Prime Minister of Australia  
The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs  
The Hon Wayne Swan MP, Treasurer  
The Hon Simon Crean MP, Minister for Regional Australia, Regional Development and Local Government  
The Hon Martin Ferguson MP, Minister for Tourism  
Senator the Hon Mark Arbib, Minister for Indigenous Employment and Economic Development

**Commercial in confidence**

## **Ayers Rock Resort: an opportunity to acquire enterprises and create sustainable jobs for some of Australia's most disadvantaged Indigenous people**

### **Purpose**

To illustrate the opportunity to acquire Ayers Rock Resort (ARR) and its businesses to create sustainable jobs for Indigenous Australians.

### **Background**

In late 2008, Wana Ungkuntja (WU—an Aboriginal corporation representing communities around Uluru) approached the Indigenous Land Corporation (ILC) regarding the opportunity to acquire ARR to achieve significant benefits for local Indigenous people.

Mutitjulu and other neighboring communities have been identified as communities in extreme need by Australian Government departments. Around 70% of adults in Mutitjulu receive welfare payments. Unemployment and dependency on passively derived income have been identified as the fundamental cause of many of the problems and the social dysfunction facing the community.<sup>1</sup> Not one Anangu resident of Mutitjulu currently works at ARR.

ARR has been unsuccessful at employing Indigenous people and providing them with the flow-on socio-economic benefits that come with employment. Currently ARR and its operating businesses employ 670 people, of which we understand only one is Indigenous.

### **The ILC Board's vision**

- \* Acquisition of world-renowned tourism destination
- \* Creation of Indigenous jobs
- \* Provision of world-class cultural tourism
- \* Development of Indigenous tourism leadership and capacity
- \* Promotion of Indigenous excellence in tourism
- \* Successful granting of the land to an Indigenous organisation

<sup>1</sup> G. Andrews (2006). Mutitjulu Tjunga Waakaripayi Project 'Working Together' Discussion Paper  
G. Phelps and T. Linn (2002). Indigenous Employment and Training at the Alice Springs Desert Park

**Commercial in confidence**

*ILC acquisition of Ayers Rock Resort*

The ILC Board believes this is a once-in-a-lifetime opportunity for Indigenous people to own this land and establish a major Indigenous enterprise employing significant numbers of Indigenous staff.

The ILC will create a national Indigenous Tourism and Hospitality Training Academy that produces accredited Indigenous graduates and transitions them to employment at ARR and mainstream tourism and hospitality industries across Australia. Partnerships with Mutitjulu and other local Indigenous communities will focus on educating and training Indigenous youth to facilitate their employment at ARR.

Uluru is viewed as an iconic Indigenous attraction yet there is little to no Indigenous experience for visitors. Australia has failed to deliver high-quality cultural tourism, despite market desire for this product. The ILC plans a genuine, interactive Indigenous experience at ARR, in partnership with WU. This project will ensure that visitors to ARR and Uluru have a significant Indigenous experience.

**Indigenous benefits**

- \* Acquisition of ARR on 104,000 Ha of land, including areas of cultural and environmental value
- \* Acquisition of:
  - 8 accommodation choices—five-star to backpackers to camping
  - Visitor's centre
  - Shopping centre and businesses
  - Conference facilities
  - Petrol station
  - Spa and recreation facilities
  - Lease of airport
- \* 670 jobs at ARR, of which only one is currently Indigenous
  - 200 Indigenous jobs by end 2015
  - 340 Indigenous jobs by end 2018
- \* 300 Indigenous jobs by the end of 2015 with major hotel operators elsewhere in Australia
- \* Creation of National Indigenous Tourism and Hospitality Training Academy
- \* Nationally accredited Indigenous graduates
- \* School-based apprenticeships
- \* Transition to employment
- \* Indigenous tourism leadership capability

The ILC aims to employ 200 Indigenous people by 2015 and 340 by 2018. Through the Academy, the ILC would be a source of recruits for the Australian tourism industry's demand for work-ready and trained Indigenous employees. It will develop an Indigenous tourism leadership capability and provide a platform for increased Indigenous participation in the tourism industry across Australia. The Indigenous workforce for ARR will be sourced from across Australia, but special attention will be given to recruitment of local Indigenous people.

**Commercial in confidence**

***ILC acquisition of Ayers Rock Resort***

The project will provide real, sustainable jobs and contribute significant flow-on economic, environmental, social and cultural benefits for Indigenous people in regions that severely lack economic development opportunities and that suffer chronic social disadvantage. This will contribute to 'closing the gap' in employment.

The 104,000 Ha of land where ARR and the Yulara township are situated include areas of cultural and environmental value, which will be protected through the acquisition.

**Grant of land to an Indigenous corporation**

The 104,000 Ha of land will be acquired to grant to an appropriate Indigenous titleholding body. This grant will occur when secured and unencumbered title is available through discharge of the ILC's financial and security obligations. The grant will occur with a lease-back arrangement to ensure the ongoing successful operation of ARR. There is already an ownership and 99-year leaseback and management arrangement with Traditional Owners over Uluru-Kata Tjuta National Park. This Commonwealth Government model will be the starting point for discussions between Traditional Owners and the ILC.

**Financial arrangements**

***Details of the proposed financial arrangements***

Acquisition of ARR	\$300m <sup>2</sup>
Capital expenditure for infrastructure/modernisation	\$ 45.0m
Delivery of the employment and training model (capital)	\$ 2.5m
Delivery of the employment and training model (operational)	\$ 1.3m pa
Delivery of school based apprenticeships	\$ 0.2m pa

The ILC, with the vendor's support of the ILC's vision for ARR, has been able to minimise the amount of external borrowings required to fund the acquisition. The ILC, through a wholly-owned subsidiary, will acquire ARR through a tailored program of guaranteed deferred payments to the vendor for the purchase price. The ILC subsidiary will become the owner of ARR on contract completion (the vendor will not retain any equity interest).

The acquisition, capital expenditure on infrastructure, and modernisation will be funded through a combination of the guaranteed deferred payments to the vendor, the ILC's existing cash reserves and bank finance.

As at 30 June 2010 the ILC had \$158m in cash reserves. The ILC will use these cash reserves, where not required for ILC normal operations, to minimise external borrowings. Three of the four major banks have provided credit approval for the bank finance.

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<sup>2</sup> This is an indicative purchase price only—a final purchase price has yet to be settled

**Commercial in confidence**

*ILC acquisition of Ayers Rock Resort*

External borrowings and guarantees will peak at \$260m at year one and reduce to \$100m by year five, with the profit being approximately \$25m per annum. Borrowings are expected to be fully extinguished prior to the end of year 10 of operations.

After the repayment of borrowings, ARR will provide an income of approximately \$25m to the ILC enabling it to significantly expand the benefits it will be able to deliver to Indigenous people, beyond the income it will receive from the Aboriginal and Torres Strait Islander Land Account.

Delivery of the employment and training model and school-based apprenticeships at ARR will be funded from the income derived from ARR. The ILC has had favourable discussions with DEEWR to fund capital infrastructure for the training and employment model.

**No adverse impact on ongoing ILC operations**

There will be no adverse impact on the delivery of the ILC's existing operations, including work in relation to native title settlements, further strategic purchases, or expenditure on existing programs as contained in the Portfolio Budget Statements 2010/11. Income received from the Land Account will continue to be used to fund new and existing land acquisition and land management projects for Indigenous organisations.

Commercial In confidence

ILC acquisition of Ayers Rock Resort

Table 1 - ARR and ILC Consolidated Cash-flow Forecast

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Operating Cash Flows</b>										
ILC (as per Portfolio budget statements)										
Income from Land Account	45.0	45.9	47.1	48.2	49.6	51.9	52.6	55.8	57.5	59.2
Other Income	10.6	9.9	8.1	8.1	8.3	8.3	8.3	8.3	8.3	8.3
Program and admin expenditure	-54.1	-54.4	-53.7	-54.7	-56.4	-58.7	-59.4	-62.6	-64.5	-6.0
<b>ILC EBITDA</b>	<b>1.4</b>	<b>1.4</b>	<b>1.5</b>	<b>1.6</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.3</b>	<b>1.5</b>
<b>ARR</b>										
Operating Revenue	109.2	111.5	124.4	136.4	151.6	164.5	168.6	173.3	178.1	183.1
Operating Expense	-72.9	-74.9	-80.2	-85.4	-92.1	-98.0	-100.7	-103.7	-106.7	-109.9
Head Office	-9.0	-9.5	-9.8	-10.1	-10.4	-10.7	-11.0	-11.3	-11.7	-12.0
Indigenous E&T	-1.0	-1.1	-1.2	-1.3	-1.5	-1.6	-1.8	-1.9	-2.1	-2.4
FF&E Expenditure	-1.0	-1.0	-1.1	-1.1	-1.1	-1.2	-1.2	-1.2	-1.3	-1.3
<b>ARR EBITDA</b>	<b>25.3</b>	<b>26.0</b>	<b>32.1</b>	<b>38.5</b>	<b>46.5</b>	<b>53.0</b>	<b>53.9</b>	<b>55.2</b>	<b>56.3</b>	<b>57.5</b>
Net Interest	-2.8	-1.1	-1.7	0.3	2.8	-3.2	1.6	5.3	8.2	11.3
Tax Expense							-1.9	-4.1	-4.9	-5.3
<b>Total operating cash flows</b>	<b>23.9</b>	<b>25.3</b>	<b>31.9</b>	<b>40.4</b>	<b>50.8</b>	<b>51.3</b>	<b>55.1</b>	<b>57.9</b>	<b>60.9</b>	<b>65.0</b>
<b>Investing Cash Flows</b>										
Contribution to Capital Expenditure	4.0	8.0	8.0	3.0	2.0					
Purchase (incl deferred payments)	-81.0	-81.0			-155.0					
Capital expenditure ARR	-18.3	-16.9	-4.7	-2.1	-2.3	-5.0	-5.0	-5.0	-5.0	-5.0
<b>Total Investing cash flows</b>	<b>-95.3</b>	<b>-89.9</b>	<b>3.3</b>	<b>0.9</b>	<b>-155.3</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>	<b>-5.0</b>
<b>Financing Cash Flows</b>										
Debt Raised	18.3	18.9	4.7	2.1	54.0					
Debt Repaid						-45.0	-48.0	-3.0		
Interest on deferred payments	-13.9	-8.6	-8.6	-8.6	-8.6					
<b>Total financing cash flows</b>	<b>4.4</b>	<b>8.3</b>	<b>-3.9</b>	<b>-6.5</b>	<b>45.4</b>	<b>-45.0</b>	<b>-48.0</b>	<b>-3.0</b>		
<b>Net change in cash</b>	<b>-67.0</b>	<b>-56.3</b>	<b>31.3</b>	<b>34.8</b>	<b>-59.1</b>	<b>1.3</b>	<b>2.1</b>	<b>49.9</b>	<b>55.9</b>	<b>60.0</b>
<b>Cash Balance</b>										
Opening cash balance	128.2	61.2	4.9	36.2	71.0	11.9	13.2	15.3	65.2	121.1
Net change in cash	-67.0	-56.3	31.3	34.8	-59.1	1.3	2.1	49.9	55.9	60.0
<b>Closing cash balance</b>	<b>61.2</b>	<b>4.9</b>	<b>36.2</b>	<b>71.0</b>	<b>11.9</b>	<b>13.2</b>	<b>15.3</b>	<b>65.2</b>	<b>121.1</b>	<b>181.1</b>

Commercial in confidence

ILC acquisition of Ayers Rock Resort

Table 2 - Financing/ Borrowing Forecast ARR (\$ millions)

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Financing/ Borrowing</b>										
ILC*	48.7	39.4	-36.0	-36.9	5.1			-20.3		
Bank Finance*	18.3	16.9	4.7	2.1	54.0	-45.0	-48.0	-3.0	-	-
<b>Total cash requirements</b>	<b>67.0</b>	<b>56.3</b>	<b>-31.3</b>	<b>-34.8</b>	<b>59.1</b>	<b>-45.0</b>	<b>-48.0</b>	<b>-23.3</b>	<b>-</b>	<b>-</b>
<b>Accumulative Bank Finance</b>	<b>18.3</b>	<b>35.2</b>	<b>39.9</b>	<b>42.0</b>	<b>96.0</b>	<b>51.0</b>	<b>3.0</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Accumulative Funding from the ILC</b>	<b>48.7</b>	<b>88.1</b>	<b>52.1</b>	<b>15.2</b>	<b>20.3</b>	<b>20.3</b>	<b>20.3</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

\*Repayment = -ve

Table 3 – Due diligence conducted

Grant Samuel	Coordination of due diligence and business structure proposal
Business analysis, accounting and financial modeling	Grant Samuel Horwath HTL Beachfame
Property and capital expenditure	Planned Property Management BeachFame
Airport and aviation	Aspirion
Legal due diligence and compliance – including structure, properties and businesses	Baker and McKenzie Solicitors Corrs Chambers Westgarth Lawyers
Environmental due diligence	URS Australia
Hotel management and systems review	Simon Barlow Koos Klein E Horner and Associates
IT and Communications due diligence	E Horner & Associates
Human resources due diligence	HR Strategies
Sales and marketing due diligence	Marlene Poynder

## Commercial in Confidence

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

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1 October 2010

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

Dear Minister

***Ayers Rock Resort***

Further to my letter of 30 September 2010, I advise that the Board of the Indigenous Land Corporation met today and resolved to proceed with the acquisition of Ayers Rock Resort.

However, having regard to our correspondence, the Board proposes to delay implementation for seven days in the event that you wish to raise any further appropriate, substantial issues regarding Directors' duties under the *Commonwealth Authorities and Companies Act 1997*.

The Board has asked that I, as Chairperson, have regard to any appropriate, substantial issues.

Yours sincerely

**SHIRLEY McPHERSON**  
Chairperson

Rec'd 8/10/10



## SENATOR THE HON PENNY WONG

Minister for Finance and Deregulation

Senator for South Australia

REF:B10/1374

Ms Shirley McPherson  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Ms McPherson

Thank you for your letters of 30 September 2010 and 1 October 2010 concerning the Indigenous Land Corporation's (ILC) proposed acquisition of Ayers Rock Resort. I am particularly grateful for the ILC's promptness in responding to my letter of 29 September 2010, and the information provided to the Department of Finance and Deregulation.

While the information provided by the ILC addresses the matters of interest to me, I continue to be concerned with the potential financial viability of the proposed purchase and its impact on ILC's ability to perform its broader obligations. The due diligence report produced by Howath HTL identified some key risks facing the Resort in the medium to long term, which could potentially result in continued poor occupancy rates.

I do note that it is a matter for the Board to act with care and diligence in making a business judgement on the acquisition, and also note from your correspondence that considerable work has been undertaken by the Board prior to reaching a decision to acquire the Ayres Rock Resort. However, as advised in my letter of 29 September 2010 I do see the benefit of undertaking an independent sensitivity analysis, to further test the assumptions of the financial viability of the resort.

I note that following a meeting between the ILC's General Manager, Mr David Galvin, and officials from my Department, it was agreed that, should the acquisition proceed, quarterly meetings will be held between the ILC, the Department of Finance and Deregulation and the Department of Families, Housing, Community Services and Indigenous Affairs to monitor the performance of the Resort against the ILC's financial projections. I welcome this initiative.

Based on information to hand, I understand that the ILC subsidiary is likely to be classified by the Australian Bureau of Statistics as being outside the General Government Sector (GGS), but only as long as it is a going concern. However, regardless of whether the subsidiary is inside or outside the GGS, there will be broader implications for the Budget and this is a further reason for ongoing discussions with ILC.

In the event you proceed with the purchase, in accordance with paragraph 16(1)(c) of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), I ask that you develop and provide me with:

- an independent detailed sensitivity analysis;
- a detailed contingency plan on actions the Board intends to take under various revenue and expense scenarios; and
- quarterly information on the Resort's performance, including comparisons to projected performance data.

In accordance with subsection 16(2) of the CAC Act, I ask that the directors of ILC please provide this information to me within 28 days from the date of this letter.

I have copied this letter to the Prime Minister, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Treasurer, the Minister for Regional Australia, Regional Development and Local Government, the Minister for Tourism, and the Minister for Indigenous Employment and Economic Development, for their information.

Yours sincerely

**Penny Wong**

**Commercial-in-Confidence**

Your ref: B10/1374  
CH2010/61



**Australian Government**  
**Indigenous Land Corporation**  
ABN 59 912 679 254

5 November 2010

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

Dear Minister

On 29 September 2010 you wrote expressing concern that the Indigenous Land Corporation's (ILC) proposal to purchase Ayers Rock Resort (ARR) may place ILC Directors in a situation where they had not complied with their duties under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). I replied to you on 30 September 2010 providing you with more comprehensive information on the proposed acquisition including details of the significant due diligence that had been undertaken, and responding to your specific questions.

I wrote to you again on 1 October 2010 advising that the ILC Board had met and resolved to proceed with the acquisition of ARR, after satisfying themselves they would be acting with appropriate care and diligence, in good faith, in the best interest of the ILC and for a proper purpose as required by the CAC Act.

On 8 October 2010 you wrote seeking the following:

1. An independent sensitivity analysis
2. A detailed contingency plan on actions the Board intends to take under various revenue and expense scenarios
3. Quarterly information on ARR's performance, including comparisons to projected performance data

The ILC engaged the respected Grant Samuel Corporate Finance to conduct the independent sensitivity analysis, which is at Attachment A. The contingency plan is at Attachment B.

The ILC will be pleased to meet with officers of your Department on a quarterly basis and provide details of ARR's performance, after settlement has taken place (expected in early to mid 2011).

Should you have any queries regarding the enclosed, please do not hesitate to contact the ILC's General Manager, Mr David Galvin, on 02 6269 2500.

Yours sincerely

**SHIRLEY McPHERSON**  
Chairperson

cc: The Hon Julia Gillard MP, Prime Minister of Australia  
The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs  
The Hon Wayne Swan MP, Treasurer  
The Hon Simon Crean MP, Minister for Regional Australia, Regional Development and Local Government  
The Hon Martin Ferguson MP, Minister for Tourism  
Senator the Hon Mark Arbib, Minister for Indigenous Employment and Economic Development

## ATTACHMENT A

Independent Sensitivity Analysis—Conducted by Grant Samuel Corporate Finance (October 2010)  
Purchase of Ayers Rock Resort (ARR)

The ILC requested that Grant Samuel Corporate Finance undertake a sensitivity analysis on the financial model for the purchase of ARR. The results of the sensitivity analysis are summarised below.

Base Case

Over the two years of consideration of the acquisition the ILC and Grant Samuel Corporate Finance have developed a number of financial models that are akin to a sensitivity analysis. Like other similar businesses, ARR has just gone through the Global Financial Crisis, which has had a significant adverse affect on the tourism industry. However, ARR reported EBITDA of \$28.6 million for the year ended 31 December 2009 and expected EBITDA of \$23.0 million for the year ending 31 December 2010. The final financial model has utilised this period of trading as its base case but assumed a more conservative second half resulting in a lower expected EBITDA of \$21.2 million for the year ending 31 December 2010.

The ten-year financial forecasts prepared to analyse the proposed acquisition are conservative.

- Occupancy levels in the forecasts only recover to the 2008 level of 58% in 2014 and the 2007 level of 63% in 2015 following \$52 million of capital expenditure
- Occupancy remains unchanged at 67% after 2016 (occupancy levels in the three years until 2001, the year Ansett collapsed, was in excess of 77%)
- Room rates remain around \$260 until 2013. The room rate in 2006 was \$258 and in 2009 was \$257
- Forecast EBITDA does not exceed 2006 EBITDA of \$38.5 million until 2015

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Occupancy	53.2%	52.9%	55.7%	59.3%	64.7%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%
Room Rate	\$256	\$262	\$280	\$297	\$307	\$317	\$327	\$336	\$347	\$357	\$367	\$377	\$387
Turnover	\$108.4m	\$110.5m	\$123.0m	\$135.6m	\$151.9m	\$163.3m	\$167.7m	\$172.8m	\$178.0m	\$183.3m	\$188.6m	\$193.9m	\$199.2m
EBITDA	\$23.3m	\$23.5m	\$30.5m	\$37.3m	\$46.1m	\$51.8m	\$53.0m	\$54.6m	\$56.3m	\$58.0m	\$59.7m	\$61.4m	\$63.1m

<sup>1</sup> EBITDA has been revised to take into account the actual current cost of the Voyages platform.

### Scenario 1

The sensitivity analysis under Scenario 1 assumes that EBITDA for Full Year 2011 (FY11) (first year of trade by the LLC) is \$21.8 million, which is only 3% higher than the financial model EBITDA for FY10 (ie, assumes that EBITDA for FY11 remains the same as FY10 in real terms).

Earnings and other assumptions thereafter are assumed to maintain the same growth profile as the base case. The logic for this is that capital expenditure under this Scenario would remain the same as the base case. The capital expenditure is a significant driver for increased occupancy levels and increased room revenues.

To change the EBITDA for FY11 from \$23.3 million to \$21.8 million, two assumptions were independently changed:

Scenario 1A - Average Room Rates remain the same. The base case's occupancy levels change:

Scenario	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Base Case	63.1%	63.1%	58.3%	51.2%	51.7%	53.2%	52.9%	55.7%	59.3%	64.7%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%	67.4%
Scenario 1A						52.3%	51.9%	54.7%	58.2%	63.6%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%	66.2%
Difference						0.9%	0.9%	1.0%	1.1%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%	1.2%
Refinancing requirement in 2015																					
Base Case																					
Scenario 1A																					
				</																	

It should be noted that output of these sensitivities in Scenario 1 show:

- under Scenario 1A occupancy levels do not exceed the 2008 levels (just prior to the GFC) until 2015
- under Scenario 1B the average room rate assumptions are very conservative on the basis that average room rates do not exceed the 2009 levels (shortly after the GFC) until 2013
- under both Scenario 1A and Scenario 1B significant capital expenditure would have been undertaken so there should be considerable improvement in performance during this period
- the refinancing requirement for the final payment to the vendor in year 5 under Scenarios 1A and 1B increases by less than \$10 million

### Scenario 2

The analysis under Scenario 2 looks at the sensitivity of either occupancy declines by 5% from the base case or average room revenue decline by 5% from the base case.

Scenario 2A - 5% relative decline in forecast occupancy with room rates remaining the same:

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Base Case	63.1%	63.1%	58.3%	51.2%	51.7%	53.2%	52.9%	55.7%	59.3%	64.7%	67.4%	67.4%	67.4%
Scenario 2A						50.6%	50.2%	53.9%	56.3%	61.5%	64.0%	64.0%	64.0%
Difference (absolute)						2.7%	2.6%	2.8%	3.0%	3.2%	3.4%	3.4%	3.4%
Turnover													
Base Case						\$108.4m	\$110.5m	\$123.0m	\$135.6m	\$151.9m	\$163.3m	\$167.7m	\$172.8m
Scenario 2A						\$103.4m	\$105.4m	\$117.2m	\$129.2m	\$144.7m	\$155.5m	\$159.8m	\$164.6m
Difference						\$5.0m	\$5.1m	\$5.8m	\$6.4m	\$7.2m	\$7.8m	\$7.9m	\$8.2m
EBITDA													
Base Case						\$23.3m	\$23.5m	\$30.5m	\$37.3m	\$46.1m	\$51.8m	\$53.0m	\$54.6m
Scenario 2A						\$19.1m	\$19.2m	\$25.6m	\$32.0m	\$40.1m	\$45.3m	\$46.4m	\$47.8m
Difference						\$4.2m	\$4.3m	\$4.8m	\$5.3m	\$6.0m	\$6.5m	\$6.6m	\$6.8m
Refinancing requirement in 2015													
Base Case										\$43.7m			
Scenario 2A										\$69.9m			

Privileged and Confidential property of the Indigenous Land Corporation

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000
Base Case	\$258																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								

In Scenario 2A it is assumed occupancy is a further 1.7%-2.2% lower than Scenario 1A.

It should be noted that output of these sensitivities in Scenario 2 show:

- under Scenario 2A occupancy rates do not exceed 2008 levels (just prior to the GFC) until 2015
- under Scenario 2B the average room rate does not exceed 2009 levels until 2013
- under Scenario 2 the refinancing requirement in 2015 is more sensitive to a 5% fall in occupancy

Again significant capital development expenditure should result in a considerable improvement in performance over the period. Accordingly a decline of the magnitude in Scenario 2 would be considered unlikely.

The analysis indicates that:

- over the first five-year period that an ~1% absolute decline in occupancy rates equates to a total of \$8.8m decline in EBITDA over the five year period
- a 5% relative decline (or ~2.5%-3.4% absolute decline) in occupancy rates increases the refinancing requirement by \$26.2 million (to \$69.9 million)
- a 5% relative decline (or \$13-\$18 absolute decline) in average room rates increases the refinancing requirement for the final payment to the vendor in year 5 by \$10.4 million (to \$54.1 million)

This supports the ILC emphasis on improving occupancy as a key driver in the contingency plan rather than seeking increases in room rates immediately.

Refinancing of these levels (ie, \$69.9 million under Scenario 2A) in 2015 would be easily achievable on an asset such as ARR with its earnings profile and no other senior debt obligations, particularly given ILC Tourism was able to obtain credit approval for a \$60 million debt facility recently with a third party bank with significant vendor financing outstanding.

Grant Samuel Corporate Finance has indicated that both Scenarios 1 and 2 are based on very conservative assumptions.

**Key Performance Drivers and Contingency Plan  
Purchase of Ayers Rock Resort (ARR)**

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
- Qantas airfares have been high, if not prohibitive, since competition was eliminated with the collapse of Ansett in 2001
- 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
- The visitor experience is limited – there is little exposure to Indigenous culture and activities
- Average stay at the resort is only 1.8 days
- ARR has been on the market for two years
- Tourism activities were not core business for the owner

In order to improve performance at ARR, the ILC has identified (with the assistance of expert consultants) the following key performance drivers and activities.

Key Driver	Plan	Specific Activity
Increase occupancy	Accommodation experiences are commensurate with star rating and considered value for money	A consistent theme from consumer feedback was that ARR is an expensive destination. This includes cost to travel to ARR.
		Refurbishment of existing facilities (in particular Sails in the Desert) and the addition of new facilities (in particular the conference centre) is critical
		Develop activities to deliver on guest expectation of indigenous cultural experience
	Cheaper air access with more airline capacity	Virgin commenced flying from Sydney seven days a week from 3 August 2010 (104 seats per day) and has given ILC Management a commitment to retain flights to ARR Occupancy at ARR in August 2010 was 22% higher than in August 2009 — 68% versus 56% — and air fares have fallen significantly from approximately \$800 pp to approximately \$400 pp Focus on developing and maintaining relationships with Qantas and Virgin to keep capacity increasing and fares competitive.

Key Driver	Plan	Specific Activity
	Effective marketing and promotional strategy	<p>Marketing activities for the last two years have been reactive. Focus on developing a proactive marketing and promotion strategy</p> <p>Develop strong linkages to domestic and overseas travel companies and Government tourism authorities</p> <p>Increase focus on the conference and incentives market</p> <p>Retain the branding and reputation of Voyages</p> <p>Voyages travel agency has a good reputation that has been impacted as a result of ARR being on the market for two years. Build on travel agency reputation and performance.</p> <p>"Once in a lifetime" visit aspiration means minimal repeat visitation. Seek opportunities to promote repeat visitation.</p> <p>In low season the large number of empty rooms erodes profits due to high holding costs. Develop and promote low season activities.</p> <p>Development of out of room experiences including tours, Indigenous culture and art, entertainment and dining experiences.</p> <p>Maintain relationship and arrangements with Wana Ungkumtyja and further develop relationships with local Indigenous communities.</p> <p>Work with National Parks regarding its plans for the management of Uluru Kata Tjuta National Park.</p> <p>Work with National Parks to promote walks at Kata Tjuta.</p> <p>Develop capital expenditure plan for increased experiences associated with the resort (eg, wild life park, golf course)</p>
	Increase average length of stay	<p>Mr David Baffsky, former Chairperson of Accor Asia Pacific and Asia-Pacific Hotelier of the Year 2004, will be the Chairperson of the ARR operating company and an extremely experienced Board of directors will be appointed to the company.</p> <p>Mr Koos Klein, former President of Hilton Hotels, Asia Pacific and Middle East, and Asia-Pacific Hotelier of the Year 2007, has been consulting to the LLC and has agreed to be ARR's CEO for three years.</p>
Business operations	The LLC recognises that there are challenges in operating a destination resort, particularly in a remote location. Therefore, a quality board and management team will be required.	

Key Driver	Plan	Specific Activity
		The acquisition of the Voyages platform gives access to an experienced management team and will ensure a seamless transition of ownership to ILC Tourism, retention of experienced staff and operation of the businesses without interruption during the purchase period.
	Improve staff turnover	The ILC can, if it so chooses, enter into a franchising arrangement with an international hotel group for services, marketing and personnel Through an Indigenous Employment and Training Strategy, develop a five-year program at ARR. Develop a cohesive recruitment and selection process with tools that ensure the employer brand can attract and retain talent. Enterprise Bargaining Agreement expires in 2011 and will be renegotiated. Consider employee retention strategy as part of this process. Review and potentially re-structure the HR team and practices
	Manage expenditure	Voyages Corporate Office is larger than required for management of ARR only. Consider further downsizing and office subleasing options Remote location entails high operating costs. Consider the opportunities for partnering relationships for key services to ARR. Test the market as existing commercial contracts expire. Nature of ARR and location requires large and ongoing repairs and maintenance costs. Establish ongoing maintenance program.

Obviously the focus for the ILC will be on increasing the profitability of ARR so that it can successfully deliver Indigenous training and employment outcomes. However, the ILC's contingency plan also includes the following if the profitability does not improve:

**Re-scheduling capital expenditure program.**

The ILC has forecast and prioritised its capital expenditure program for the first five years on essential repairs and maintenance and upgrading of accommodation facilities so they again meet international standards. Accordingly, it has sought a cash advance facility to assist with the capital expenditure program for the first five years. The ILC has a contractual undertaking from the vendor that it will contribute \$25m in total to that capital expenditure program for the first five years. Should ARR not meet the forecast profit and cashflow, then the ILC would in the first instance look at the program of capital expenditure.

#### Re-negotiate external financing arrangements.

The ILC will not require external bank finance to fund the acquisition until the final payment to the vendor is required at the end of year 5 (described above as refinancing requirements). The ILC has been advised that the amount currently forecast to be required at that time would be easily achievable on an asset such as ARR with its earnings profile and no other senior debt obligations. This is particularly so given the ILC was able to secure a \$60 million debt facility recently with a third party bank with significant vendor financing outstanding. Should ARR not meet the forecast profit and cashflow then the ILC would seek to negotiate with external bankers support for a higher refinancing total.

#### Re-negotiate the final payment terms with the vendor.

The ILC has negotiated a deferred payment arrangement for the purchase price of ARR with the vendor. The final payment is required on the fifth anniversary of the completion date. Under this arrangement, the ILC pays the vendor 6.5% interest on the deferred payments and the vendor takes security over the assets of ILC Tourism Pty Ltd. Should the ILC not be in a position to make the final payment in full, the vendor may call on that security. Accordingly, should ARR not meet the forecast profit and cashflow, the ILC would seek to work with the vendor to negotiate a mutually acceptable arrangement that avoids the need for the vendor to commence a process to sell the assets.

#### Sell the Airport

During the due diligence process for the purchase of ARR the ILC considered on-selling the lease on the Airport. Valuations sought indicated that the ILC could sell the Airport for \$45m-\$70m (there is still strong interest in its purchase). The ILC decided not to on-sell the Airport, as it is one of the best performing operations of ARR. On-selling will also dilute the relationship between ARR and the airlines. However, should ARR not meet the forecast profit and cashflow then the ILC could seek to sell the Airport.

#### Sell ARR

The ILC has entered into agreement to purchase ARR to:

- Acquire a world-renowned tourism destination
- Create Indigenous employment, including through an Indigenous Tourism Training Academy
- Provide world class cultural tourism
- Develop Indigenous tourism leadership and capacity
- Promote Indigenous excellence in tourism
- Grant the land to an Indigenous organisation

Therefore, for the ILC, increasing the profitability of ARR is a means to an end. However, should ARR not meet the forecast profit and cashflow, as well as not meet its long-term objectives, then as a last resort the ILC could seek to sell ARR.





## SENATOR THE HON PENNY WONG

Minister for Finance and Deregulation



REF: C10/3118

01 FEB 2011

Ms Shirley McPherson  
Chair  
Indigenous Land Corporation  
PO Box 586  
CURTIN ACT 2605

Dear Ms McPherson

Thank you for your letter dated 5 November 2010, which provided a sensitivity analysis and contingency plan for the purchase of Ayers Rock Resort by the Indigenous Land Corporation (ILC) in response to my letter of 8 October 2010.

I note your assurances that the ILC Board is continuing to monitor the financial performance of the Ayers Rock Resort in the period leading up to the expected settlement of the purchase.

I ask that you continue to work closely with the Department of Finance and Deregulation regarding the parameters in the sensitivity analysis and ongoing risk management strategies.

I thank you again for the willingness of ILC to provide information in response to my requests, and for working cooperatively with the Department of Finance and Deregulation and the Department of Families, Housing, Community Services and Indigenous Affairs, regarding the purchase of Ayers Rock Resort.

I have copied this letter to the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, for her information.

Yours sincerely

Penny Wong



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

~~14~~ May 2013

The Hon Jenny Macklin MP  
Minister for Families, Community Services and Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

The purpose of this letter is to draw to your attention a number of significant issues that have arisen in relation to the Indigenous Land Corporation's (ILC) Ayers Rock Resort (ARR) project, being managed through Voyages Indigenous Tourism Pty Ltd (Voyages) that give rise to serious questions about the decision to acquire ARR and establish Voyages.

This correspondence outlines both the issues and responses being initiated by the current ILC Board to address them. It also proposes that you secure agreement with the Minister for Finance and Deregulation to jointly request the Australian National Audit Office (ANAO) to undertake a forensic audit of the adequacy of the due diligence undertaken by the then ILC Board in relation to the \$300m acquisition of ARR, and the establishment of Voyages.

This latter request results from a resolution accepted at the latest ILC Board meeting of 17 April 2013. This resolution was made following Board consideration of both the findings of a recently completed independent review of ILC governance commissioned from Deloitte, and the latest financial projections for the ARR project, provided by Voyages to the ILC Board.

By way of background, in October 2010 the then ILC Board resolved to proceed with the \$300m acquisition of ARR with a view to establishing it 'as a world renowned Indigenous tourism enterprise that employs significant numbers of Indigenous staff'.

Prior to this occurring, in January 2009 the ILC's then CEO, David Galvin provided a written briefing to FAHCSIA seeking in-principle agreement to secure \$272m loan funds from the Land Fund Account towards the purchase of this property. Whilst this loan proposal did not proceed (the then ILC Board ultimately secured vendor finance from GPT), in the same briefing Mr Galvin included a table 'prepared by Grant Samuel in conjunction with other due diligence consultants and particularly Howath HTL', (that) 'assumes extremely conservative and realistic financial projections for ARR based on the current world economic crisis'. These projected total EBITDA of ARR assets in 2011, 2012 and 2013 respectively of \$30.2m, \$33.6m and \$37.1m.'

Prior to the final settlement proceeding (in May 2011) there was a significant amount of correspondence between yourself, the Minister for Finance and the then ILC Board Chairperson regarding the ARR purchase. Both your and Minister Wong's correspondence raised a number of specific concerns. These included seeking advice as to how the ILC

would meet its other statutory obligations if the financial projections for the project were not achieved, the independent sensitivity of the projected revenue and cost projections prepared for the ILC, and the importance of ensuring other ILC programs were not going to be adversely affected.

The then Chairperson, Ms Shirley McPherson responded to these concerns, including in separate letters to both you and Minister Wong of 23 September and 30 September 2010. In both responses Chairperson McPherson forecast reduced revenues (compared to the projections in Mr Galvin's 2009 briefing) with projected EBITDA for the ARR project over 2011, 2012 and 2013 respectively, being \$25.3m, \$25m and \$32.1m.

Ms McPherson also stated that 'I can assure you that in all aspects of the due diligence, planning and financial forecasting, the ILC Board is ensuring there will be no adverse impact on the delivery of ILC's existing operations'..... 'Indeed, based on conservative cash flow projections, ARR after ten years of operations, is predicted to provide additional net income to the ILC of \$25m a year, which will enable expansion of ILC's programs across Australia'.

In May 2011, the ILC's purchase of ARR settled. The detailed arrangements included in the settlement are summarised in the attached. Beyond the ILC's initial injection of equity in the first year, the ILC underwriting model assumed that the operating cash flow of ARR would be sufficient to fund both the interest costs of the GPT and ANZ loans and ongoing capital expenditure. To date this has been the case with Voyages having directly funded the interest rates on the ANZ loan since it was drawn down, and on the GPT loan since 2012.

I have previously written to you outlining the current ILC Board's concerns in relation to the financial exposure of the ILC to the ARR project, including its deteriorating financial performance relative to acquisition forecast performance.

Voyages most recent forecasts most 'likely scenario' projects a reduction in EBITDA to \$12.7m in 2012-13 and to \$12.6m in 2013/4. With debt service obligations totalling more than \$11m per annum, Voyages advises that under the most 'likely scenario' Voyages will not be in a position to fund any capital expenditure in 2013-4 (currently required to be maintained at a minimum of \$5m per annum). Under an alternative 'downside scenario' Voyages argues 'it would need some assistance to meet its current debt service obligations'. The Board was also advised that 'it may be increasingly difficult for Voyages, in the light of their financial circumstances to contribute \$1.35m in 2013/4 and \$1.38m in 2014/5 towards Indigenous employment and training program costs'.

In response to these latest financial projections the existing Board agreed at its April 17 meeting to move promptly to commission a comprehensive independent review of the Voyages financial projections for ARR.

This will include:

- Identifying short term strategies to improve ARR financial performance across a wide range of ARR operations;
- Review of longer term risks associated with ownership and operations of ARR;
- Identification of contingency plans to address identified risks;
- Detailed projections of capital requirements;
- Identification of potential alternative sources of funding or equity injection/ partners; and
- Alternative debt funding arrangements.

However, this has led to the Board questioning the fundamental quality of the original due diligence undertaken and when joined with the results of a Board initiated independent review of ILC corporate governance, had led to this request for you and Minister Wong to request an ANAO forensic audit of the Voyages acquisition.

The Deloitte report identifies a number of shortcomings in relation to the Ayers Rock acquisition. I have previously written to you about these issues.

The issues include:

- The services provided by Grant Samuel. The Deloitte report indicated there is no evidence to indicate that good practice procurement policy was employed in the direct appointment of this party to provide services, ultimately valued at over \$3m;
- The practice of declaration of interests had weaknesses including inconsistent practice for documenting declarations of interest and poor practice in recording why Directors left Board meetings at certain times; and
- The manner in which the Board acquisition decision was ultimately taken, involving two abstentions by individual Board members with their reasons for not doing so not being recorded.

These findings and the poor financial performance of ARR as against the original Grant Samuel model projections, gives rise to serious questions about the decision to acquire ARR and establish Voyages.

With these issues in mind I have attached suggested draft terms of reference for the undertaking of a forensic audit by the ANAO and request that both you and Minister Wong give due consideration to requesting ANAO to undertake this task as a matter of urgency.

I have written in similar terms to the Minister for Finance and Deregulation, Senator Wong.

Yours sincerely

Dr Dawn Casey PSM FAHA  
Chair

Encl.

- Attachment A: Proposed Draft Terms of Reference for ANAO Audit
- Attachment B: ARR Settlement Arrangements

**Proposed Draft Terms of Reference**

**Forensic Audit –Acquisition of Ayers Rock Resort (ARR) and establishment of  
Voyages Indigenous Tourism Pty Ltd (Voyages)**

Examine all matters pertaining to the adequacy of the due diligence undertaken directly or on behalf of by the previous Indigenous Land Corporation Board in relation to the acquisition of the ARR and the establishment of Voyages. In particular:

- Did the purchase represent value for money paid to the vendor, taking into account the GPT CAPEX contribution and uplift payment?
- Were the projections regarding capital refurbishment and maintenance requirements over the immediate, medium and longer terms realistic and appropriate?
- Were the projections regarding profitability and return on the investment appropriate and realistic given financial returns previously generated by previous owners of the ARR and the then current and projected international and domestic tourism market across Australia and in Central Australia in particular?
- Were the loan arrangements negotiated with the vendor and the ANZ bank appropriate and undertaken at arm's length?
- The extent to which all consultancies commissioned by the previous ILC board were consistent with ILC purchasing guidelines?
- Was the advice and the valuation (s) provided by consultants realistic? (including by seeking access and reviewing relevant working papers held by the consultants)
- Was the advice provided by consultants followed by the previous ILC Board and reflected in the negotiations with the vendor and other relevant parties?
- Were the negotiations conducted in the best interests of the ILC Corporation?
- Was the establishment of Voyages, selection of Directors, their length of appointment and setting of remuneration in accordance with normal practice for a Commonwealth statutory body, and in particular the arrangements made in relation to then ILC Directors and the then CEO?;
- Comment on the extent to which a transparent audit trail was established that records ILC Board decisions and their implementation;
- Confirm that appropriate declarations and recording of conflicts of interest by Directors and consultants were made consistent with Commonwealth statutory guidelines ; and
- Examine any other matters deemed relevant to providing that this purchase in the best interest of the ILC and Indigenous people, including via eventual divestment.

**Attachment: ARR Settlement Arrangements**

In May 2011 the ILC's purchase of ARR settled, and in accordance with the sale agreement was immediately on-sold to the ILC's wholly owned subsidiary, ILC Tourism Ltd (now renamed Voyages). The consideration of the sale from the ILC was two million \$1 shares and the balance as a loan to the ILC (\$300m in total). The ILC purchase occurred through a combination of ILC equity and vendor finance from the GPT Group (GPT) repayable over 5 years at 6.5% per annum. The ILC funded the settlement payment of \$81m (drawing on its then cash reserves) in May 2011 and also funded interest payments to GPT on the GPT loan for the first year after settlement. The second payment of \$81m was paid in May 2012 by the draw-down of a \$60m ANZ five year term loan held by Voyages, with the balance directly paid by the ILC (again from its cash reserves). A further \$138m is scheduled to be paid on the fifth anniversary of completion.

Through terms included in the sale agreement, the ILC and Voyages guarantee to GPT that all payments for the acquisition will be paid in full when due. This was based on calculations provided to the previous Board that 'external borrowings and guarantees will peak at \$260m in year one and reduce to \$100m in year five, with profit being approximately \$25m per annum. Borrowings are estimated to be fully extinguished prior to the end of year ten of operations'.

In recognition of the fact that GPT had starved the ARR of capital maintenance and improvements during the sale process GPT agreed to contribute \$25m to capital improvements through the payment of staggered instalments over five years. Through agreement reached with GPT this total payment was brought forward at a discounted rate of \$22m in 2012, given the need to undertake significant capital improvements to ARR accommodation and conference facilities.

In addition, in the original sale agreement the ILC agreed to pay GPT an additional amount on the fifth anniversary of completion, calculated at 46% of the amount by which the value of ARR exceeds \$300m at the time (or a minimum of \$17m).

Beyond the ILC's initial injection of equity in the first year, the ILC underwriting model assumed that the operating cash flow of ARR would be sufficient to fund both the interest costs of the GPT and ANZ loans and ongoing capital expenditure. To date this has been the case with Voyages having directly funded the interest rates on the ANZ loan since it was drawn down, and on the GPT loan since 2012.



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

14 May 2013

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

Dear Minister

The purpose of this letter is to draw to your attention a number of significant issues that have arisen in relation to the Indigenous Land Corporation's (ILC) Ayers Rock Resort (ARR) project, being managed through Voyages Indigenous Tourism Pty Ltd (Voyages) that give rise to serious questions about the decision to acquire ARR and establish Voyages.

This correspondence outlines both the issues and responses being initiated by the current ILC Board to address them. It also proposes that you secure agreement with the Minister for Families, Housing, Community Services and Indigenous Affairs (FAHCSIA) Jenny Macklin, to jointly request the Australian National Audit Office (ANAO) to undertake a forensic audit of the adequacy of the due diligence undertaken by the then ILC Board in relation to the \$300m acquisition of ARR, and the establishment of Voyages.

This latter request results from a resolution accepted at the latest ILC Board meeting of 17 April 2013. This resolution was made following Board consideration of both the findings of a recently completed independent review of ILC governance commissioned from Deloitte, and the latest financial projections for the ARR project, provided by Voyages to the ILC Board.

By way of background, in October 2010 the then ILC Board resolved to proceed with the \$300m acquisition of ARR with a view to establishing it 'as a world renowned Indigenous tourism enterprise that employs significant numbers of Indigenous staff'.

Prior to this occurring, in January 2009 the ILC's then CEO, David Galvin provided a written briefing to FAHCSIA seeking in-principle agreement to secure \$272m loan funds from the Land Fund Account towards the purchase of this property. Whilst this loan proposal did not proceed (the then ILC Board ultimately secured vendor finance from GPT), in the same briefing Mr Galvin included a table 'prepared by Grant Samuel in conjunction with other due diligence consultants and particularly Howath HTL', (that) 'assumes extremely conservative and realistic financial projections for ARR based on the current world economic crisis'. These projected total EBITDA of ARR assets in 2011, 2012 and 2013 respectively of \$30.2m, \$33.6m and \$37.1m.'

Prior to the final settlement proceeding (in May 2011) there was a significant amount of correspondence between yourself, the Minister for FAHCSIA and the then ILC Board

Chairperson regarding the ARR purchase. Both your and Minister Macklin's correspondence raised a number of specific concerns. These included seeking advice as to how the ILC would meet its other statutory obligations if the financial projections for the project were not achieved, the independent sensitivity of the projected revenue and cost projections prepared for the ILC, and the importance of ensuring other ILC programs were not going to be adversely affected.

The then Chairperson, Ms Shirley McPherson responded to these concerns, including in separate letters to both you and Minister Macklin of 23 September and 30 September 2010. In both responses Chairperson McPherson forecast reduced revenues (compared to the projections in Mr Galvin's 2009 briefing) with projected EBITDA for the ARR project over 2011, 2012 and 2013 respectively, being \$25.3m, \$25m and \$32.1m.

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With these issues in mind I have attached suggested draft terms of reference for the undertaking of a forensic audit by the ANAO and request that both you and Minister Macklin give due consideration to requesting ANAO to undertake this task as a matter of urgency. I have written in similar terms to the Minister for Families, Community Services and Indigenous Affairs, The Hon Jenny Macklin.

Yours sincerely

Dr Dawn Casey PSM FAHA  
Chair

Encl.

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**The Hon Jenny Macklin MP**  
**Minister for Families, Community Services and Indigenous Affairs**  
**Minister for Disability Reform**

*Parliament House*  
*CANBERRA ACT 2600*

*Telephone: (02) 6277 7560*  
*Facsimile: (02) 6273 4122*

MN13-000888

**- 5 JUN 2013**

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

Dear Dr Casey

Thank you for your letter of 11 April 2013 enclosing the final report by Deloitte Touché Tohmatsu (Deloitte) regarding the results of an independent review of the Indigenous Land Corporation's Board governance arrangements. I also refer to your letter of 14 May 2013 regarding the decision in 2010 of the Board of the Indigenous Land Corporation to purchase the Ayers Rock Resort (Resort). I understand you have also written in similar terms to the Minister for Finance and Deregulation, Senator the Hon Penny Wong, about the Resort. I am also replying on behalf of Minister Wong.

As you know, I respect the statutory independence of the Corporation. However, I expect that all agencies in my portfolio uphold the highest standards of governance and practice. In your letter of appointment from me on 19 October 2011, I stated my expectation that you would oversee a period of strengthened governance at the Corporation. I am pleased that, as part of this work, you commissioned an independent review of the Corporation's governance arrangements.

I note that the review acknowledges the positive steps you and the Board have already taken to improve governance and provide enhanced strategic direction to the Corporation. However, the review also identifies a number of serious issues which require action and makes recommendations that go to strengthening the overall governance and operations of the Board and the Corporation.

I support the Board's acceptance of the review findings and its decision to implement all the report recommendations. I understand the Board is developing a detailed action plan to assist in implementing the recommendations, and expect that you will work with my Department to finalise this plan. Once complete, I also expect that you will provide me with the final plan, and regular updates on progress in implementing the agreed actions in an appropriate and timely manner.

I understand the Corporation is currently considering publication of the Deloitte governance review. I ask that you release the review publicly as a matter of priority to ensure proper transparency and accountability arrangements for all stakeholders of the Corporation, including Indigenous Australians.

I trust that implementation of the recommendations will enhance the accountability and transparency of the Corporation and will support the Board in its role to improve the lives of Indigenous Australians.

Further, in the interests of improving the operations and governance of the Corporation, I provide you with my Statement of Expectations for the Indigenous Land Corporation. This Statement outlines the Government's expectations regarding the operations and performance of the Corporation.

The Statement of Expectations has been prepared in consultation with the Corporation's Chief Executive Officer and other staff, and I understand the Corporation's Board has also had the opportunity to provide comments on a draft. I have included an additional clause regarding implementation of the governance review recommendations to ensure this is carried through.

I look forward to receiving the action plan and regular reports on your progress in implementing the governance review recommendations. I also look forward to receiving a Statement of Intent, outlining how the Corporation will implement the Statement of Expectations, within two months.

Regarding the decision that was taken by the Board to purchase the Ayers Rock Resort in 2010, I recognise this decision was taken prior to your appointment as Chair.

I note in your letter that you have outlined concerns about how the Board arrived at this decision, including matters that go to proper due diligence and governance of the Corporation's decision-making, as outlined in the Deloitte governance review.

Minister Wong and I have carefully considered your request to ask the Australian National Audit Office (ANAO) to conduct a forensic audit of the purchase decision. You may be aware that, at the time, both Minister Wong and I wrote to your predecessor expressing concerns about the proposed acquisition. In particular, I was concerned that an acquisition as large and financially and operationally complex as the Resort could limit the Corporation's ability to deliver on its business objectives and take up other opportunities that would benefit Indigenous people.

Noting the Resort's current and projected financial outlook, in addition to the review findings about the acquisition process, Minister Wong and I consider that rather than a retrospective ANAO review, a more comprehensive, independent, end-to-end review is required. This review should examine the purchase decision, in addition to the current performance and longer-term operational and financial forecast for the Resort, and make appropriate recommendations in all three areas.

To this end, I ask that you and the Board work with my Department to expand the Terms of Reference for the independent review that the Board agreed to commission on 17 April 2013 into the Resort's forward operations, to an all-encompassing review covering the purchase decision, current performance and future outlook for the Resort.

I request that this comprehensive, end-to-end review also include consideration of long-term strategies regarding ownership of the Resort, the potential financial and broader implications

of these strategies on the Corporation; and advice on when the Board should consider divestment of the Resort in the financial interests of the Corporation.

I would also expect that the final report would be made public, consistent with the requested release of the governance review and in the interests of accountability and transparency.

I would ask that the Board keep me informed about the progress and outcomes of the proposed review, which should focus on maximising the benefits to Indigenous Australians from investment in the resort.

In addition, I have been advised that there are quarterly financial performance monitoring meetings between my Department, the Department of Finance and Deregulation (Finance) and the Corporation. Minister Wong and I have asked our departments to elevate these meetings to a more senior level.

In cooperation with my Department, and as a result of these meetings, I ask that the Corporation keep Minister Wong and myself regularly apprised of the financial position of the Resort.

If you have any questions regarding these matters, the Department's contact is Ms Tracey Carroll, Acting Branch Manager, Cross Portfolio & Information Branch on (02) 6146 2861 or email [tracey.carroll@fahcsia.gov.au](mailto:tracey.carroll@fahcsia.gov.au).

Thank you again for writing.

Yours sincerely

**JENNY MACKLIN MP**

Encl.

## Indigenous Land Corporation

### Statement of Expectations

The Indigenous Land Corporation (ILC) is an independent statutory authority established under Part 4A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). The ILC was established in June 1995 to assist Aboriginal and Torres Strait Islander people to acquire and manage land to achieve economic, environmental, social or cultural benefits. The National Indigenous Land Strategy outlines the strategies, policies and priorities which guide the ILC's land acquisition and land management functions. I encourage any future revisions to clearly set out the ILC's strategy for achieving measurable benefits through its land acquisition and land management programs.

While recognising the independence of the ILC, the Australian Government will be looking to the ILC Board to support the Council of Australian Governments (COAG) Closing the Gap targets, including through work to complement the Indigenous Economic Development Strategy, the Remote Jobs and Communities Program and the National Partnership on Remote Service Delivery.

The Australian Government is working to achieve constructive and flexible resolution of native title claims. To progress this priority, the Australian Government will be looking to the ILC to actively contribute to native title settlements as part of its land acquisition and land management functions. This will involve active consultation with State and Territory Governments and Native Title Representative Bodies, which should be conducted in a sensitive manner in accordance with appropriate consideration of statutory functions while maintaining the highest standards of corporate governance.

In order to successfully achieve the required outcomes under this Statement of Expectations, I expect the ILC will continue to:

- assist Aboriginal and Torres Strait Islander people to acquire and manage Indigenous-held land so as to provide economic, environmental, social or cultural benefits for Aboriginal and Torres Strait Islander people including assisting native title claimants and holders to build their capacity to manage land and establish viable, land-based enterprises through training, education and other means;
- initiate strategic land acquisitions and land management projects having regard to broader Commonwealth policy initiatives including; Closing the Gap priorities and investments, such as the COAG National Partnership on Remote Service Delivery, the Urban and Regional Service Delivery Strategy, investment in housing and infrastructure and the Indigenous Economic Development Strategy;
- maximise employment and education and training benefits having regard to the COAG targets for Closing the Gap in employment outcomes and educational attainment;

- actively contribute to making the ILC's programs and resources more accessible to native title claimants to facilitate and support resolution of native title claims and implementation of settlement agreements, and report progress to me with a copy to the Attorney-General's Department and my Department;
- develop an active land grant plan and to progress land grants consistent with the ILC's legislative brief, including maintaining and developing appropriate land grant plans which include detailed property-specific divestment strategies for all properties owned by the ILC. I encourage the ILC to monitor and progress such strategies in a timely and reasonable manner to ensure sustainable benefits;
- implement the recommendations of the governance review and keep me informed of progress;
- brief me regularly on progress by the ILC in the performance of its statutory functions and of key business issues faced by the Board, including:
  - prior notification of an event or issue, including land acquisition, if in the Board's judgement, the event or issue could be particularly significant;
  - where the event or issue relates to land acquisition the notification should include the intended benefits for Indigenous people and the proposed divestment strategy and timeframes;
  - prior notification of any proposal over \$1 million for the ILC or a subsidiary to use the borrowing powers and guarantee limits;
  - regular reports on the ILC's financial position and on any events or issues. These reports could be provided quarterly, or timed to suit the Board meeting schedule. However, I would expect to be notified promptly of any decision or event that may result in a significant impact on the operations of the ILC or the services it provides.

In performing its role and pursuing the priorities outlined above, I expect that the ILC will:

- continue to operate in accordance with all relevant legislation (including the *Aboriginal and Torres Strait Islander Act 2005*; *Auditor-General Act 1997*; *Corporations Act 2001*; *Commonwealth Authorities and Companies Act 1997* (CAC Act)) and Australian Government guidelines covering responsibilities to:
  - provide me with regular and timely reports on significant events;
  - ensure timely preparation of Annual Reports and proper financial management and accountability, including financial statements for the ILC's subsidiaries;
  - comply with General Policy Orders and best practice standards for audit committees;
  - ensure timely and quality answers to Questions on Notice in accordance with Parliamentary timeframes and reasonable Departmental timeframes.

- manage budgets in a fiscally responsible manner and being mindful of any potential impact on the Commonwealth more broadly;
- maintain best practice standards of corporate governance by:
  - having regard to the ANAO's Public Sector Governance Better Practice Guides;
  - ensuring transparency in the use of funds and a high level of financial accountability in accordance with the legislative requirements;
  - ensure there are appropriate processes in place that facilitate the directors being kept informed about the operations and performance of subsidiaries so they are able to fulfill their legislative responsibilities as CAC Act authority directors;
  - ensuring Board members remain aware of their roles and responsibilities and discharge their duties impartially with a high degree of diligence, care and skill and at all times act in a manner that promotes the highest level of corporate governance in Board operations.
- building organisational and workforce capabilities to meet current future demands and expectations; and
- developing a protocol with my Department that sets out mechanisms for achieving effective communication over the longer term. I have asked my Department to work with the ILC on the development of an appropriate protocol.



## MINISTER FOR INDIGENOUS AFFAIRS

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 McGrathNicol 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.

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



## 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.

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.dpmc.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

14 November 2013

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

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

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

people land  
opportunity



E

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

18 December 2013

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

Dr Dawn Casey PSM FAHA  
Chair

peopleland  
opportunity

**B**

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

**5** January 2014

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;

- 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

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

Dr Dawn Casey PSM FAHA  
Chair



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

Dr Dawn Casey PSM FAHA  
Chair

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

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

Dr Dawn Casey PSM FAHA  
Chair

5 March 2015

Senator Zed Seselja  
Chairperson  
Community Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator

I am writing in regard to the appearance before your Committee by Mr Michael Dillon, CEO, Indigenous Land Corporation (ILC) at a public hearing on 13 February 2015 into *The Aboriginal and Torres Strait Islander Amendment Bill 2014*.

I submit that various aspects of Mr Dillon's evidence served to misinform the Committee in relation to the purchase by the ILC of Ayers Rock Resort (ARR) in May 2011. Regrettably, this is the second occasion where Mr Dillon has provided misinformation to your Committee in relation to the purchase of ARR as much of what he said was repeated from his appearance on 28 February 2014. Outlined below are the clear instances of Mr Dillon misinforming the Committee.

- *"It is clear from recent history that there has not been appropriate governance and management within the ILC" (Dillon).*

On the contrary, a report by KPMG in 2011, commissioned by the then Department of Families, Housing, Community Services and Indigenous Affairs and overseen by the Department of Finance, (in its consideration of the ILC borrowing limits and guarantee powers), examined the ARR transaction and related Board governance in detail and concluded that the *"comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles"*.

- *"I have given evidence before the committee on this topic in the past, so I will not dwell on it, but there has been a huge loss from the purchase of ARR – over \$100 million – to the ILC (Dillon)."*

In fact, according to the ILC's own financial statements for the year ended 30 June 2014, impairment (NOT LOSS) of assets was \$62,359,000 in 2013 and \$19,218,000 in 2014, a total of \$81,577,000.

Interestingly, for the same reporting periods, Indigenous Business Australia (IBA) reported write-down and impairment of assets of \$53,529,000 in 2014 (with a further loss from asset sales of \$1,250,000 in 2014) and \$38,365,000 in 2013, a total of \$93,245,894 representing a loss of \$11,668,894 more than the ILC.

During that time Dawn Casey was Chairperson of both the ILC and IBA. However, Dawn Casey has never called for an enquiry into IBA's losses and the governance processes relating to those losses. Why then is she and the ILC CEO fixated on the purchase of ARR when its impairment losses are less than those of the IBA? More especially so when ILC's contribution to Indigenous training and employment far outweighs IBA's contribution?

The ILC's consideration of the ARR purchase began after the opportunity was referred to it by Mr Dillon, when he was a Senior Adviser in Minister Macklin's office (I note that Mr Dillon did not formally declare his second hat at the opening of his evidence). Mr Dillon indicated to the ILC that the Aboriginal Corporation called Wana Ungkuntja (WU) had a proposal to partner with the ILC to purchase ARR for the eventual divestment of the asset to an Indigenous Corporation consistent with the objectives of the ILC under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act).

The WU, which represents business interests of the local Anangu communities surrounding Uluru, was granted first right of refusal over the ARR by the previous owners. Following the ILC purchase of the ARR, WU received two seats on Board of the ILC subsidiary (Voyages) created to manage the ARR and other ILC owned tourism assets, and 7% equity ownership in Voyages approximately in 10 years' time. As part of the ARR divestment strategy a process was to be developed by the ILC and Central Land Council to identify an appropriate Indigenous Corporation to which the ARR could be divested once free of any financial encumbrances.

Consequently, the write-down of the asset is immaterial to the ILC as it is obliged to divest (at no cost) the asset, including ARR, to an Indigenous Corporation over time so that fluctuations in its value over time, prior to its divestment, are ultimately of no consequence. The key point is that ILC is not an investor holding the asset for sale, unlike IBA.

It is of considerable concern that neither Mr Dillon nor his Chairperson seem to understand this basic principle. It is also of considerable concern that they don't seem to have even the basic understanding of accounting standards and their consequences.

- "The resort is running very well, but we paid and we borrowed too much" (Dillon).

However, the McGrathNicol report, commissioned by the ILC itself into the purchase of ARR, found that (pages 19-46):

- *"The Grant Samuel financial model was influential on the Board and is standard practice in mergers and acquisitions.*
- *The price was consistent with the Net Present Value (NPV) suggested in the Grant Samuels model.*
- *The assumptions made by the Grant Samuels model about cash flows was conservative, and more conservative than comparable assessments by Colliers and CBRE in their valuations.*
- *Grant Samuel's consideration of forecast CAPEX was higher than that of CBRE and Colliers.*
- *Ultimately value is subjective and it is possible that the Board had good reason to assess the price as appropriate.*
- *The ILC was a motivated purchaser, but the length of time for purchase and negotiations indicate it was not prepared to purchase at any price.*
- *Vendor finance arrangements were reasonable, based on competitive interest rates, and were not disadvantageous to the ILC".*

It should also be noted that Voyages Indigenous Tourism Australia Pty Ltd, was able to borrow \$60 million from the ANZ bank for major works, which was secured by ARR with no collateral or obligation

from the ILC. No doubt the ANZ undertook its own valuation and was happy to facilitate the loan. This gives lie to Mr Dillon's assertions that the ILC paid and borrowed too much money.

- *"In essence, it turns on the question of whether the then directors made a sound business decision. The advice we have is that, prima facie, they did not (Dillon)."*

Mr Dillon has not provided evidence to support his assertions. On the contrary, KPMG's report of 2011, which was not made available to McGrathNicol by the ILC, states, "*comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles*".

Furthermore, it is beyond question that the greatest single pathway to achieving the Closing the Gap objectives is scalable, effective and sustainable employment and training programs for Indigenous people that equip them to work in current and future export and other growth markets. The ARR's focus on hospitality training is achieving this and it is arguably the most effective Indigenous training and employment program in Australia by volume, reach and success.

It is estimated that the cost to the Federal Government of supporting welfare dependent Indigenous people is an average of \$75,000 per person each year [H and M Hughes, Centre for Independent Studies 2011]. By this estimate the Voyages employment and training programs, deliverable because of the ARR economies of scale, are saving the Federal Government about \$20M (based on 263 people employed) in welfare payments each year. Over a 40 year period in which these young people will continue to work, rather than collect welfare benefits, the Federal Government is potentially saving up to \$760M (2013 prices). If it is assumed that over the next 40 years the ARR trains for employment a further 7,400 Indigenous people (an average of 185 people per year based on throughput over the last 2 years), and those people gain employment at the ARR or in the broader tourism or other sectors, the Federal Government is saving up to a further \$555M in welfare payments. There would be further savings when taking into account the multiplier effect of each of these trainees working for the rest of their lives, instead of receiving welfare payments. Again, this characterises the ILC performing its functions using sound business principles and foresight.

- *"The audit committee of the ILC of the time did not take a role in the transaction. In fact, the chair of the audit committee at the time was chief driver of the transaction within the ILC ... The members of the audit committee had been members for 12 years. The Auditor General's provisions say six years maximum" (Dillon).*

I was the Chair of the Audit at that time and the McGrathNicol report:

- Does not discuss in any way the role of the ARMC Chair and his involvement in the ARR transaction.
- Does not include any findings, conclusions or recommendations that one Director's chairmanship of the ARMC and involvement in the ARR transaction was a possible reason defining the ARMC role in the transaction, or that the ARMC role was affected by any conflict of interest.
- Does not make any findings, conclusions or recommendations that the ARMC role, operation and membership, was a key corporate governance issue that the ILC should address.

Mr Dillon's evidence asserts that one Director (myself), rather than the Board as a whole, was instrumental in the ARR transaction and purchase. However, in the MN report there are no findings, conclusions or recommendations that support his assertion. There was also no rule, at that time, from the Australian National Audit Office (ANAO) that precluded a Director serving more than six years on the ILC

Audit Committee. If there had been, then ANAO would have pointed this out to the ILC and I would have immediately stood down. I am immensely proud that during my time on the ILC Audit Committee we delivered 12 unqualified audits.

- *"Things like the due diligence that was undertaken was done by Grant Samuel – a very respected firm. The contract required, or allowed, that we would pay them a proportion of the purchase price – one percent – as their fee. The higher the purchase price, the higher the fee the people undertaking the due diligence received" (Dillon).*

The MN report does not find that there was any improper conduct on the part of Grant Samuel. The McGrathNicol report found that (page 9):

*"Grant Samuel'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 Grant Samuel acted improperly in this respect. However, we consider that it may have been prudent for ILC to consider alternative fee structures".*

- *"The McGrathNicol report found that one of the directors – in fact, the director driving the transaction – had a substantial undisclosed conflict-of-interest. That is a concern" (Dillon).*

Mr Dillon's evidence states the McGrathNicol report considered that I had an undeclared potential conflict of interest arising from my connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time of the ILC's purchase.

The McGrathNicol report considers conflict of interest issues in section 6.5 (page 69). In relation to the connection referred to by Mr Dillon, the report identified this as a Directorship held by myself of Singapore Airport Terminal Services, a listed public company, which is 43% owned by Temasek Holdings. Temasek Holdings is 100% owned by the Singapore Government. The Singapore Government is also the 100% owner of GIC Private Limited which has an 11.65% shareholding in General Property Trust, the vendor of ARR.

The McGrathNicol report concluded that it *"has no further knowledge regarding this connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be remote".*

Mr Dillon has misrepresented McGrathNicol's findings on this issue and has sought to mislead your Committee.

The Committee might also wish to note that McGrathNicol also considered my role as Honorary Chairman of Accor Asia Pacific, which was awarded the hotel service contract for the ARR by Voyages after a competitive process. It found that I properly declared my conflict of interest and took no part in considerations and decisions by the Voyages Board about the hotel services contract.

It is curious that Mr Dillon ignores McGrathNicol's findings about the propriety with which I managed an immediate conflict of interest, but seeks to infer that I may have behaved improperly in relation to a connection considered to be remote. So remote in fact that I myself did not know about it.

I ask that the Committee call Mr Dillon to account for his misleading statements at the hearing on 13 February 2015, particularly those relating to me. If Mr Dillon repeated his misleading statements outside the privilege of

Parliament committees I would no doubt have legal remedy. However, he has used parliamentary privilege to defame my good name and I trust that will be seen by the Committee as a misuse of parliamentary privilege by a senior Commonwealth officer.

Finally, to put into context the apparent dysfunction of the ILC and the role of the CEO and Chairperson therein, please find a copy of a staff letter which apparently appears on the ILC's own extranet website. It requires no further comment and this in relation to a person who received a \$60,000 "performance bonus" last year and at a time when the ILC is crying poor.

Yours sincerely

**David Baffsky AO**

Dear Minister

We are writing to you on behalf of all ILC staff. We have had enough!

The ILC Board and Chief Executive Officer have lost their way in a myriad of endless Board and committee meetings and over-the-top meaningless governance processes. We have now suffered nearly three and a half years of unintelligent 'leadership' that seeks to criticise the past, but fails to pursue outcomes for Indigenous people now or in the future.

It is demonstrably clear that the ILC Board is intrinsically connected to the Labor and Greens parties as evidenced by the absurd and unnecessary legislation (drafted by ILC staff) introduced by the Greens and supported by Labor. Note also the appointment as CEO of Jenny Macklin's former senior advisor, Mike Dillon, who has brought bureaucratic focused and non-commercial policies and procedures to clog up any chance of achieving outcomes for Indigenous landowners.

Staff overwhelmingly celebrated your recent appointment of Ms Shirley McPherson to the Board of IBA. Unfortunately, her appointment made us realise how much we missed her genuine, courageous, intelligent and bipartisan leadership at the ILC. She was an inspiration to all of us, particularly Indigenous staff. In stark contrast, we have Dawn Casey as Chairperson of the ILC. ILC staff have had the misfortune and embarrassment of having to listen to her staff addresses. It is clear to all of us that she has no idea whatsoever about anything the ILC actually does. Her talks are all about her achievements and what a genius she is. However, the most uncomfortable and embarrassing thing is listening to her endless criticisms of the purchase of Ayres Rock Resort. Instead of trying to make the resort a nationally significant Indigenous employment outcome and icon, she bleats about the past and openly defames former ILC Directors. But, we know her efforts are little more than a thinly disguised attack on the reputations of Shirley McPherson, David Baffsky and Sam Jeffries, the previous ILC directors who had the courage to buy the resort. Worse, she re-writes history by failing to note that current ILC Director Ian Trust also voted for the purchase of the resort as a member of the previous Board!

Mike Dillon, as CEO, is widely despised by ILC staff (apart from a handful of hand-picked Labor/Green lackeys in Canberra who have been appointed outside of due process) for his complete lack of leadership and for his outrageous attack on Ms McPherson under parliamentary privilege last year. As you yourself have pointed out, he has no experience in overseeing the operations of commercial businesses or subsidiaries, nor of the land management and land acquisition functions of the ILC. He is a glorified 'bureaucratic policy wonk' who is concentrating the ILC's functions in Canberra. He is setting up the ILC like a public service bureaucracy, specifically aimed at being a tool of the Labor Party and the Greens. For all this he received a \$60,000+ performance bonus from his mates on the ILC Board!! Yet his own leadership has failed over six months to deliver a new enterprise agreement for ILC staff!!

The latest instalment of the politicisation and bureaucratisation of the ILC is the appointment of Kate Gumley as a highly paid senior executive position in charge of Policy, and yes, also based in Canberra. We know that Gumley was finally 'worked out' at PM&C following her dismal performance in implementing the failed *Community Jobs Program* and assisting Andrew Forrest's review of Indigenous employment policy and programs. Gumley has let it be known that she is unhappy about the way she was treated by the leadership of PM&C. However, what goes around comes around! As you can imagine ILC staff are horrified, but not surprised, by her appointment.

subsidiary, National Indigenous Pastoral Enterprises (NIPE). What is even more confusing and incredulous to staff is that Mr Dillon's best mate and co-author of useless books, ILC Director Neil Westbury, has been appointed as Chairperson of NIPE. Westbury, a bureaucrat of 40 years with no real achievements, has absolutely no business experience, let alone agricultural experience, is now in charge of one of Australia's leading pastoral companies. The mind boggles! How can this be allowed to happen?

Similarly, Director Lisa Gay is the Chairperson of Voyages Indigenous Tourism Australia, the owner of ARR, the largest integrated tourism resort in Australia, but she has absolutely no tourism experience. Again, the mind boggles! The only good thing we can say about Ms Gay is that we understand she has made it known to you and another parties how disgusted she is with Casey and Dillon's endless public 'running down' of ARR.

The ILC Board under Casey has been here for more than three years and during that time, for all its rhetoric, it has not delivered any new programs or projects that have benefited Indigenous people. All it has done is brought in overly bureaucratic and over-the-top meaningless governance procedures that have not achieved one benefit for Indigenous people. You would be acutely aware of this now you have seen how the Commonwealth Indigenous bureaucracy operates - "busy as bees in a bottle", but not achieving anything.

To highlight the lack of achievements in the past 3 1/2 years, you only have to read Dillon's Christmas message to ILC staff. Everything he claims as an achievement is in fact a product of the previous Board's policies and programs. When staff read his Christmas message all we could do was laugh, when in reality we wanted to cry, at the wasted 3 1/2 years of damage and pain that Casey and Dillon have wrought upon the ILC. We have enclosed Dillon's Christmas message so you have it on record as a mark of their total lack of achievement. We beg the Parliament to ask the ILC Board to outline its achievements for Indigenous people over the past three years. How many land acquisitions have been made at what expenditure? How many Indigenous landowners have been assisted and at what expenditure? How much of the annual ILC budget has actually hit Indigenous landowners on the ground? How much has been spent in the past three years on administration, especially for Directors' and sub-committee meetings and airfares and travelling allowances? How much has been wasted on consultancies and fees from the Australian Government Solicitor's Office and McGrathNicol etc?

We request you to conduct a high level independent inquiry into the \$2.5M that was given as a political favour to Yawuru, represented by Patrick Dodson for his support on the draft legislation, on the divestment of Roebuck Plains Station last year. It is an outrageous and unprecedented payment by the ILC, not supported by key senior management, and should not be allowed to stand.

Minister, please be aware that Casey and Dillon are plotting against you and using the 20th year celebration (costing \$200K, but crying poor!) of the ILC's founding as the tool for their attack. They know that their time is up in October and they will be using returns from the Land Account to attack you and the Government.

We had hoped that you could have dismissed ILC Directors for bringing the ILC's reputation into disrepute over ARR. While that hasn't been possible, we are looking forward to Casey and her fellow Directors ending their tenure in October 2015 and the closing down of the Labor/Greens ILC office in Canberra. You will excuse us if we take a day off and party like there is no tomorrow, as IBA staff did! For us that tomorrow cannot come quick enough.

Yours sincerely

ILC staff

cc ILC Board and The Australian

9 March 2015

Senator Zed Seselja  
Chairperson  
Community Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator

Further to my letter of 5 March 2015, I have now been able to read copies of the letters between the Minister for Indigenous Affairs, Senator Nigel Scullion, and the Minister for Finance, Senator the Hon Mathias Cormann, which apparently have been now tabled in the Senate, together with a statement issued by the ILC and particularly the Chairperson, Dr Dawn Casey, on 3 March 2015, a copy of which is attached.

The paragraph highlighted on the second page has already been found by the Aegis Report dated May 2014 to be both false and misleading and it is clear that the Senate and your Committee are being deliberately misled.

A copy of the May 2014 Aegis Report is attached for your consideration.

It is disconcerting in the extreme that such outrageous behaviour is allowed to continue without foundation 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.

Please don't hesitate to contact me if I can provide any further information.

Yours sincerely

David Baffsky AO

**Cormann reversal "inexplicable and incomprehensible" (Tuesday, 03 March 2015)**

The Indigenous Land Corporation Chairperson Dr Dawn Casey today described the Minister for Finance's decision to reverse his earlier decision to commission an investigation into alleged serious corporate governance failures by the former Board of the ILC in relation to the purchase of Ayers Rock Resort as "inexplicable and incomprehensible".

"The ILC calls on Minister Cormann, the Minister responsible for regulation of public sector corporations, to reinstate his earlier decision to initiate a review of the former ILC Board's decision to acquire Ayers Rock Resort," Dr Casey said.

"The correspondence tabled in the Senate last week shows that Minister Scullion was instrumental in reversing Minister Cormann's original decision.

"Minister Scullion's antipathy to an investigation is difficult to understand. There is already a huge amount of information on the public record suggesting the decision making around the former Board's decision was fundamentally flawed.

"The Government must analyse the actions of all those involved in purchasing the resort to see if they met their legal obligations.

"The ILC believes the proposed investigation should be carried out by a respected and independent former judge or Senior Counsel. The investigation's terms of reference must be determined independently. In particular, the terms of reference should include a specific requirement to assess the compliance of the former ILC Directors with their statutory and common law duties.

"Good policy and good government demand it.

"The issues at stake are fundamental to proper public administration, and proper regulation of statutory corporations. If not dealt with appropriately, they will also impact on the ILC's core functions, and lead to diminished services to Indigenous land holders across Australia for years to come," Dr Casey said

The ILC is also releasing the statement (below) following the tabling of correspondence in the Senate Estimates Committee last week.

**Media enquiries to Eric Roberts on 0417 818482**

**Statement by Indigenous Land Corporation Chairperson Dr Dawn Casey**

Ayers Rock Resort, operated by ILC subsidiary Voyages Indigenous Tourism Australia, is operating successfully, and has improved its financial performance over the past two years since a significant refresh of its Board. Voyages continues to win tourism awards for its services and employs around 250 Indigenous employees and trainees, over 30 percent of its workforce at Yulara.

However, the acquisition of the resort has involved huge financial losses for the ILC. The transaction was also based on an extraordinary level of borrowings (around \$200m in total) which was to be covered by revenues from the operation of the resort. This has not been the case to date, and won't be the case for at least five to 10 years. In these circumstances, it falls to the ILC to cover the debt from the revenues allocated to it from the Land Account for its ongoing operations. These liabilities are adversely affecting the capacity of the ILC to deliver its statutory land acquisition and management functions and will do so into the future.

Letters tabled in Senate Estimates last week reveal that while the Minister for Finance Senator the Hon Mathias Cormann had agreed an investigation into the transaction is required, following a request from Minister for Indigenous Affairs Senator the Hon Nigel Scullion, a decision has been taken not to initiate that investigation.

Minister Scullion has claimed that the ILC has provided no new information to justify an investigation into the transaction, and claims that there have been three investigations which have already subjected the transaction to a high level of Government and independent scrutiny.

The ILC Board wishes to emphasise that none of the inquiries undertaken were focussed on assessing the compliance of the former ILC Directors and officers with their legal duties. An investigation is required to analyse the huge amount of information now available and to assess the legal ramifications.

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, it is now essential that a further investigation examine in detail whether former ILC Directors and officers complied with their legal duties.

The ILC has recommended that Minister Cormann obtain an assurance from Minister Scullion that he does not have an actual or potential conflict of interest in relation to the former Board's decision to acquire the resort. Based on the correspondence tabled in the Senate, Minister Cormann does not appear to have obtained such an assurance. In these circumstances, the ILC does not consider it would be appropriate for Minister Scullion to oversight the investigation.

Persons who take remunerated directorships on statutory corporations must be held accountable for their actions, and if found to have breached their duties should not be re-appointed to similar positions.

The ILC Board notes Minister Scullion has recently appointed one of the former ILC Directors involved in this matter to the Board of a Statutory Corporation and an Expert Panel; and the Director of Public Prosecutions has recently withdrawn a criminal prosecution of another former ILC Director involved in the transaction related to the leak of Commonwealth information on the basis that such a prosecution was not in the public interest even though *there remained sufficient evidence to proceed with the prosecution*.

The letters tabled in the Senate are available at

[http://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/fapactte/estimates/add1415/cross/index](http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/fapactte/estimates/add1415/cross/index)

3 March 2015

# Review of Indigenous Land Corporation Issues

## Supplementary Report to January 2014 Aegis Report

Prepared for the former Directors of the ILC  
and Voyages

May 2014

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### About Aegis Consulting Group

Aegis is an independent advisor to government, corporate and non-government organisations on:

- Public Policy
- Economics
- Government
- Strategy

Aegis was established in 2002 and has an international team of consultants in Sydney, Cairns, Singapore and London.

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## SUMMARY OF KEY FINDINGS

These findings relate to claims about the Ayers Rock Resort (ARR transaction), former Directors of the ILC and Voyages, advisors to the ILC, and the governance of the ARR transaction by the former ILC Board made in:

- A letter dated 5 January 2014 from the Chair of the ILC, Ms Dawn Casey, to the Hon Senator Nigel Scullion, Minister for Indigenous Affairs, (the Minister) and copied to the Hon Tony Abbott MP, Prime Minister (the ILC letter). The letter has been published on the ILC website.
- Evidence given by the ILC CEO, Mr Mike Dillon, to the Senate Finance and Public Administration Legislation Committee (Senate Committee) on 28 February 2014<sup>1</sup> (ILC Senate Committee evidence).
- Statements by the Chair of the ILC, Ms Dawn Casey, on 17 April 2014 made in a radio interview on the ABC Sunday Profile program (the radio interview)<sup>2</sup>.

The ILC letter and ILC Senate Committee evidence explicitly suggest that the claims made are supported by the findings, conclusions or recommended actions in the McGrathNicol (MN) report (December 2013), commissioned by the ILC. The radio interview suggests that claims made are supported by the MN report and the Deloitte report (March 2013) which examined ILC governance arrangements.

### ILC Actions and the Application of the Commonwealth Authorities and Companies Act 1997 (CAC Act)

#### Key Finding 1 - Claims in the ILC letter, ILC Senate Committee evidence and radio interview may breach CAC Act

The ILC letter makes claims that potentially cause detriment and damage to the reputations of former Directors of the ILC, advisors to the ILC, the ILC and the Minister. The ILC Senate Committee evidence makes claims that potentially cause detriment and damage to the reputations of former Directors of the ILC, advisors to the ILC and the ILC. The ILC letter and ILC Senate Committee evidence indicate that the claims are made on the basis of alleged evidence in the MN report.

This Aegis supplementary report has found that the claims made are not supported by any findings, conclusions or recommendations in the MN report, or are based on the selective use of information in the MN report which does not reflect the overall conclusions in the MN report. Accordingly it is a misleading or false statement to claim that the MN report provides evidence for the claims, particularly in relation to claims about one or more Directors.

The radio interview makes claims that potentially cause detriment and damage to the reputation of the former Directors of the ILC and Voyages Boards and advisors to the ILC. The interview includes statements that indicate the claims are based on alleged findings in the MN report and Deloitte report.

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<sup>1</sup> Hansard, Australian Senate Finance and Public Administration Legislation Committee, 28 February 2014, pp25-29

<sup>2</sup> Sunday Profile, ABC Radio, 17 April 2014

This Aegis supplementary report has found that the claims made are not supported by any findings, conclusions or recommendations in the MN report or the Deloitte report. Accordingly it is a misleading or false statement to claim that the MN and Deloitte report provides evidence for the claims.

Asserting misleading or false statements may mean that the Chair and CEO of the ILC may have improperly used their positions or information available to them, in their capacities as Commonwealth officials for the purposes of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), to cause detriment to the former Directors of the ILC and Voyages, the ILC, advisors to the ILC, and the Minister. This is prohibited under sections 24 and 25 of the CAC Act.

## **ILC use of the MN Report**

### **Key Finding 2 - Assessment of MN report support for claims in ILC letter, ILC Senate Committee evidence and radio interview**

The tone, words and fabric of argument contained in the ILC letter, ILC Senate Committee evidence and radio interview seem to suggest that the claimants are attempting to use findings in the MN report to allege that there was at worst impropriety, and at least incompetence, at Board level in relation to the ARR transaction and that the purchase was flawed. This interpretation of the MN report findings is not consistent with the overall conclusions of the MN report.

The overall conclusion of the MN report (page 12) is that, in their opinion, when considering (1) the cautions of previous Ministers about the ARR purchase, (2) the insufficient progress of the ILC in carrying out risk treatments to an acceptable level and (3) the scale of the transaction – MN considers that “*the ILC was deficient in documenting the appropriate deliberation and assessment required to demonstrate sound business principles. This does not 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*”.

However it should be noted that this conclusion is not consistent with the findings of KPMG in 2011. In its consideration of the ILC borrowing limits and guarantee powers KPMG examined the ARR transaction and related Board governance in detail and concluded that the “*comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles*”<sup>3</sup>.

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<sup>3</sup> KPMG, Review of the ILCs Borrowing Powers and Guarantee Limits April 2011; p49. The KPMG report was commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and oversighted by Department of Finance and Deregulation (DoFD) and the ILC and copied to Treasury

## Claims about a particular former ILC Director

### Key Finding 3 - Procurement of ARR transaction consultancies

The ILC letter and radio interview claim that the MN report found that a Director was responsible for the procurement of consultants in ways that did not comply with ILC procurement policies and that this requires further investigation. There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

### Key Finding 4 - Audit and risk management committee: length of Chair's term

The ILC letter claims that the MN report found that the length of time that one Director had been Chair of the ARMC and his simultaneous involvement in the ARR transaction created an inherent conflict of interest. There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

### Key Finding 5 - Audit and risk management committee: oversight of ARR transaction

The ILC letter and ILC Senate Committee evidence claim that the ARMC did not oversight the ARR transaction because one Director had been the ARMC Chair for a long time and was also involved in the transaction, and that this was raised in the MN report as a key corporate governance issue. However, the MN report:

- Does not discuss in any way the role of the ARMC Chair and his involvement in the ARR transaction.
- Does not include any findings, conclusions or recommendations that one Director's chairmanship of the ARMC and involvement in the ARR transaction was a possible reason defining the ARMC role in the transaction or that the ARMC role was affected by any conflict of interest.
- Does not include any findings, conclusions or recommendations that the ARMC role, operation and membership, was a key corporate governance issue that the ILC should address.

Accordingly, any statements that explicitly or impliedly seek to create an impression to the contrary are false and misleading.

### Key Finding 6 - Director's authority

The ILC letter and ILC Senate Committee evidence assert that one Director, rather than the Board as a whole, was instrumental in the ARR transaction and purchase and that the MN report found this requires further investigation. There are no findings, conclusions or recommendations in the MN report that support this assertion, and it would be a false or misleading statement to suggest otherwise.

### **Key Finding 7 - Conflict of interest**

The ILC letter claims that a Director involved in the transaction had undeclared conflicts of interest arising from a connection with a major shareholder in the vendor of the ARR and that the MN report found this requires further investigation. There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

### **Key Finding 8 - Reappointment of a Director to Voyages Board**

The ILC letter claims that the MN report provides ample evidence to support the ILC Board's decision not to reappoint a particular Director to the Voyages Board. There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

### **Claims about former ILC Board governance**

#### **Key Finding 9 - Selective use of information**

The ILC letter, ILC Senate Committee evidence and radio interview selectively use some findings and not others about important issues. Selective use of some findings and not others can easily be misleading and lead to inaccurate conclusions about the ARR transaction.

The claims focus on findings in the MN report relating to ARR transaction issues that could have been better managed. However there are also a series of findings in the MN report relating to the good management of the ARR transaction that are not referred to in the communications by the ILC. Selective use of MN report findings can present a very negative picture of the ARR transaction which would not be possible if all the findings are considered in the context of the full report.

To achieve a balanced view of the MN report and the implications for the ARR transaction it is critical to take account of all the findings together.

When discussing the Board's consideration of the purchase price and related revenue and commercial issues the MN report does not find or conclude that the Board failed to consider up to date revenue and commercial issues put before them as asserted in the radio interview.

## **Key Finding 10 - ARR purchase price and risk management**

Given the nature of the findings in the MN report, it is not reasonable to selectively use some findings to criticise the ARR purchase, but ignore other findings that present a more positive picture of the transaction. This approach increases the risk that the ARR will be viewed negatively when this view is not entirely accurate. This outcome may have a negative impact on the capacity of the ARR to conduct and drive business with partners and suppliers.

## **Key Finding 11: Grant Samuel fees**

The ILC Senate Committee evidence suggests that the MN report found that the success fee paid to Grant Samuel (GS) was based on the value of the ARR transaction, and that this may have improperly led GS to advise the ILC to accept a higher purchase for the ARR. The MN report does not find that GS acted improperly in relation to the advice it provided to the ILC about an appropriate purchase price for the ARR.

## **Key finding 12 - Findings of Deloitte report**

Contrary to assertions in the radio interview, the Deloitte report does not find, conclude or recommend that the ARR transaction be examined in more detail. The Deloitte report found that the ILC governance arrangements were reasonable and that minor improvements were needed. The report did not find that these improvements were required because of the performance of the Voyages Board.

## EXECUTIVE SUMMARY

### Background

In December 2013 Aegis Consulting Group (Aegis) was commissioned by former Directors of the Indigenous Land Corporation (ILC) and Voyages to objectively and independently examine public criticism by the current ILC Board and management of the ILC purchase of Ayers Rock Resort (ARR) in October 2010. Former ILC and Voyages Directors were greatly concerned about the potential risks and damage to the ILC, ARR and its benefits arising from this criticism. They were equally concerned about the damage caused to their individual and collective reputations.

Aegis delivered its report in January 2014 and concluded that there is no irrefutable evidence contained in the independent reviews of the ARR or ILC/Voyages governance by KPMG (2011), Australian National Audit Office (ANAO) (2013), Deloitte (2013) and McGrathNicol (MN) (2013) to support the substance of, or rationale for, the public criticism of the ARR or termination of the Voyages Board. In fact KPMG and ANAO found that the purchase and board deliberations were consistent with good business principles and ILC obligations and MN concluded that it was not inappropriate. The MN report (2013) considered by Aegis was commissioned by the current ILC Board and tasked with reviewing the ARR purchase.

On 5 January 2014 the Chair of the ILC, Ms Dawn Casey, wrote (the ILC letter) to the Hon Senator Nigel Scullion, Minister for Indigenous Affairs, (the Minister) making a number of claims about a former Director of the ILC, and the governance by the former ILC Board in relation to the purchase of ARR. The ILC letter suggests that the MN report provides evidence to support the claims. The letter was copied to the Hon Tony Abbott MP, Prime Minister, and has been published on the ILC website.

On 28 February 2014, the ILC CEO, Mr Mike Dillon, gave evidence to the Senate Finance and Public Administration Legislation Committee (ILC Senate Committee evidence) that<sup>4</sup>:

- The MN report contains 25 headline findings of concern about the ARR transaction and related ILC Board governance.
- Commented on some of the findings in the MN report.
- Suggested the MN report raised concerns about the membership and role of the ILC Audit and Risk Management Committee.
- Suggested that the MN report raised concerns about the independence of due diligence advisers (Grant Samuel) to the ILC.

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<sup>4</sup> Hansard, Australian Senate Finance and Public Administration Legislation Committee, 28 February 2014, pp25-29

On 17 April 2014, the ILC Chair, Ms Dawn Casey, claimed in a radio interview that<sup>5</sup> :

- The MN report found that the ILC Board did not consider the latest figures put before them about revenue returns and other commercial issues, but relied on figures that were 17 months old.
- The Deloitte report<sup>6</sup> found a range of shortcomings in ILC governance; recommended that the ARR transaction be examined in more detail; and found that the ILC should have a good relationship with its Voyages subsidiary, which did not exist.
- The Voyages Board was terminated because its members included persons who were responsible for the shortcomings identified in the Deloitte and MN reports.

## **Purpose**

Aegis has been commissioned by former ILC and Voyages Directors to prepare a supplementary report to its January 2014 report. Aegis has been asked to review the MN report again to:

- Assess whether its findings, conclusions or recommendations substantiate the claims made in the ILC letter, ILC Senate Committee evidence and radio interview;
- Assess whether, when taking into account all of its findings, the claims made about the former ILC Board's governance of the ARR transaction in the ILC letter, ILC Senate Committee evidence and radio interview are reasonable and accurate; and
- Assess whether the claims in the ILC letter, ILC Senate Committee evidence and radio interview that are not substantiated by the MN report are misleading or false and could cause detriment or damage to the former Directors of the ILC and Voyages, the ILC and advisors to the ILC.

Aegis has also been asked to examine the Deloitte report again to assess whether its findings, conclusions or recommendations substantiate the claims made in the radio interview.

## **Claims about a particular former ILC Director**

The MN report does not include any findings, conclusions or recommendations that support the claims about a particular former Director, and it would be a false or misleading statement to suggest otherwise. The claims and related MN report discussion are discussed below.

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<sup>5</sup> Sunday Profile, ABC Radio, 17 April 2014

<sup>6</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013

- The ILC letter and radio interview claims that the MN report concludes that a particular Director failed to comply with ILC **procurement policies** in relation to the engagement of consultants on the ARR transaction. However, at no point during the discussion of procurement issues does the MN report refer to the role of individual ILC directors in the procurement of consultants. It is assumed in the MN discussion that procurement decisions were made by the Board as a whole.
- The ILC letter claims that the MN report considered that a particular Director's lengthy membership of the **Audit and Risk Management Committee** (ARMC) and simultaneous involvement in the ARR transaction created an inherent conflict of interest. The ILC letter is crafted in a way that infers a link between these issues and the MN report finding that the ARMC had a minimal role in overseeing the transaction. The ILC Senate Committee evidence also infers this link and states that *"the review found that that was a key corporate governance issue the ILC should address"*.<sup>7</sup> However the MN report (page 64): (1) considers the role of the ARMC briefly and acknowledges that reviewing the ARMC was not within the scope of is project brief from the ILC; (2) does not discuss any other Director's membership of the ARMC at all; (3) does not suggest in any way that the ARMC was conflicted during its consideration of the ARR transaction; and (4) does not make any findings that the membership of the ARMC or any other matter relating to the ARMC is a key corporate governance issue needing attention.
- The ILC Senate Committee evidence asserts that a particular Director, Mr David Baffsky, **'drove' the ARR transaction**. This statement suggests that one Director was acting in a single capacity without the full remit or authority of the Board and therefore was able to make decisions about the transaction alone. However there are no suggestions, findings or conclusions in the MN report which in any way indicate that any one Director was instrumental to the transaction in ways that enabled him to make decisions without Board scrutiny and agreement. The MN report focuses on Board decision making in relation to the ARR transaction and concludes that, while Board decisions could have been better documented, the Board was responsible for decisions to undertake the due diligence on the ARR transaction and purchase the ARR.
- The ILC letter claims that the MN report considered that a serious issue requiring to be addressed is a particular Director's undeclared potential **conflict of interest** arising from his connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time the ILC purchased it. However the MN report (page 69) concluded that it *"has no further knowledge regarding this connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be remote"*.
- The ILC letter refers to the Minister's request to ILC in October 2013 that a particular Director be reappointed as Chair of the Voyages Board. The ILC letter claims that in part the ILC decision not to reappoint him was correct because the MN report delivered in December 2013 provides "ample evidence" to support that decision. However that decision is not supported by any findings, conclusions or recommendations in the MN report.

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<sup>7</sup> Hansard, Australian Senate Finance and Public Administration Committee, 28 February 2014, p28

## Claims about former ILC Board governance

- The ILC letter, ILC Senate Committee evidence and radio interview make a number of claims about the governance of the ARR transaction by the former ILC Board, and rely on the MN report to support these claims. The Aegis January 2014 report makes a detailed assessment of the public criticism of the ARR transaction by the ILC Board and management. Many of the issues raised in the ILC letter, ILC Senate Committee and radio interview evidence were considered as part of this assessment. The analysis in the Aegis January 2014 report shows that the claims made about the ARR transaction by the ILC in a range of public forums are potentially misleading, when taking into account all of the information contained in the MN report (2013), Deloitte report concerning ILC governance (2013), KPMG report concerning ILC borrowing powers (2011), Dransfield advice on tourism asset valuation (2013), and the ILC's own submission to the review of the ILC and Indigenous Business Australia (2014).
- The MN report focuses on the documentation of the ILC Board's consideration of ARR transaction issues and makes a number of positive and negative findings about this. To achieve a balanced view of the MN report, and the implications for the ARR transaction, it is critical to take account of all the findings together. Selective use of some findings and not others can easily be misleading. The ILC letter, ILC Senate Committee evidence and radio interview selectively use some findings and not others about important issues, such as purchase price and risk management. This can present a very negative picture of the ARR transaction which would not be possible if all the findings are considered in the content of the full report.
- Contrary to the suggestions made in the ILC Senate Committee evidence, the MN report does not find that Grant Samuel acted improperly in relation to the advice it provided to the ILC about an appropriate purchase price for the ARR.
- Contrary to the claims in the radio interview, the Deloitte report found that the ILC governance arrangements were reasonable except for the fact that the ILC should develop a group wide strategy including all its subsidiary businesses; the ILC Board should clarify its own expectations about the reporting obligations of its subsidiaries and align meetings of the ILC and subsidiary Boards and sub-committees; and the ILC should develop consolidated financial reporting that includes its subsidiaries<sup>8</sup>. These findings related to actions that the ILC needed to undertake and did not suggest in any way that the actions were necessary because of the performance of the Voyages Board. The Deloitte report does not find, conclude or recommend that the ARR transaction be examined in more detail.

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<sup>8</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013, pp7-9

## 1. BACKGROUND TO THIS REPORT

In December 2013 Aegis Consulting Group (Aegis) was commissioned by former Directors of the Indigenous Land Corporation (ILC) and Voyages to objectively and independently:

- Examine whether public criticisms by the current Chair of ILC, Dawn Casey, the Deputy Chair, Ian Trust, and CEO, Mike Dillon about the ILC purchase of the Ayers Rock Resort (ARR) are appropriate given the full range of facts and benefits associated with and previous independent reviews of the transaction;
- Consider the implications for the ARR of the public criticisms;
- Review and prepare a detailed history of the ARR transaction; and
- Consider any related ILC and Voyages governance issues.

Former ILC and Voyages Directors engaged Aegis because they were greatly concerned about the potential risks to the ILC, ARR and its benefits arising from the apparent public campaign being conducted by the current Board and management against the ARR purchase. Aegis was commissioned because of its public policy and program evaluation experience, which included being engaged by the ILC in 2010 to review its performance against its legislative objectives.

Aegis delivered its report in January 2014.

### Summary of January 2014 Aegis report findings

The report found that:

- In 2011 the ILC purchased the ARR for a net price of \$292M to create an iconic asset with the commitment and economies of scale to significantly increase Indigenous training, employment and leadership opportunities at the ARR and in the national tourism sector.
- The purchase has enabled the ILC to lift Indigenous employment from 1 to 215 at ARR and 283 across all Voyages businesses.
- This employment reduces Federal Government welfare spending by about \$21M annually and \$840M over 40 years. At current rates the ARR could train another 7,400 Indigenous people over 40 years for the benefit of tourism around Australia, particularly in the towns and cities in which they and their families live. These benefits cannot be replicated by other tourism assets.

- ARR is profitable and that any future financial liability to ILC arising from the ARR purchase can be covered by ILC if need be, which had approximately \$65M in cash on 31 December 2013.
- Public criticism may have (1) undermined the appeal of business, investment and/or sponsorship arrangements with the ARR; (2) reduced consumer confidence in the ARR, leading to less visitors and events and associated revenue; and (3) disillusioned existing and potential Indigenous employees and trainees about participating in the ARR.
- If public criticism has damaged the reputation and commercial position of the ARR, Directors and management may be in breach of sections 22-26 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) requiring them to always act in the interest of the ILC.
- Before a Board or management publicly criticise their own organisation or activities they should formally consider and ensure that the strategic and commercial benefits outweigh any negative public attention and response.
- It is not clear what strategic or commercial benefit the criticism levelled at the ARR is intended to achieve, or that the ILC Board formally considered all the non-public alternatives to achieve its objectives.
- There is no irrefutable evidence contained in the independent reviews of the ARR or ILC/Voyages governance by KPMG (2011), Australian National Audit Office (ANAO) (2013), Deloitte (2013) and McGrathNicol (MN) (2013) to support the substance of, or rationale for, the public criticism of the ARR or termination of the Voyages Board. In fact KPMG and ANAO found that the purchase and board deliberations were consistent with good business principles and ILC obligations and MN concluded that it was not inappropriate.
- Despite publicly criticising the ARR purchase, in its submission to the ILC/IBA review (January 2014), the ILC relied on the ARR and its benefits to demonstrate why the ILC should remain a distinct organisation.
- Accordingly, the public statements of the current Chair, CEO and other Directors regarding the ARR and its governance by the former ILC Board and Voyages may be potentially misleading.

## 2. PURPOSE OF THIS REPORT

### Reasons for this report

On 5 January 2014 the Chair of the ILC, Ms Dawn Casey, wrote (the ILC letter) to the Hon Senator Nigel Scullion, Minister for Indigenous Affairs, (the Minister) making a number of claims about a former particular Director of the ILC, and the governance by the former ILC Board in relation to the purchase of ARR. The ILC letter suggests that the MN report provides evidence to support the claims. The letter was copied to the Hon Tony Abbott MP, Prime Minister, and has been published on the ILC website.

On 28 February 2014, the ILC CEO, Mr Mike Dillon, gave evidence to the Senate Finance and Public Administration Legislation Committee (ILC Senate Committee evidence) that<sup>9</sup>:

- The MN report contains 25 headline findings of concern about the ARR transaction and related ILC Board governance.
- Commented on some of the findings in the MN report.
- Suggested the MN report raised concerns about the membership and role of the ILC Audit and Risk Management Committee.
- Suggested that the MN report raised concerns about the independence of due diligence advisers (Grant Samuel) to the ILC.

On 17 April 2014, the ILC Chair, Ms Dawn Casey, claimed in a radio interview that<sup>10</sup>:

- The MN report found that the ILC Board did not consider the latest figures put before them about revenue returns and other commercial issues, but relied on figures that were 17 months old.
- The Deloitte report<sup>11</sup> found a range of shortcomings in ILC governance; recommended that the ARR transaction be examined in more detail; and found that the ILC should have a good relationship with its Voyages subsidiary, which did not exist.
- The Voyages Board was terminated because its members included persons who were responsible for the shortcomings identified in the Deloitte and MN reports.

### Scope of this report

Aegis has been commissioned by former ILC and Voyages Directors to prepare a supplementary report to its January 2014 report. Aegis has been asked to review the MN report again to:

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<sup>9</sup> Hansard, Australian Senate Finance and Public Administration Legislation Committee, 28 February 2014, pp25-29

<sup>10</sup> Sunday Profile, ABC Radio, 17 April 2014

<sup>11</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013

- Assess whether its findings, conclusions or recommendations substantiate the claims made in the ILC letter, ILC Senate Committee evidence and radio interview;
- Assess whether, when taking into account all of its findings, the claims made about the former ILC Board's governance of the ARR transaction in the ILC letter, ILC Senate Committee evidence and radio interview are reasonable and accurate; and
- Assess whether the claims in the ILC letter, ILC Senate Committee evidence and radio interview that are not substantiated by the MN report are misleading or false and could cause detriment or damage to the former Directors of the ILC and Voyages, the ILC and advisors to the ILC.

Aegis has also been asked to examine the Deloitte report again to assess whether its findings, conclusions or recommendations substantiate the claims made in the radio interview.

### 3. ILC ACTIONS AND THE CAC ACT

The Aegis January 2014 report concluded that in their public criticism of the ARR transaction the ILC Chair and CEO may have breached sections 22 to 26 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Sections 24 and 25 of the CAC Act require that a person must not improperly use their position or information that becomes available to them as an official of a Commonwealth entity to cause detriment to a Commonwealth entity, the Commonwealth or any other person.

The publication of the ILC letter has the potential to cause detriment to the reputations of former ILC Board members, the ILC (a Commonwealth entity), advisors to the ILC and possibly the Minister. This is because the ILC letter either claims, asserts and/or infers that:

- A particular Director may have acted improperly in relation to the ARR transaction.
- The former ILC Board may have been negligent in its governance of the ARR transaction.
- There are questions to answer regarding the engagement of and motivations for the advice provided by advisors to the ILC.
- The Minister may have been seeking to influence the MN report by seeking a draft copy before its finalisation.

The ILC Senate Committee evidence, which echoes many of the issues raised in the ILC letter may similarly have the potential to cause detriment to the reputations of former ILC Board members, the ILC (a Commonwealth entity) and advisors to the ILC.

The radio interview which echoes some of the issues raised in the ILC letter and ILC Senate Committee evidence and also suggests that the Voyages Board performance was responsible for 'shortcomings' in ILC governance may also potentially damage the reputations of Voyages Board directors.

It seems incongruous that officials of a statutory corporation created by the Australian Government would act in a way that could potentially publicly embarrass or cause other damage to the reputations of former members of its Board, the Commonwealth entity in which they hold positions, and its portfolio Minister.

The issue of a Commonwealth official's improper use of their position, or information that is made available to them as a result of their position, arises in relation to the claims in the ILC letter, ILC Senate Estimates evidence and radio interview if it is found that the claims are misleading or false. As the claims are made on the basis of alleged evidence in the MN report and Deloitte report, they may become misleading or false if they are not supported by evidence in the MN report and Deloitte report.

**Key Finding 1:** The analysis in sections 5, 6 and 7 of this report indicate that the claims made in the ILC letter, ILC Senate Estimates evidence and radio interview are not supported by any findings, conclusions or recommendations in the MN report or Deloitte report, or are based on the selective use of information in the MN report which does not reflect the overall conclusions in the MN report. Asserting misleading or false statements may mean that the Chair and CEO of the ILC may have improperly used their positions or information available to them, in their capacities as Commonwealth officials, to cause detriment to the former Directors of the ILC and Voyages, the ILC, advisors to the ILC, and the Minister. There is no definition of the term improperly in the CAC Act and therefore its ordinary meaning may apply.

## 4. LIMITATIONS ON MN REPORT FINDINGS

The terms of reference for the MN report required a forensic audit of the ARR transaction. However in its report (page 2) MN state that:

*"We have not carried out an audit, nor have we verified any of the information given to us by ILC. We have relied upon assurances from management as to the accuracy of the information provided. As the achievement of any prediction as to the results of subsequent trading is dependent upon future events, the outcome of which cannot be assured, the actual results achieved may vary materially from the projections included in this report. In all circumstances, whilst we believe that the statements made by us in this report are accurate, no warranty of accuracy or reliability is given".*

Accordingly it is not clear that MN had access to all relevant information necessary to reach a fully balanced set of conclusions. In its report (page 14) MN states that is was not provided the opportunity to consider the KPMG report (April 2011) on the borrowing limits and guarantee powers of the ILC.

Aegis had the opportunity to review the KPMG report during the preparation of its January 2014 report.

In its consideration of the ILC borrowing limits and guarantee powers KPMG examined the ARR transaction and related Board governance in detail and concluded that the “comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles”<sup>12</sup>.

The KPMG report recommended some further legislative controls on ILC borrowings to align it with other government authorities. The previous Federal Government does not appear to have implemented these controls, which would have been an expected response if there were concerns within government about the ARR purchase.

Furthermore, an independent review in 2013 by Deloitte of the ILC’s Board governance arrangements found that the arrangements were reasonable except for the fact that the ILC should develop a group wide strategy including all its subsidiary businesses; the ILC Board should clarify its own expectations about the reporting obligations of its subsidiaries and align meetings of the ILC and subsidiary Boards and sub-committees; and the ILC should develop consolidated financial reporting that includes its subsidiaries<sup>13</sup>.

Thus, as indicated in the Aegis January 2014 report, the findings in the MN report appear to be in significant conflict with the KPMG report about the way in which the ARR transaction was managed, and in conflict with the Deloitte report about general Board governance of ILC and Voyages.

The Aegis January 2014 report also raised concerns that the MN report included a value for money assessment of the ARR purchase, without considering any of the benefits or outcomes that may have been taken into account by the Board at the time or achieved since. A value for money assessment cannot occur without proper consideration of benefits/outcomes. In its report, MN admits (page 8) that “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)”.

One of the purposes of the Aegis January 2014 report was to examine the benefits of the ARR transaction. It found that the ARR transaction has delivered significant benefits for the ILC, Federal Government and Indigenous people and would continue to deliver benefits into the future.

## 5. ASSESSMENT OF ILC USE OF MN REPORT

The ILC letter appears to claim that the MN report has concluded there are serious questions to answer arising from its findings.

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<sup>12</sup> KPMG, Review of the ILCs Borrowing Powers and Guarantee Limits April 2011, p49. The KPMG report was commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and oversighted by Department of Finance and Deregulation (DoFD) and the ILC and copied to Treasury

<sup>13</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013

It is important to note that the MN report draws no conclusions nor makes any recommendations about actions that should be taken in response to its findings. The decisions of the ILC Board to pursue the actions (such as the publication of the ILC letter) or suggest that the MN report findings raise serious questions to be answered through public forums are entirely those of the ILC.

The overall conclusion of the MN report (page 12) is that, in their opinion, when considering (1) the cautions of previous Ministers about the ARR purchase, (2) the insufficient progress of the ILC in carrying out risk treatments to an acceptable level and (3) the scale of the transaction – MN considers that *“the ILC was deficient in documenting the appropriate deliberation and assessment required to demonstrate sound business principles. This does not 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”*.

By its own words this conclusion indicates that the ILC may have needed to apply more appropriate process and record management measures during the ARR transaction. However, this conclusion cannot be used to support claims that the ARR transaction was subject to any impropriety on the part of Directors or that the purchase was misguided.

**Key Finding 2:** The tone, words and fabric of argument contained in the ILC letter, ILC Senate Estimates evidence and radio interview seem to suggest that the ILC is attempting to use findings in the MN report to claim that there was at worst impropriety, and at least incompetence, at Board level in relation to the ARR transaction and that the purchase was flawed. This interpretation by the ILC of the MN report findings is not consistent with the overall actual conclusions of the MN report.

## 6. ASSESSMENT OF ILC CLAIMS ABOUT A PARTICULAR FORMER ILC DIRECTOR

### Summary of ILC claims

In summary it is claimed that the MN report provides evidence that:

- A particular Director failed to comply with ILC procurement policies in relation to the engagement of consultants during the ARR transaction, and this raises questions which should be answered (claim made in ILC letter and radio interview).
- The ILC Audit and Risk Management Committee (ARMC) (1) was conflicted because its Chair of twelve years was also involved in the ARR transaction and (2) failed to perform appropriate oversight of the ARR transaction, and accordingly there are questions to answer (claims made in ILC letter and ILC Senate Committee evidence).

- One particular Director 'drove' the transaction (claim made in ILC Senate Committee evidence).
- During his involvement in the ARR transaction a particular Director did not declare potential conflicts of interest arising from his connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time the ILC purchased it, and accordingly there are questions to answer (claim made in ILC letter).
- The ILC was correct in terminating a particular Director as Chair of Voyages and refusing to reappoint him to this position as subsequently requested by the Minister (claim made in ILC letter).

### **Claim 1: Procurement of ARR transaction consultancies**

The ILC letter and radio interview claim that the MN report concludes that a particular Director failed to comply with ILC procurement policies in relation to the engagement of consultants on the ARR transaction.

The MN report considers the engagement of consultants on the ARR transaction in section 6.2 (page 59). The MN report concludes that:

*"In respect of the engagement of consultants advising on the purchase of the ARR, we have found no evidence that competitive tender or quotation processes were used by the ILC in making procurement decisions. Furthermore, the ILC is unable to demonstrate that its procurement processes were conducted in accordance with the ILC purchasing guidelines and generally accepted procurement principles".*

At no point during the discussion of procurement issues does the MN report refer to the role of individual ILC directors in the procurement of consultants. It is assumed during the discussion in the MN report that the decisions to engage consultants was made collectively by the management and/or Board of the ILC.

**Key Finding 3:** There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

### **Claim 2: Audit and risk management committee (ARMC)**

#### **Claims in ILC letter**

The ILC letter suggests that the Chair of the ILC Audit and Risk Management Committee (ARMC) at the time of the ARR transaction had been in that position for twelve years. In fact he was a member of the ARMC for a total of fourteen years, of which he spent nine years as Chair.

The MN report briefly considers the role of the ARMC in section 6.3 (page 64), even though it acknowledges that it was not within its scope to do so. It is not clear why MN reviewed the role of the ARMC if it was not within the scope provided by the ILC.

The ILC letter claims that the MN report considered that the Director's lengthy membership of the ARMC and involvement in the ARR transaction created an inherent conflict of interest. However the MN report:

- Does not discuss his or any other Director's membership of the ARMC at all; and
- Does not suggest in any way that the ARMC was conflicted during its consideration of the ARR transaction.

The ILC letter also claims that the MN report concluded that the ARMC failed to oversight the ARR acquisition process appropriately.

In preparing its report MN reviewed the minutes of the ARMC meetings between June 2008 and March 2011 and found that the only meeting where the minutes recorded a discussion about the ARR transaction was 22 March 2011. Based on this review the MN report concludes that:

- The ARMC had almost no role in the oversight of consideration of the ARR transaction.
- It was unusual for the ARMC to have no oversight given that the transaction occurred over two years.
- Given the potential impact of the ARR investment on the financial position of the ILC, the minimal involvement of the ARMC was a deficiency in the then ILC governance process.
- The ARMC should have considered the ILC's risk management practices for the ARR transaction.

The MN report does not examine any possible reasons why the ARMC seemed to have a minimal role. For example, the discussion about the ARMC role does not include any information about other formal or informal measures (such as sub-committees) used by the ILC Board at the time to manage the ARR transaction and its risks. Examination of these issues may have concluded that the ARMC had a limited role because the ILC Board instituted other mechanisms to manage the transaction.

The MN report also does not consider or discuss why the limited involvement of the ARMC is unusual in the context of other examples of similar transactions undertaken by comparative organisations.

The ILC letter is crafted in a way that conjoins in one paragraph the claims that a particular Director's chairmanship of the ARMC and involvement in the ARR transaction represented a conflict of interest, and that the ARMC failed to oversight the transaction properly. Whether intentionally or otherwise, by conjoining these quite separate issues, the ILC letter creates an inference that the particular Director may have had conflicts of interest that influenced the minimal role of the ARMC.

## **Claims in ILC Senate Committee evidence**

In his evidence to the Senate Committee on 28 February 2014, the ILC CEO, Mr Dillon, states that: *"The audit risk committee should have had a key role in over sighting the transaction. The transaction was driven by Director Baffsky. Director Baffsky chaired the Audit and Risk Management Committee. The review notes that the audit and risk committee did not give due attention to the transaction. Director Baffsky had been on the audit and risk committee – I do not have the exact figure – for somewhere in excess of 10 years. The Audit Office guidelines say two terms, five years or thereabouts, and another member of the audit and risk committee, Director Jeffries, had been on the audit and risk committee for nine years. So the committee had been locked in place for too long and the review found that that was a key corporate governance issue the ILC should address. Of course when the new board was appointed in October 2011, they immediately took action to renew the audit committee. That was when, suddenly, conflict emerged within the board"*<sup>14</sup>. Like the ILC letter, this statement also seeks to conjoin separate issues which can create the impression that a particular Director's chairmanship of the ARMC and involvement in the ARR transaction represented a conflict of interest which somehow influenced the minimal role of the ARMC in overseeing the ARR transaction. As discussed above the MN report does not discuss any Director's membership of the ARMC and does not suggest in any way that the ARMC was conflicted during its consideration of the ARR transaction.

While Mr Dillon suggests that the MN report reached a conclusion that the length of time Mr Baffsky and Mr Jeffries had been on the ARMC was a key corporate governance issue the ILC should address, the MN report does not in any way:

- Discuss the make-up of the AMRC or the length of time Directors served on it.
- Discuss any of the Directors on the AMRC and the roles they played in the ARR transaction.
- Suggest, find or conclude that the AMRC was conflicted.
- Suggest, find or conclude that there was any reason why the AMRC had a minimal role in the ARR transaction.
- Suggest, find or conclude that the AMRC, its role, operation or membership was a "key corporate governance issue the ILC should address".

**Key Finding 4: Audit and risk management committee: length of Chair's term:** The ILC letter claims that the MN report found that the length of time that one Director had been Chair of the ARMC and his simultaneous involvement in the ARR transaction created an inherent conflict of interest. There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

**Key Finding 5: Audit and risk management committee: oversight of ARR transaction:** The ILC letter and ILC Senate Committee evidence claim that the ARMC did not oversight the ARR transaction because one Director had been the ARMC Chair for a long time and was also involved in the transaction, and that this was raised in the MN report as a key corporate governance issue. However, the MN report:

- Does not discuss in any way the role of the ARMC Chair and his involvement in the ARR transaction.

<sup>14</sup> Hansard, Australian Senate Finance and Public Administration Committee, 28 February 2014, p28

- Does not include any findings, conclusions or recommendations that one Director's chairmanship of the ARMC and involvement in the ARR transaction was a possible reason defining the ARMC role in the transaction or that the ARMC role was affected by any conflict of interest.
- Does not include any findings, conclusions or recommendations that the ARMC role, operation and membership, was a key corporate governance issue that the ILC should address.

Accordingly, any statements that explicitly or impliedly seek to create an impression to the contrary are false and misleading.

### Claim 3: Director's authority

The ILC Senate Committee evidence asserts that a particular Director 'drove' the transaction, and names this Director as Mr David Baffsky. The ILC letter claims that the Chair of the ARMC was "directly involved in driving the acquisition" and the MN report considered this serious issues needing to be addressed.

These statements seem intended to suggest that a particular Director was acting in some single capacity without the full remit or authority of the Board and therefore was able to make decisions about the transaction alone.

There are no suggestions, findings or conclusions in the MN report which in any way indicate that one Director was instrumental to the transaction in ways that enabled him/her to make decisions without Board scrutiny and agreement. The MN report focuses on Board decision making in relation to the ARR transaction and concludes that while Board decisions could have been better documented, the Board was responsible for decisions to undertake the due diligence on the ARR transaction and purchase the ARR.

In relation to Board decision making, the MN report states that (page 61):

*"Our main focus has been on the quality of board minutes and decision making in relation to the 1 October 2010 decision to acquire the ARR. However, based on our review of all board meeting minutes for the period 27 August 2008 to 20 June 2011, we make the following general observations:*

- *The ILC has a dedicated board secretariat function. Board packs appear to have been prepared and made available to directors in advance of each meeting;*
- *For each of the board meetings reviewed, the secretariat would personally attend, draft the minutes, and finalise the minutes after implementing any required changes. McGrathNicol was able to locate minutes for each of the board meetings held over the relevant period; and*
- *The Board meeting minutes appear to record the key decisions of the board, important discussions, and the resolutions passed".*

The MN report also concludes that (page 61):

*"From our review of the Board minutes and the Board Land Acquisition Decision dated 1 October 2010, we note that whilst the Board Land Acquisition Decision provides a summary of the due diligence work undertaken, it does not clearly set out the findings of the due diligence activities and the relevance to the decision to pursue the acquisition. The ILC Board resolved that the transaction was in the ILC's best interests and for its benefit. It is considered prudent to support an overarching comment such as this with a summary of the reasons why the transaction was considered to be in the best interests of the ILC".*

The Aegis January 2014 report included consideration of the evidence of the former ILC Chair, Ms Shirley McPherson, to the Senate Committee. Her written evidence makes clear that 5 of the 7 Directors of the ILC voted in favour of the ARR purchase and 2 Directors abstained<sup>15</sup>. This evidence of the former ILC Chair who presided over the purchase of the ARR is a powerful counter point to the assertion that one Director was responsible for directing the ARR towards the purchase.

**Key Finding 6:** There are no findings, conclusions or recommendations in the MN report that support this assertion, and it would be a false or misleading statement to suggest otherwise.

#### **Claim 4: Conflict of interest**

The ILC letter claims that the MN report considered that a serious issue requiring to be addressed is a particular Director's undeclared potential conflict of interest arising from his connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time the ILC purchased it.

The MN report considers conflict of interest issues in section 6.5 (page 69).

In relation to the connection referred to in the ILC letter, the MN report identified this as a Directorship held by Mr David Baffsky of Singapore Airport Terminal Services, which is 43% owned by Temasek Holdings. Temasek holdings is 100% owned by the Singapore Government. The Singapore Government is also the 100% owner of GIC Private Limited which has an 11.65% shareholding in General Property Trust, the vendor of ARR.

The MN report concluded that it *"has no further knowledge regarding this connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be remote"*.

**Key Finding 7:** There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

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<sup>15</sup> Ms Shirley McPherson, letter to the Chair of the Senate Finance and Public Administration Committee, 9 December 2013

The MN also considers Mr Baffsky's role as Honorary Chairman of Accor Asia Pacific, which was awarded the hotel service contract for the ARR by Voyages after a competitive process. The MN found that he properly declared his conflict of interest and took no part in considerations and decisions by the Voyages Board about the hotel services contract.

It is curious that the ILC letter ignores the MN findings about the propriety with which Mr Baffsky managed an immediate conflict of interest, but seeks to infer that he may have behaved improperly in relation to a connection that the MN report considers is remote.

#### **Claim 5: Reappointment of a Director to Voyages Board**

The ILC letter refers to the Minister's request to ILC in October 2013 that a particular Director be reappointed as Chair of the Voyages Board. The ILC letter claims that in part the ILC decision not to reappoint him was correct because the MN report delivered in December 2013 provides "ample evidence" to support that decision.

Based on the reviews of the MN report as part of the Aegis January 2014 report, and now as part of this assessment, it is clear that there are no findings, conclusions or recommendations in the MN report which could in any way be regarded as evidence to support the initial removal of the Chair of the Voyages Board, or the refusal of the ILC to reappoint him as apparently requested by the Minister.

**Key Finding 8:** There are no findings, conclusions or recommendations in the MN report that support this claim, and it would be a false or misleading statement to suggest otherwise.

## 7. ASSESSMENT OF ILC CLAIMS ABOUT FORMER ILC BOARD GOVERNANCE

### Summary of ILC claims

The ILC letter claims that the MN report suggests questions need to be answered because:

- The Board failed to consider the most recent financial performance of the ARR and relied on a valuation that was 17 months old.
- The Board failed to adequately mitigate risks identified in the due diligence.
- The Board relied on financial projections that were not conservative.
- The Board did not adequately record the voting intentions of all Directors.

The ILC Senate Committee evidence claims that<sup>16</sup>:

- The MN report includes 25 headline findings of concern.
- The ILC Board paid too much for the ARR.
- Grant Samuel was paid partly via a success fee (percentage of the purchase price) which would have incentivised them to recommend a higher purchase price.

The radio interview claims that<sup>17</sup>:

- The MN report found that the ILC Board did not consider the latest figures before them about revenue returns and other commercial issues, but relied on figures that were 17 months old.
- The Deloitte report<sup>18</sup> found a range of shortcomings in ILC governance; recommended that the ARR transaction be examined in more detail; and found that the ILC should have a good relationship with its Voyages subsidiary, which did not exist.
- The Voyages Board was terminated because its members included persons who were responsible for the shortcomings identified in the Deloitte and MN reports.

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<sup>16</sup> Hansard, Australian Senate Finance and Public Administration Legislation Committee, 28 February 2014, pp25-29

<sup>17</sup> Sunday Profile, ABC Radio, 17 April 2014

<sup>18</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013

## Aegis January 2014 report

The Aegis January 2014 report makes a detailed assessment of the public criticism of the ARR transaction by the ILC Board and management. Many of the issues raised in the ILC letter and ILC Senate Committee evidence were considered as part of this assessment. This is particularly in relation to:

- The valuations used by the ILC Board when considering the ARR purchase, and the ARR purchase price.
- The risk management undertaken by the Board.

The analysis in the Aegis January 2014 report shows that the claims made about the ARR transaction by the ILC in a range of public forums are potentially misleading, when taking into account all of the information contained in the MN report (2013), Deloitte report concerning ILC governance (2013), KPMG report concerning ILC borrowing powers (2011), Dransfield advice on tourism asset valuation (2013), and the ILC's own submission to the review of the ILC and Indigenous Business Australia (2014).

## Assessment of claims

As discussed in this current report, and the Aegis January 2014 report, the overall conclusion of the MN report (page 12) is that when considering (1) the cautions of previous Ministers about the ARR purchase, (2) the insufficient progress of the ILC in carrying out risk treatments to an acceptable level and (3) the scale of the transaction – MN considers that *“the ILC was deficient in documenting the appropriate deliberation and assessment required to demonstrate sound business principles. This does not 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”*.

The Aegis January 2014 report also identified that, while the MN report made a number of findings to support this conclusion, it also made a number of positive findings about the governance of the ARR transaction. These included that (pages 5-12):

- The financial model relied on by the ILC Board when assessing the ARR purchase was conservative.
- The ILC was a motivated purchaser, but the process indicates it was not prepared to purchase at any price.
- The transaction was consistent with ILC powers and obligations under ATSI and CAC Acts.
- Vendor finance arrangements were reasonable and not disadvantageous to the ILC.
- A comprehensive risk management plan dealing with operational and transactional risks was prepared.
- The post purchase risk assessment and mitigation strategy in relation to occupancy was reasonable.
- The ILC Board decision was based on and followed the advice of consultants.

**Key Finding 9: Selective use of information:** The ILC letter, ILC Senate Committee evidence and radio interview selectively use some findings and not others about important issues. Selective use of some findings and not others can easily be misleading and lead to inaccurate conclusions about the ARR transaction.

The claims focus on findings in the MN report relating to ARR transaction issues that could have been better managed. However there are also a series of findings in the MN report relating to the good management of the ARR transaction that are not referred to in the communication by the ILC. Selective use of MN report findings can present a very negative picture of the ARR transaction which would not be possible if all the findings are considered in the context of the full report

To achieve a balanced view of the MN report and the implications for the ARR transaction it is critical to take account of all the findings together.

When discussing the Board's consideration of the purchase price and related revenue and commercial issues the MN report does not find or conclude that the Board failed to consider up to date revenue and commercial issues put before them as asserted in the radio interview.

## Purchase price

A good example of the need to consider all the findings in the MN report arises in relation to the issue of the ARR purchase price.

On the one hand the MN report found that (pages 19-46):

- The Grant Samuel (GS) financial model was influential on the Board. The GS model is standard practice in mergers and acquisitions.
- The price was consistent with the NPV suggested in the GS model.
- GS model assumptions about NPV of cash flows was conservative and more conservative than comparable assessments by Colliers and CBRE in their valuations.
- GS model consideration of forecast capex was higher than CBRE and Colliers.
- Ultimately value is subjective and it is possible that the Board had good reason to assess the price as appropriate.
- The ILC was a motivated purchaser, but the length of time for purchase and negotiations indicate it was not prepared to purchase at any price.
- Vendor finance arrangements were reasonable, based on competitive interest rates and not disadvantageous to the ILC.

On the other hand the MN report found that (pages 19-46):

- GS model was arguably ambitious on forecast revenue, given findings by other consultants such as Howarth HTL. This may have inflated NPV.
- GS model capex forecast consisted of essential capex only and may not have been at levels needed to support the forecast growth in operating projections in the GS model. Higher capex projections may have lowered NPV.

- The GS model did not include any sensitivity analysis on the NPV prior to the Board decision in October 2010.
- The GS sensitivity analysis provided to the Board in November 2010 would have reduced the NPV to between \$237M (\$55 below price paid) and \$274M (\$18M below price paid).
- The price was \$22M higher than the value suggested by CBRE (\$270M).
- An updated full speaking valuation should have been undertaken, rather than the CBRE one being relied on as it was 17 months old.

Considering all of these findings offers a fuller understanding of the Board's decision to purchase the ARR and related governance than the view being promoted in the ILC letter, ILC Senate Committee evidence and radio interview.

## **Risk management**

Another good example of the need to consider all findings together arises in relation to risk management.

On the one hand the MN report found that (pages 48-52):

- A comprehensive risk management plan dealing with operational and transactional risks was prepared with assistance of consultants and presented to the Board. Risk management strategies for extreme, high and moderate risks were prepared and documented.
- Of the 9 key risks identified in the ARR transaction risk management plan MN considered that 5 had reasonable risk treatments and post risk ratings. This included the satisfactory development of a sensitised 10 year financial forecast based on conservative occupancy, reflecting a downturn in world economic conditions.

On the other hand, the MN report found that (pages 48-52):

- While the due diligence included 10 year financial forecasts, the risk treatment for the purchase price should have included a full speaking valuation.
- The post purchase risk treatment of government support should have been high, not moderate.
- The post purchase risk treatment of remoteness of ARR and reliance on airlines should have been high, not moderate.
- While the financial analysis of the ARR projected capex in the first 5 years is consistent with the independent expert assessment, these capex forecasts were based on "essential capex" only, to maintain the standard of the ARR and this appears inconsistent with the optimistic operating forecasts.

Considering all of these findings offers a fuller understanding of the Board's decision to purchase the ARR and related governance than the view being promoted in the ILC letter, ILC Senate Committee evidence and radio interview.

**Key Finding 10: ARR purchase price and risk management:** Given the nature of the findings in the MN report, it is not reasonable to selectively use some findings to criticise the ARR purchase, but ignore other findings that present a more positive picture of the transaction. This approach increases the risk that the ARR will be viewed negatively when this view is not entirely accurate. This outcome may have a negative impact on the capacity of the ARR to conduct and drive business with partners and suppliers.

### Grant Samuel fees

The ILC Senate Committee evidence suggests that the MN report found that the success fee paid to Grant Samuel (GS) was based on the value of the ARR transaction, and that this may have improperly led GS to advise the ILC to accept a higher purchase for the ARR. The relevant section in the evidence is as follows.

**"Mr Dillon:** The first point to note from McGrathNicol was that the CBRE valuation that the board had available to it when it made the acquisition was 17 months old. McGrathNicol did some calculations. They indicated that had they had an up to date valuation the value of the resort would have been in the order of \$250 million-not \$300 million. That goes to the point of paying too much. A further key finding was that the due diligence, which cost \$6 million was on a success-fee basis. There was no appropriate selection process around the selection of due diligence consultants. Grant Samuel received one per cent of the purchase price which –

**Senator Seselja:** So the higher the purchase price the more the person would receive?

**Mr Dillon:** Absolutely.

**Senator Siewert:** Is that usual? I am not an expert on due diligence but –

**Mr Dillon:** We understand there are precedents in the industry about this but –

**Senator McKenzie:** Which industry?

**Mr Dillon:** The due diligence for the real estate industry – hotel acquisitions.

**Senator Seselja:** It was effectively an incentive for the individual or company to value it at a higher rate because they would get more of a success fee.

**Mr Dillon:** Exactly. That is the concern that McGrathNicol raised<sup>19</sup>.

The MN report does not find that there was any improper conduct on the part of GS. The MN report found that (page 9):

*"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".*

The nature of the ILC Senate Committee evidence may be damaging to the reputation of GS, even though the MN report found GS did not act improperly.

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<sup>19</sup> Hansard, Australian Senate Finance and Public Administration Legislation Committee, 28 February 2014, pp27

**Key Finding 11: Grant Samuel fees:** The MN report does not find that GS acted improperly in relation to the advice it provided to the ILC about an appropriate purchase price for the ARR.

### **Deloitte report findings**

In the radio interview it is claimed that the Voyages Board needed to be terminated because its members were responsible for the shortcomings identified in the Deloitte report which included a poor relationship between the ILC and Voyages. It is also claimed that the Deloitte report recommended that the ARR transaction be examined further.

The Aegis January 2014 report examined the Deloitte report in detail. The Deloitte report does not find, conclude or recommend that the ARR transaction be examined in more detail. The Deloitte report considered the ARR purchase as one case study for its governance review, in addition to other case studies. The Deloitte report considered that the ARR transaction provided examples of where the ILC could formalise its protocols for communicating with government; ensure its procurement policies are adhered to; conduct appropriate communication with stakeholders and formalise its conflict of interest declaration policies<sup>20</sup>.

With respect to the ILC Board governance in general the Deloitte report found that the arrangements were reasonable except for the fact that the ILC should develop a group wide strategy including all its subsidiary businesses; the ILC Board should clarify its own expectations about the reporting obligations of its subsidiaries and align meetings of the ILC and subsidiary Boards and sub-committees; and the ILC should develop consolidated financial reporting that includes its subsidiaries<sup>21</sup>. These findings related to actions that the ILC needed to undertake, and did not suggest in any way that the actions were necessary because of the performance of the Voyages Board.

**Key Finding 12: Deloitte report findings:** The Deloitte report does not find, conclude or recommend that the ARR transaction be examined in more detail. The Deloitte report found that the ILC governance arrangements were reasonable and that minor improvements were needed. The report did not find that these improvements were required because of the performance of the Voyages Board.

<sup>20</sup> Deloitte, Review of ILC Board Governance Arrangements, March 2013, p57

<sup>21</sup> Ibid, pp7-9

5 March 2015

Senator Zed Seselja  
Chairperson  
Community Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator

I am writing in regard to the appearance before your Committee by Mr Michael Dillon, CEO, Indigenous Land Corporation (ILC) at a public hearing on 13 February 2015 into *The Aboriginal and Torres Strait Islander Amendment Bill 2014*.

I submit that various aspects of Mr Dillon's evidence served to misinform the Committee in relation to the purchase by the ILC of Ayers Rock Resort (ARR) in May 2011. Regrettably, this is the second occasion where Mr Dillon has provided misinformation to your Committee in relation to the purchase of ARR as much of what he said was repeated from his appearance on 28 February 2014. Outlined below are the clear instances of Mr Dillon misinforming the Committee.

- *"It is clear from recent history that there has not been appropriate governance and management within the ILC" (Dillon).*

On the contrary, a report by KPMG in 2011, commissioned by the then Department of Families, Housing, Community Services and Indigenous Affairs and overseen by the Department of Finance, (in its consideration of the ILC borrowing limits and guarantee powers), examined the ARR transaction and related Board governance in detail and concluded that the *"comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles"*.

- *"I have given evidence before the committee on this topic in the past, so I will not dwell on it, but there has been a huge loss from the purchase of ARR – over \$100 million – to the ILC (Dillon)."*

In fact, according to the ILC's own financial statements for the year ended 30 June 2014, impairment (NOT LOSS) of assets was \$62,359,000 in 2013 and \$19,218,000 in 2014, a total of \$81,577,000.

Interestingly, for the same reporting periods, Indigenous Business Australia (IBA) reported write-down and impairment of assets of \$53,529,000 in 2014 (with a further loss from asset sales of \$1,250,000 in 2014) and \$38,365,000 in 2013, a total of \$93,245,894 representing a loss of \$11,668,894 more than the ILC.

During that time Dawn Casey was Chairperson of both the ILC and IBA. However, Dawn Casey has never called for an enquiry into IBA's losses and the governance processes relating to those losses. Why then is she and the ILC CEO fixated on the purchase of ARR when its impairment losses are less than those of the IBA? More especially so when ILC's contribution to Indigenous training and employment far outweighs IBA's contribution?

The ILC's consideration of the ARR purchase began after the opportunity was referred to it by Mr Dillon, when he was a Senior Adviser in Minister Macklin's office (I note that Mr Dillon did not formally declare his second hat at the opening of his evidence). Mr Dillon indicated to the ILC that the Aboriginal Corporation called Wana Ungkuntja (WU) had a proposal to partner with the ILC to purchase ARR for the eventual divestment of the asset to an Indigenous Corporation consistent with the objectives of the ILC under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act).

The WU, which represents business interests of the local Anangu communities surrounding Uluru, was granted first right of refusal over the ARR by the previous owners. Following the ILC purchase of the ARR, WU received two seats on Board of the ILC subsidiary (Voyages) created to manage the ARR and other ILC owned tourism assets, and 7% equity ownership in Voyages approximately in 10 years' time. As part of the ARR divestment strategy a process was to be developed by the ILC and Central Land Council to identify an appropriate Indigenous Corporation to which the ARR could be divested once free of any financial encumbrances.

Consequently, the write-down of the asset is immaterial to the ILC as it is obliged to divest (at no cost) the asset, including ARR, to an Indigenous Corporation over time so that fluctuations in its value over time, prior to its divestment, are ultimately of no consequence. The key point is that ILC is not an investor holding the asset for sale, unlike IBA.

It is of considerable concern that neither Mr Dillon nor his Chairperson seem to understand this basic principle. It is also of considerable concern that they don't seem to have even the basic understanding of accounting standards and their consequences.

- "The resort is running very well, but we paid and we borrowed too much" (Dillon).

However, the McGrathNicol report, commissioned by the ILC itself into the purchase of ARR, found that (pages 19-46):

- *"The Grant Samuel financial model was influential on the Board and is standard practice in mergers and acquisitions.*
- *The price was consistent with the Net Present Value (NPV) suggested in the Grant Samuels model.*
- *The assumptions made by the Grant Samuels model about cash flows was conservative, and more conservative than comparable assessments by Colliers and CBRE in their valuations.*
- *Grant Samuel's consideration of forecast CAPEX was higher than that of CBRE and Colliers.*
- *Ultimately value is subjective and it is possible that the Board had good reason to assess the price as appropriate.*
- *The ILC was a motivated purchaser, but the length of time for purchase and negotiations indicate it was not prepared to purchase at any price.*
- *Vendor finance arrangements were reasonable, based on competitive interest rates, and were not disadvantageous to the ILC".*

It should also be noted that Voyages Indigenous Tourism Australia Pty Ltd, was able to borrow \$60 million from the ANZ bank for major works, which was secured by ARR with no collateral or obligation

from the ILC. No doubt the ANZ undertook its own valuation and was happy to facilitate the loan. This gives lie to Mr Dillon's assertions that the ILC paid and borrowed too much money.

- "In essence, it turns on the question of whether the then directors made a sound business decision. The advice we have is that, prima facie, they did not (Dillon)."

Mr Dillon has not provided evidence to support his assertions. On the contrary, KPMG's report of 2011, which was not made available to McGrathNicol by the ILC, states, "*comprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles*".

Furthermore, it is beyond question that the greatest single pathway to achieving the Closing the Gap objectives is scalable, effective and sustainable employment and training programs for Indigenous people that equip them to work in current and future export and other growth markets. The ARR's focus on hospitality training is achieving this and it is arguably the most effective Indigenous training and employment program in Australia by volume, reach and success.

It is estimated that the cost to the Federal Government of supporting welfare dependent Indigenous people is an average of \$75,000 per person each year [H and M Hughes, Centre for Independent Studies 2011]. By this estimate the Voyages employment and training programs, deliverable because of the ARR economies of scale, are saving the Federal Government about \$20M (based on 263 people employed) in welfare payments each year. Over a 40 year period in which these young people will continue to work, rather than collect welfare benefits, the Federal Government is potentially saving up to \$760M (2013 prices). If it is assumed that over the next 40 years the ARR trains for employment a further 7,400 Indigenous people (an average of 185 people per year based on throughput over the last 2 years), and those people gain employment at the ARR or in the broader tourism or other sectors, the Federal Government is saving up to a further \$555M in welfare payments. There would be further savings when taking into account the multiplier effect of each of these trainees working for the rest of their lives, instead of receiving welfare payments. Again, this characterises the ILC performing its functions using sound business principles and foresight.

- "The audit committee of the ILC of the time did not take a role in the transaction. In fact, the chair of the audit committee at the time was chief driver of the transaction within the ILC ... The members of the audit committee had been members for 12 years. The Auditor General's provisions say six years maximum" (Dillon).

I was the Chair of the Audit at that time and the McGrathNicol report:

- Does not discuss in any way the role of the ARMC Chair and his involvement in the ARR transaction.
- Does not include any findings, conclusions or recommendations that one Director's chairmanship of the ARMC and involvement in the ARR transaction was a possible reason defining the ARMC role in the transaction, or that the ARMC role was affected by any conflict of interest.
- Does not make any findings, conclusions or recommendations that the ARMC role, operation and membership, was a key corporate governance issue that the ILC should address.

Mr Dillon's evidence asserts that one Director (myself), rather than the Board as a whole, was instrumental in the ARR transaction and purchase. However, in the MN report there are no findings, conclusions or recommendations that support his assertion. There was also no rule, at that time, from the Australian National Audit Office (ANAO) that precluded a Director serving more than six years on the ILC

Audit Committee. If there had been, then ANAO would have pointed this out to the ILC and I would have immediately stood down. I am immensely proud that during my time on the ILC Audit Committee we delivered 12 unqualified audits.

- "Things like the due diligence that was undertaken was done by Grant Samuel – a very respected firm. The contract required, or allowed, that we would pay them a proportion of the purchase price – one percent – as their fee. The higher the purchase price, the higher the fee the people undertaking the due diligence received" (Dillon).

The MN report does not find that there was any improper conduct on the part of Grant Samuel. The McGrathNicol report found that (page 9):

*"Grant Samuel'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 Grant Samuel acted improperly in this respect. However, we consider that it may have been prudent for ILC to consider alternative fee structures".*

- "The McGrathNicol report found that one of the directors – in fact, the director driving the transaction – had a **substantial undisclosed conflict-of-interest**. That is a concern" (Dillon).

Mr Dillon's evidence states the McGrathNicol report considered that I had an undeclared potential conflict of interest arising from my connection with a major shareholder in the vendor of the ARR (General Property Trust) at the time of the ILC's purchase.

The McGrathNicol report considers conflict of interest issues in section 6.5 (page 69). In relation to the connection referred to by Mr Dillon, the report identified this as a Directorship held by myself of Singapore Airport Terminal Services, a listed public company, which is 43% owned by Temasek Holdings. Temasek Holdings is 100% owned by the Singapore Government. The Singapore Government is also the 100% owner of GIC Private Limited which has an 11.65% shareholding in General Property Trust, the vendor of ARR.

The McGrathNicol report concluded that it *"has no further knowledge regarding this connection, and therefore cannot conclude whether or not it represents a conflict of interest. However, the connection appears to be remote".*

Mr Dillon has misrepresented McGrathNicol's findings on this issue and has sought to mislead your Committee.

The Committee might also wish to note that McGrathNicol also considered my role as Honorary Chairman of Accor Asia Pacific, which was awarded the hotel service contract for the ARR by Voyages after a competitive process. It found that I properly declared my conflict of interest and took no part in considerations and decisions by the Voyages Board about the hotel services contract.

It is curious that Mr Dillon ignores McGrathNicol's findings about the propriety with which I managed an immediate conflict of interest, but seeks to infer that I may have behaved improperly in relation to a connection considered to be remote. So remote in fact that I myself did not know about it.

I ask that the Committee call Mr Dillon to account for his misleading statements at the hearing on 13 February 2015, particularly those relating to me. If Mr Dillon repeated his misleading statements outside the privilege of

Parliament committees I would no doubt have legal remedy. However, he has used parliamentary privilege to defame my good name and I trust that will be seen by the Committee as a misuse of parliamentary privilege by a senior Commonwealth officer.

Finally, to put into context the apparent dysfunction of the ILC and the role of the CEO and Chairperson therein, please find a copy of a staff letter which apparently appears on the ILC's own extranet website. It requires no further comment and this in relation to a person who received a \$60,000 "performance bonus" last year and at a time when the ILC is crying poor.

Yours sincerely

**David Baffsky AO**



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

### FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

#### **Estimates**

(Public)

FRIDAY, 29 MAY 2015

CANBERRA

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**SENATE**

**FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

**Friday, 29 May 2015**

**Members in attendance:** Senators Bernardi, Gallagher, Lazarus, McKenzie, McLucas, Peris, Siewert, Smith.



## **CROSS-PORTFOLIO INDIGENOUS MATTERS**

### **In Attendance**

Senator Scullion, Minister for Indigenous Affairs.

### **Department of the Prime Minister and Cabinet**

#### **Outcome 2**

#### **Overview**

Ms Liza Carroll, Associate Secretary, Indigenous Affairs

Mr Richard Eccles, Deputy Secretary, Indigenous Affairs

Ms Elizabeth Kelly, Deputy Secretary, Governance

#### **Outcome 2: Indigenous Affairs**

#### **Indigenous Affairs Group**

Ms Caroline Edwards, First Assistant Secretary, Community Safety and Policy Division

Ms Liz Hefren-Webb, First Assistant Secretary, Schools, Information and Evaluation Division

Ms Marie Taylor, First Assistant Secretary, Housing, Land and Community Capability Division

Ms Nadine Williams, First Assistant Secretary, RJCP Implementation Taskforce

Ms Ngaire Hosking, First Assistant Secretary, Indigenous Employment and Recognition Division

Ms Susan Black, First Assistant Secretary, Programme Implementation Taskforce

Ms Kerrie Tim, Special Adviser, Indigenous Engagement

Mr Matt Cahill, National Director, PM&C Regional Network

Ms Melissa Clode, Acting Assistant Secretary, Strategy and Budget Branch

Mr Robert Ryan, Assistant Secretary, Welfare Reform Branch

Ms Kirsti Van Der Steen, Acting Assistant Secretary, Welfare Reform Branch

Mr Gavin Matthews, Assistant Secretary, Community Safety Branch

Mr Brendan Gibson, Acting Assistant Secretary, Health Branch

Ms Bronwyn Field, Acting Assistant Secretary, Intergovernmental Branch

Ms Kathleen Finn, Acting Assistant Secretary, Education and Youth Branch

Mr Neil Harwood, Assistant Secretary, Early Childhood Branch

Mr Matthew James, Assistant Secretary, Indigenous Affairs Group Information and Evaluation Branch

Mr Mike Fordham, Assistant Secretary, School Attendance Branch

Ms Belinda Campbell, Assistant Secretary, Housing Branch

Mr Paul Denny, Acting Assistant Secretary, Infrastructure Branch

Mr Wayne Beswick, Acting Assistant Secretary, Land Management Branch

Mr Geoff Richardson, Assistant Secretary, Culture and Capability Branch

Mr Daniel Owen, Assistant Secretary, Land Reform Branch

Mr Ryan Bulman, Acting Assistant Secretary, RJCP Policy and Programme Delivery Branch

Ms Maya Stuart-Fox, Assistant Secretary, Economic and Employment Policy Branch

Ms Ingrid Kemp, Assistant Secretary, RJCP Transition Branch

Ms Tania Rishniw, Assistant Secretary, Constitutional Recognition Taskforce

Mr Martin J Cowling, Assistant Secretary, Employment and Training Branch

Ms Marian Moss, Assistant Secretary, Legal Services Branch

Mr Brant Smith, Acting Assistant Secretary, Environment Branch

Ms Rachel Livingston, Acting Assistant Secretary, Forrest Review Taskforce

Mr Robert McMahon, Assistant Secretary, Strategic Priorities Branch

Mr Greg Roche, Assistant Secretary, Programme Integrity Branch

Ms Sarah Vandenbroek, Acting Assistant Secretary Grant Systems and Deregulation Office Branch

Ms Julie Steel, Acting Assistant Secretary, Programme Office Branch

Ms Lisa Croft, Assistant Secretary, IAS Policy Branch

#### **Governance Group**

Ms Amanda McIntyre, First Assistant Secretary, Financial Services Division

Mr Ben Neal, First Assistant Secretary, Corporate Services Division

Mr Kamlesh Sharma, Assistant Secretary, Financial Governance Projects and Indigenous Portfolio Bodies Branch

#### **Northern Land Council**

Mr Joe Morrison, Chief Executive Officer

Mr Michael O'Donnell, Principal Legal Officer

Ms Leanne Liddle, Senior Policy Advisor

#### **Aboriginal Hostels Limited**

Ms Joy Savage, Chief Executive Officer

Mr Jeff Svigos, General Manager Operations

Ms Georgina McKenzie, Chief Financial Officer

Ms Katrina Fanning, General Manager Strategy, Innovation and People

#### **Indigenous Land Corporation**

Mr Michael Dillon, Chief Executive Officer

Ms Kate Gumley, Executive Director

#### **Tiwi Land Council**

Mr Brian Clancy, Acting Chief Executive Officer

Mr Gibson Farmer, Chairman

Mr Andrew Tipungwuti, Executive Member

#### **Office of the Registrar of Indigenous Corporations**

Mr Anthony Beven, Registrar

#### **Office of Township Leasing**

Mr Greg Roche, Executive Director Township Leasing

#### **Committee met at 08:58**

**CHAIR (Senator Bernardi):** Good morning, everybody. I declare open this meeting of the Senate Finance and Public Administration Legislation Committee. Today the committee will continue examination of the budget estimates with the cross-portfolio hearing of Indigenous matters. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 23 June 2015, and has fixed 10 July 2015 as the date for the return of answers to questions taken on notice. The committee will begin with an examination of portfolio agencies as listed on the program, then proceed to outcome 2 of the Department of the Prime Minister and Cabinet, followed by Indigenous health issues with the Department of Health, who will join officers of PM&C.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution

prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

I particularly draw the attention of the witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

**CHAIR:** Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.

An officer called upon to answer a question for the first time should state their full name and the capacity in which they appear. Witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. Mobile phones should be switched off. Officers are requested to keep opening statements brief or seek to incorporate longer statements into the *Hansard*.

**Northern Land Council**

[09:01]

**CHAIR:** I note that many of the agencies appearing before us today have travelled a great distance to be with us. The first of those is the Northern Land Council. I welcome the Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion; Mr Joe Morrison, the Chief Executive Officer of the Northern Land Council; and officers. Minister, do you wish to make an opening statement?

**Senator Scullion:** I do not wish to make an opening statement.

**CHAIR:** Thank you. Mr Morrison, do you wish to make an opening statement?

**Mr Morrison:** Yes, please.

**CHAIR:** Please proceed.

**Mr Morrison:** Thank you. As this committee is well aware, we were here—

**CHAIR:** Excuse me. Just one moment, Mr Morrison.

**Senator McLUCAS:** Before we begin, can I just put on the record a view that we do need to negotiate the program for next time. Due to a number of changes in personnel, there was not an opportunity to have a conversation about the program. I rang the chair about this, Senator McKenzie, so this is not new.

**Senator McKENZIE:** The draft program has been—

**CHAIR:** I do not want to get into a debate about this. I will make this point, Senator McLucas. The program is agreed by the committee some weeks prior to the estimates hearing. If you are not happy or you want to negotiate the program at all, the time to do that is before it is settled or after it has been sent out for consultation. I will also make this point: these agencies have been requested by particular senators, including you. Some of them have travelled a great distance at great expense to be here. We have to afford them the respect for their taking the time to do that and question them appropriately. This is a matter for the committee and the Senate to determine.

**Senator McLUCAS:** I understand that.

**CHAIR:** You have registered your interest in this, and I will just proceed as we are.

**Senator McLUCAS:** I would like to encourage all of us as committee members to keep our questioning of the agencies as short as we can because the big issues are in outcome 2, and we need to focus on outcome 2 today. There has been a change in the way that this department is structured now, and our committee agenda should reflect the change that has happened in the government.

**CHAIR:** You know that the standing orders, which you supported, prohibit me from limiting any senator or moving on until all senators have exhausted their questions. We are wasting a great deal of time in discussing this now.

**Senator McLUCAS:** Sorry. I have put it on the record. I would like us to finish the agencies as quickly as we can, hopefully within an hour, so that we can get on—

**CHAIR:** Perhaps they should not all have been called; that is what I would suggest. Anyway, let us move on.

**Senator McLUCAS:** Who called the Northern Land Council?

**CHAIR:** Any senator is entitled to call anyone they like. Thank you. If you have a complaint to register with the committee, register it with the committee—

**Senator McLUCAS:** That is why I rang you.

**CHAIR:** rather than waltz in here on the day of the thing and decide you want to kick up a fuss because you have not looked at the agenda beforehand. Mr Morrison, please proceed.

**Mr Morrison:** I do want to make a short statement, and it follows. As this committee is well aware, we were here in February of this year, which was around the occasion of my first anniversary as the Chief Executive Officer of the Northern Land Council. However, on reflection, I may not have made it plain back then that I had already initiated a series of reviews into internal governance and our service delivery across the agency. After all, I had been recruited to reform the organisation in the first place. My corporate mission is to develop a modern, efficient, capable organisation that effectively serves Aboriginal people's interests in the territory's lands and waters. But, I must admit that the task did take on a real impetus after my last appearance here in February.

I can report to you that the Northern Land Council has since been undergoing a roots-and-branches reform. We have taken real notice of the advice from the ANAO and, indeed, the cautions from the minister sitting right next to me here. We have also engaged seriously with officers from the Department of the Prime Minister and Cabinet, and I am grateful for their advice and assistance as we implement our reforms.

I acknowledge that our organisation has had financial management issues—that we have been late in filing annual reports and that our accounting and auditing processes have not been up to the mark. Mind you, having said that, the NLC received an unqualified audit last financial year. But I am not shirking my responsibilities when I say that we are dealing with legacy issues here. I am prepared to cop whatever criticism comes my way, but I do want to impress upon this committee that we have gone all out since we were here last, in February. There have been significant improvements in the financial auditing, compliance, management of risk and management across the organisation, including development of a corporate and strategic plan with our objectives and actions guided by the Northern Land Council's elected full council.

Processes are now in place to ensure that we meet annual reporting time lines and changes are now well embedded to improve our audit processes and procedures. We have engaged outside firms to provide advice and assistance to ensure that financial assistance and auditing processes are timely, comprehensive and accurate. We are well advanced in the development of new corporate governance policies, including: conflicts of interest, credit and debit card use, consultant engagement guidelines, procurement codes of conduct, and gifting and whistleblower provisions, including internal and external complaints systems. We have taken significant steps to resolve equity and ongoing concerns with issues around unfunded leave provisioning and a range of program overexpenditure, including the Jangala-Muckaty legal costs and the ABA debt. These were issues raised by the auditors in this estimates committee in February.

The future of the Northern Land Council under my leadership includes establishing a development prospectus, setting up a community development program, consultation work on the Ord expansion, water allocation planning and the flow-on effects from the Blue Mud Bay High Court decision. Thank you.

**CHAIR:** Thank you, Mr Morrison. Senator Smith.

**Senator SMITH:** Welcome back, Mr Morrison. You will remember at the previous estimates I took a keen interest, not just as a member of this committee but also as a member of the Public Accounts and Audit Committee, with regard to some of the findings of the National Audit Office on the governance and financial controls of the Land Council. Thank you for the opening statement, but I am just looking for a little bit more detail to support the statements that you made. Can you give me some concrete examples of the improvements that you have made around governance and financial controls?

**Mr Morrison:** If we turn to the issues raised by the ANAO, I could run through some of those. The category There was an issue raised relating to a number of adjustments and changes to the financial management statements and obviously the timing. What we have done, as I alluded to last hearing, is assemble a broader group of management across the organisation. We appointed an external accounting firm: BDO Australia. They have been engaged to assist in the preparation of the financial statements and associated supporting documentation to ensure that the financial statements are in accordance with Australian accounting standards and the finance minister's orders. The finance section is currently being restructured, with a recent advertisement for a new chief financial officer and also a financial accountant and a management accountant to be implemented into the finance branch.

In terms of the deterioration of the NLC's financial position, what we are doing is having renewed vigour on the balance sheet—management and reviewing it. The cash flow projections are prepared on a monthly basis for all Northern Land Council funding sources and they are included in the monthly budget reports to the management team. We have also implemented new processes and procedures to ensure that no projects are to commence without identifying funding sources. In terms of royalty administration, along with the finance restructure and review, we are reviewing the arrangements and the processing around royalties and distribution. This will take some time. We are looking at establishing a new royalty unit to deal with the disbursement of royalties, and we are also looking at the accounts payable ledger being reviewed and ensuring that balances are cleared. We are also doing this with the accounting firm BDO. In terms of superannuation payments, we are now paying monthly superannuation as required. In terms of the royalty trust account, this was a category L1 issue, as identified by the ANAO.

**Senator SMITH:** It was, yes.

**Mr Morrison:** Management have decided to carry out a comprehensive review of the current policies, procedures and processes. This is planned to be part of the internal audit plan for the year 2015-16. This includes BDO. Management have decided to carry out a review of all land use agreements to ensure compliance with the agreements and compliance with the Aboriginal land rights act. We have in the order of 900 agreements afoot, and it is envisaged that this will form part of the internal audit plan for the year 2015-16.

As I alluded to before, management are reviewing the way royalty distributions take place and the potential for the establishment of a new royalty unit. An aged balance report is prepared and reported to senior management to assist officers in the timely distribution of funds. As we have alluded to, as it stands today, as required under the Aboriginal land rights act, there are no section 64(3) payments outstanding.

In terms of the category C issue, long service leave, the corrective action we are taking there is that a review of the payroll system is underway to determine the accuracy of long service leave balances. This is part of the actions of the accounting firm BDO as well. The category C issue is a new issue that was raised in the 2013-14 audit. Employees' leave balances had not been correctly maintained. What we are doing there is ensuring that payroll processing is reviewed by another payroll officer and spot-checked by another manager in the organisation—a HR manager. The land council is also investigating alternative payroll and HR information management systems.

In terms of the depreciation rates—category C—the corrective action that we are putting into place there is around the assets and their useful lives. Residual values will be reviewed in line with current usage patterns and available funding. The outcome of this review will be reflected in the financial statements for 2014-15, and our assumptions will be further reviewed by BDO as part of their engagement as well.

In terms of another category C issue around minutes taken of council meetings, the minutes are ratified at each meeting. I understand that the practice of signing the minutes has commenced during the recent rounds of regional council meetings.

Another category C issue is controls over purchasing and procurement. Weaknesses were identified—a log report can be produced to record changes to vendor master files. Credit card acquittals had not been processed in a timely manner throughout the year. What we are doing in terms of the vendor master files is that the audit log is reviewed and signed off for the finance manager on a monthly basis. In terms of credit card acquittals, under the NLC credit card policy, holders must acquit expenditure for the 10th of the following month. Where acquittals are not completed on time, the card is suspended. We have, in fact, suspended a number of cards in the previous month. The credit card policy has been reviewed and updated in the process of senior management approval.

That concludes the issues as raised by the ANAO and the steps that have been taken to rectify those matters.

**Senator SMITH:** That will be on the *Hansard*, but, on notice, would you review what you have just shared with me, and, if there are things in addition to that that demonstrate the improvements that you have made, I would be very, very keen to see them. In our discussion last time, much attention was given to the audit committee.

**Mr Morrison:** Yes.

**Senator SMITH:** I do not recall hearing the audit committee mentioned in your list of achievements or progress. What has been done to update the membership of the audit committee?

**Mr Morrison:** We have appointed a new independent chair of the audit committee—a chap by the name of Jon Webster, who is a partner in Allens legal firm in Melbourne and has a very strong corporate governance and accountability background. The audit committee has also since met twice, and we are in the process of filling the last independent position on that audit committee. We were hoping to have someone appointed by now, but that has fallen through. We are looking for one last independent member to make it three independents on the audit committee.

**Senator SMITH:** So that continues to be a key area of focus for you?

**Mr Morrison:** Yes absolutely.

**Senator SMITH:** As part of the response to questions I asked last time, you did make available to us the *NLC Management Action Plan 2013*. I just want to go to a couple of issues, if I may—specifically, the management action plan, which starts at page 4 and continues on pages 5, 6, 7 et cetera. In your evidence you just shared with us, you said you had taken some actions around conflict of interest and around minutes of meetings. But on page 5 of the management action plan, under 'Current issues identified', it says:

The process for addressing conflict of interest (COI) within NLC is not clearly defined.

Then it lists a variety of actions. It then has a column which deals with 'Action', and it lists a variety of actions. Then it lists the responsible officer and then it lists 'Timing'. But under the categories 'Performance measures' and 'Status', it is blank.

**Mr Morrison:** It was not part of that document, but we have another document here that outlines the progress in relation to those matters and the entire management action plan.

**Senator SMITH:** You have a more up-to-date document than the one that was provided on notice?

**Mr Morrison:** Yes.

**Senator SMITH:** That is good.

**Mr Morrison:** We have done a lot of work since.

**Senator SMITH:** That is very, very good. Let me just move to another issue for my own satisfaction. I am happy to take you on your word but I just want to be satisfied. In another matter that you raised in your evidence you talked about proper minutes of meetings being taken. Again, in the document, under 'Performance Measures' and 'Status', there is nothing recorded. In your updated document, under 'Performance Measures' and 'status', is there detail on progress that has been made?

**Mr Morrison:** Yes, there is.

**Senator Scullion:** I wonder if it may be of assistance, if we just give you a copy of the updated document.

**Senator SMITH:** Yes.

**Mr Morrison:** We can submit that as evidence.

**Senator SMITH:** I just wanted to satisfy myself that progress is being made. It sounds like progress is being made, so on that point I extend my congratulations. Finally, could you elaborate a little more on the external assistance that you have been given to improve the governance and the financial arrangements.

**Mr Morrison:** The governance and the financial management arrangements are interconnected. At the last hearings here in February, we started a conversation with the Department of the Prime Minister and Cabinet that afternoon. As I returned home, we immediately engaged an external accountant by the name of TKO, who has been providing advice in the process of getting on top of the outstanding ANAO matters. In terms of the governance matters, they will be part of the document that we submit. We are also looking at developing an action plan with the department this coming week for presentation to an Executive Council meeting on Friday of next week. There have been significant processes and procedures reviewed in light of the findings of those reviews that took place prior to my commencement and the last appearance here in February.

**Senator SMITH:** You will provide me with a copy of the updated document?

**Mr Morrison:** Yes.

**Senator SMITH:** Finally, there will be another audit office inquiry. Are you satisfied that you will be able to meet all of the requirements of that and avoid the situation that you had previously that gave rise to these inquiries from me?

**Mr Morrison:** My management team and I are absolutely determined to meet the time lines as required by ANAO audit. That is why we have engaged the accounting firm, BDO. We are also looking at another firm to do spot checks internally across the organisation.

**Senator SMITH:** You have appointed a firm or you are looking?

**Mr Morrison:** We are looking at appointing another firm, yes.

**Senator SMITH:** And will it be suitably independent?

**Mr Morrison:** Yes.

**Senator SMITH:** Mr Morrison, of course a lot of this hinges on your own leadership skill and, in your opening evidence, you made the point that you had been hired specifically with the task of improving the governance of the Northern Land Council. What have you been doing to ensure that your leadership skills and professional skills are the best that they can be?

**Mr Morrison:** Obviously, in terms of the actions internally around reforming and getting advice externally contributes to that. Also, having better relationships with the department has been a big part of that; having greater dialogue. I think it is fair to say that the relationship with the minister has vastly improved over the last few months. I think we are on track to meet a whole lot of these time lines and deadlines as imposed and is required under the PGPA Act and also the Aboriginal Land Rights Act.

**Senator SMITH:** Have you used any of your personal time to invest in any training?

**Mr Morrison:** Prior to my—

**Senator SMITH:** Sorry, training is probably not the right word: improve your skills?

**Mr Morrison:** Prior to my commencement at the Northern Land Council, I had been successful in being awarded a position as part of a Commonwealth leadership group that is convened by the Duke of Edinburgh. This course takes place once a year in London. I was successful in 2013 for the 2014 year. In my interview and

negotiation for the commencement of this position with the executive, and on advice from the HR management and signed off by the chairman, I undertook that course early this year.

**Senator SMITH:** So you applied in 2013, were awarded it in 2014—

**Mr Morrison:** I deferred it for a year, sorry.

**Senator SMITH:** You deferred it and then you participated in the leadership course this year, in 2015.

**Mr Morrison:** Yes.

**Senator SMITH:** That was a Commonwealth sponsored leadership course.

**Mr Morrison:** Yes.

**Senator SMITH:** Here in Australia?

**Mr Morrison:** No, it took place London.

**Senator SMITH:** In the United Kingdom. Fair enough. What was the cost of that? How long was the course and what was the cost of the course?

**Mr Morrison:** The overall cost of the course was in the order of \$25,000. I was awarded a scholarship which paid 90 per cent of that, and the Northern Land Council contributed to travel and obviously my time and airfares to that course.

**Senator SMITH:** How long was the course?

**Mr Morrison:** It went for seven days.

**Senator SMITH:** Seven days? So you were away for seven days.

**Mr Morrison:** Yes.

**Senator SMITH:** Thanks very much, Chair.

**CHAIR:** Mr Morrison, just from my point of view, I thank you for your evidence; it was frank, to the point and very positive. Any other questions? Senator Peris?

**Senator PERIS:** Mr Morrison, your position as a CEO—how long is that position for at the Northern Land Council?

**Mr Morrison:** I am contracted for three years.

**Senator PERIS:** After three years, are you automatically renewed? What is the process?

**Mr Morrison:** No, I have to be performance assessed by the executive. At their satisfaction and will, I will hopefully be offered a new contract.

**Senator PERIS:** So your executive underneath you, how many members does that consist of?

**Mr Morrison:** It comprises nine. That is one from each of the seven regions of the Northern Land Council, plus the chair and deputy.

**Senator PERIS:** How were those executive members appointed? Are they appointed or elected?

**Mr Morrison:** They are elected.

**Senator PERIS:** How are they elected?

**Mr Morrison:** Communities throughout the Northern Land Council are asked to elect members to the Northern Land Council's Full Council. The Northern Land Council's Full Council comprises 78 elected members plus five co-opted women—so 83 in total, but 78 elected. They are elected by the communities across the Top End of the Northern Territory. Once they are elected and become members, they then elect an executive. They also elect the chairman and the deputy chairman through an election process.

**Senator PERIS:** So it is a democratic process.

**Mr Morrison:** Yes.

**Senator PERIS:** They are voted in by the community, who are members.

**Mr Morrison:** Yes.

**CHAIR:** That is all?

**Senator PERIS:** Yes.

**CHAIR:** Any other questions for the Northern Land Council?

No. Thank you again for your attendance today. It was greatly appreciated.

**Mr Morrison:** Thank you.

**Tiwi Land Council**

[09:25]

**CHAIR:** I welcome Mr Brian Clancy, the Acting Chief Executive Officer of the Tiwi Land Council, and other officers. Mr Clancy, do you wish to make an opening statement?

**Mr Clancy:** Andrew Tipungwuti may make an opening statement.

**CHAIR:** Please do.

**Mr Tipungwuti:** We just want to thank you for the opportunity to be here today and to explain briefly the processes of how we go forward with the Tiwis.

**Senator PERIS:** Thank you for appearing today. Mr Clancy, the 2013-14 annual report of the Tiwi Land Council states on page 9 that Mr Hicks was given a 10-year contract in 2005. Given that it is now 2015, what is Mr Hicks's current employment status with the Tiwi Land Council?

**Mr Clancy:** Mr Hicks is on leave. Over the years he built up a number of months leave. His leave officially finishes at the end of June. I am currently acting in the CEO position until then.

**Senator PERIS:** Has Mr Hicks received any benefit or extra payment from the Tiwi Land Council, including any associated entitlements?

**Mr Clancy:** He received whatever was in his contract as part of his entitlements.

**Senator PERIS:** The Tiwi Land Council annual report 2013-14 states on page 56 that the Tiwi Land Council pays \$1,300 per week for a property at 5 Benson Court, Knuckey Lagoon. Mr Clancy, who currently lives or resides in that property?

**Mr Clancy:** Our legal and accounting staff work from the Knuckey Lagoon office. We also keep all our records there; it is a very secure location. We are currently working with the department—we are keen on trying to purchase it. We have lots of businesses in Darwin that help with the Tiwi Islands, and we need a secure location for all our records. It is a very secure place to have all that information.

**Senator PERIS:** Where is the current Tiwi Land Council office at the moment?

**Mr Clancy:** We have one at Knuckey Lagoon, and the headquarters is at Pickertaramoor on Melville Island.

**Senator PERIS:** Can you provide a list of names of the current members of the Tiwi Land Council?

**Mr Clancy:** The 40 delegates?

**Senator PERIS:** Well, yes. I guess that goes to my next question: why are the current members not listed in the most recent annual report?

**Mr Clancy:** I would have to check that out. If that is an issue, then we can certainly include it in the next annual report. I am sorry, this is my first time at Senate estimates, so I apologise for being a bit nervous and a bit toey.

**Senator PERIS:** That is all right.

**Senator Scullion:** Mr Chair, the witness may not be aware that, if you do not have it to hand, it is okay to perhaps take it on notice. The convention is that, if you can get it today, during the process, that is obviously better. But if you cannot, if you need to provide it on notice, that is part of the convention.

**Mr Clancy:** We could certainly provide that information.

**Mr Clancy:** We could similarly provide that information.

**Senator PERIS:** Are you able to provide it today if you contact your—

**Mr Clancy:** Yes, certainly. Am I able to email it to someone?

**CHAIR:** What you are able to do is to table the document and send it through to the secretary, and that can be provided to senators as necessary. Your best endeavours are always appreciated.

**Mr Clancy:** Thank you.

**Senator PERIS:** The election of members to the Tiwi Land Council: is that done in a transparent and democratic manner?

**Mr Clancy:** For this question I might ask Mr Tipungwuti to explain the processes involved in that. Is that okay?

**Senator PERIS:** Yes.

**Mr Tipungwuti:** Thank you for that question. The election process of the land council has been a tradition of the elders to hand down. As elders have retired, they have sourced their successors through their family clan groups and those people have been nominated on to the land council. As people move on that process continues on as a tradition of the land council and the Tiwi people.

**Senator PERIS:** That tradition obviously differs to the Northern Land Council, where their tradition is being democratically elected by the members. Is that in the handbook, how you describe the process for executive members being elected?

**Mr Tipungwuti:** I am not sure what the Northern Land Council has in its processes, but certainly with the Tiwis it has been a process traditionally handed down. It has always been that men are in control of what happens out on the land. In saying that—and this would probably lead to a question down the path—with women being on the land council, it is a process that the elders have tried to take on board but certainly the women have taken a step back and said, 'No, that's a traditional men's thing'. With other formal committees around the islands with regard to their clan groups, there are certainly a lot of women who dominate that.

**Senator PERIS:** You are saying that it is a traditional set-up that the positions of the executive members are inherited; you pass it on. So you could have elected members who have been there for 10, 15, 20-plus years?

**Mr Tipungwuti:** Sadly, most of our elders have passed on and there are a lot of new members now. In our executive, for instance, there is no-one over 35 on that. That is a good change for us because it is bringing up the younger leadership through the council.

**Senator PERIS:** But they are not elected by the people of the Tiwi, so to speak?

**Mr Tipungwuti:** No, it has been a handed down tradition by elders who have retired. So as those younger people have come on, the full land council discussed and unanimously nominated these younger guys to participate in the forward direction of the land council.

**Senator PERIS:** So your executive members then appoint the CEO?

**Mr Tipungwuti:** Yes.

**Senator PERIS:** So the CEO is not democratically elected; he is appointed by the executive members. Regarding the agreement to lease the framework between the Land Development Corporation, an arm of the Northern Territory government, and the Tiwi Land Council that was signed in December 2014, can you explain the terms of this lease?

**Mr Clancy:** You are talking about the Tiwi Islands Development Framework agreement?

**Senator PERIS:** Yes.

**Mr Clancy:** Tiwi are very forward thinking people. A lot of development is happening on Melville Island—forestry at Port Melville. There has not been a lot of development on Bathurst Island, other than township leasing, over the years. A lot of the Tiwi traditional owners who are based at Wurrumiyanga, the main community on Bathurst Island, are very keen to move back to their country. There are cut backs on outstation funding and all that sort of stuff, and they have worked out that the best way to be able to move back to your country and take your families and stuff is if there is an economic reason to be able to do it. So if there is some sort of economic development in their country, then there is an opportunity for them to go and work their own land. There is potential for Ranku, for example, which is on the western side of Bathurst Island, to grow and be a hub. There is a small school there that could be reopened once there is an economic reason for the community to grow. The idea for this agreement, which is not—people jump at shadows and say leases are signed and everything. No leases have been signed. What happened was that in August 2013 the Land Development Corporation issued an advance payment of \$1 million.

**Senator PERIS:** Who gave you that? The Territory government?

**Mr Clancy:** The Land Development Corporation.

**Senator PERIS:** What was that in exchange for?

**Mr Clancy:** This was for Tiwi plantations. You may have some questions later about Tiwi plantations. We are due to start harvesting on 17 June. Plantations were struggling because until there is an income coming through the port was not ready to take the chip and so there was a delay. The plantations were after a hand up, so the LDC came to the party with Tiwi assistance. That \$1 million went through Tiwi resources to Tiwi plantations, to make sure we can get the harvest, because the harvest is for the benefit of all Tiwi.

**Senator PERIS:** With that \$1 million, you said it went into development. Was that for wages or for equipment? What do you mean?

**Mr Clancy:** It went to Tiwi Plantations Corporation.

**Senator PERIS:** That is an extension; it is a business arm of the Tiwi Land Council.

**Mr Clancy:** No. The Tiwi Land Council is a statutory body of the federal government. We cannot get directly involved in businesses or anything, but certainly our job is to assist traditional owners. Their vision for years, for three decades, has been the forestry project. Okay, it has taken a long time to come to reality, but it is almost there and it needed a hand-up. The Tiwi Plantations Corporation is an independent corporation with its own directors and its own processes, so that funding went to them to help them bring the plantations to harvest. What it was spent on exactly would probably be a question for Tiwi Plantations Corporation.

**Senator PERIS:** Do they then give you, in their evaluation, a report on the expenditure of that money? Is that a requirement for the Tiwi Land Council to ask these business arms?

**Mr Clancy:** We work closely with these independent businesses. They provide information if we request it, but it is done through their—they have got their own processes and their directors. The \$1 million was an upfront payment, which will be recouped a bit like how the township leasing upfront payments were. That will be recouped through forestry once they come to harvest.

**Senator PERIS:** Do you have to pay that \$1 million back?

**Mr Clancy:** Back to LDC, yes.

**Senator PERIS:** The \$1 million was for a lease of 10,000 hectares on a 99-year lease in exchange for that \$1 million.

**Mr Clancy:** That is incorrect. No leases have been agreed. This is a Tiwi development framework about the rules of how we may do business into the future, but as you know we have the Land Rights Act. Before any leases can be agreed we have to go through that whole process of consulting and getting approval, but this will allow potential investors to come and meet with the traditional owners. We have to do our due diligence and all that sort of stuff to make sure that whatever business—so we will help traditional owners in that decision. But the bottom line is they may say no. The proposal may add up, but the traditional owners might turn around and say, 'No, we don't want to do it'—and that is fine.

**Senator PERIS:** Everything that you do in terms of the forestry and the port, this first and foremost has to have traditional owner consent, and you act on behalf of the traditional owners?

**Mr Clancy:** Correct.

**Senator PERIS:** Under the land rights act, a number of statutory requirements need to be met before leases can be granted, but you are saying there were no leases?

**Mr Clancy:** That is right; no leases have been granted.

**Senator PERIS:** Are you aware of the statutory requirements?

**Mr Clancy:** Yes.

**Senator PERIS:** Are you able to inform the committee?

**Mr Clancy:** I have not got it in my head.

**Senator PERIS:** Perhaps I will read it out: 'a subdivision approval under the planning act for a lease in excess of 12 years; compliance with the statutory requirements with the Aboriginal Land Rights (Northern Territory) Act require the Land Council to consult with relevant traditional owner groups and make sure, as a group, they understand the proposal and agree with it, and the provision of a direction from the Land Council to the Land Trust into this lease.' If I could then go onto the port. When was the lease for the port signed?

**Mr Clancy:** The head lease for the port was signed in 2004.

**Senator PERIS:** How long have you had a contract with the current sole trader—not the trader, the owners of the port—for the new port?

**Mr Clancy:** The 2004 lease was a head lease to Port Melville Pty Ltd, which is an independent Tiwi-owned company. For those senators who are not aware, we have eight landowning groups on the Tiwi Islands, and the shareholders of Port Melville Pty Ltd—there is one representative from each of the eight landowning groups. That was the head lease back in 2004, and that was the 30-year term with a further 30-year option. In between then and 2010, we have had Great Southern Plantations, who were operating the port for a bit. In 2010, Port Melville Pty Ltd entered into a sublease with the current proponents.

**Senator PERIS:** What is the monthly lease payment that is received?

**Mr Clancy:** I can only talk about the head lease. The sublease payments are a deal/contract between Port Melville Pty Ltd and the current proponents.

**Senator PERIS:** Port Melville—that is your business arm off the Tiwi Land Council?

**Mr Clancy:** Again, we are a statutory body; we are not allowed to go there.

**Senator PERIS:** You are not allowed to have any. That is with who—who is the sublease agreement with? Port Melville?

**Mr Clancy:** The head lease was between the Tiwi Land Trust and Port Melville Pty Ltd back in 2004, and then Port Melville Pty Ltd entered into a sublease with Ezion, who are the current operators of the port. That is between Port Melville Pty Ltd and Ezion—the sublease.

**Senator PERIS:** The land council negotiated that lease on behalf of the traditional owners?

**Mr Clancy:** We assisted the traditional owners in that process.

**Senator PERIS:** If you have negotiated something on their behalf, would they have access to be able to see the terms of the lease?

**Mr Clancy:** They would need to make that request to both Port Melville Pty Ltd—there may be commercial-in-confidence stuff—and Ezion, the current proponents.

**Senator PERIS:** With the payments that are received through that sublease, who do they go to?

**Mr Clancy:** That is done through Port Melville Pty Ltd.

**Senator PERIS:** Where do they make those payments to?

**Mr Clancy:** That is probably a question for Port Melville Pty Ltd, I would think.

**Senator PERIS:** Will they make it to Port Melville Pty Ltd?

**Mr Clancy:** The current operators would make that payment, yes.

**Senator PERIS:** How is it dispersed into the trust?

**Mr Clancy:** That is a question for Port Melville Pty Ltd. I do know that—and I hope I am not speaking out of turn—there has been things like when people go down to Adelaide for heart operations, Port Melville has helped with that. I know in the early days of the Tiwi College, Port Melville assisted with that stuff.

**Senator PERIS:** But it does not go into a trust; it goes to Port Melville?

**CHAIR:** I guess, Mr Clancy, if I may assist Senator Peris, who are the shareholders of Port Melville will determine how Port Melville distributes any funds—is that right?

**Mr Clancy:** That is right.

**CHAIR:** Who are the shareholders at Port Melville?

**Mr Clancy:** We have got eight members representing each of the eight landowning groups, but it is not the land council.

**CHAIR:** If there was a distribution from Port Melville, it would go to the respective shareholders. It may be that Port Melville just offers support to a community as part of the thing without paying a distribution. It is entirely up to them how they spend their money—is that right?

**Mr Clancy:** That is right, exactly.

**Senator PERIS:** I have got minutes from one of your meetings that says it is \$31,667 per month that is paid. That sublease is worth \$380,000.

**Senator Scullion:** I just wonder if you could clarify which meeting that was. This is the Tiwi Land Council here. You should be asking questions of the Tiwi Land Council rather than some other entity.

**Senator PERIS:** That was the Munupi family meeting No. 20, 16 October 2014.

**Senator Scullion:** Is that a land council meeting?

**Senator PERIS:** It was a land council meeting with the Munupi people. I am happy to table that.

**Senator Scullion:** I am not questioning it. I am just seeking some clarification so that they can understand the question.

**Mr Clancy:** The issue is these payments are Port Melville Pty Ltd. I do not know if it is appropriate here to—no, we have got nothing to hide. The forestry and the port—and there are some out people out there saying, 'Where's the money?' For example, there is no income from forestry until you actually cut the chip and get rid of it at the port, and the port is not operating yet. Port Melville Pty Ltd are an independent company.

**Senator Scullion:** It may be useful, perhaps, to explain to the witnesses that they are representing the Tiwi Land Council. Whilst I know they are being as helpful as possible about other matters, as representatives of the Tiwi Land Council they do not have to answer questions about Port Melville Pty Ltd.

**CHAIR:** Thank you, Minister. I cannot pretend that I understand all the intricacies about how these things are working; others do that much better. It may facilitate things, Mr Clancy—if you are unsure about whether it is appropriate for you to take the question or not, and the advice may not be forthcoming from elsewhere, you may undertake to take some questions on notice to the extent that you are able to provide the answers. It may be that you are able to get the answers very easily—maybe not today, but at a later time—or you may come back and say, 'I'm really sorry, it has got nothing to do with us.' You might need to get some external advice in that respect. Not to stonewall Senator Peris; I think you have been very helpful. There is a blur of responsibility here.

**Senator PERIS:** That lease is not with the Tiwi Land Council, it is with Port Melville Pty Ltd?

**Mr Clancy:** Yes, the head lease is with the Tiwi Land Trust to Port Melville. Port Melville then sublease to the current operators, Ezion.

**Senator PERIS:** Current executive members, including staff of the Tiwi Land Council—is it a conflict of interest for any of those members to be shareholders or directors of business arms, people doing business on the Tiwi Islands?

**Mr Clancy:** At all our meetings we ask when we come across things, if there is a conflict of interest. And people at a particular time might say, 'I've got a conflict of interest with that particular thing. I might have to get some legal advice on that.'

**CHAIR:** But you follow established corporate governance principles about declarations of conflicts of interest, and individuals disqualify themselves from appropriate discussions?

**Mr Clancy:** Our members do the pecuniary interest register thing. Chairman just reminded me that, if there is a conflict of interest, sometimes the member will leave the room while we are discussing something.

**CHAIR:** Which is appropriate.

**Senator Scullion:** Could I just say, if it assists, Chair, I am aware of the arrangements in the Tiwi Islands, but I can say that they are consistent with arrangements and declarations. For example, the CEO of the Central Land Council, Mr David Ross, is on Centrecorp, a significant investment arm of—as long as there is a declaration, I understand that they have a declaration process. And perhaps, without verballing you, Senator, you are asking, 'Do you have that thing in place?' Perhaps you could provide those processes on notice. But I am aware that, across all of the land councils, there are mechanisms. Most of the land councils actually have those, because the leadership is also involved in other business arms after they have leased this out. They are also traditional owners, and there are conflict of interest processes that I know well from the other land councils.

**Senator PERIS:** I want to go onto Port Melville. As you would be aware, there is widespread community support for Port Melville facilities—put that on record. But, having said that, there have been recent reports regarding the lack of environmental impact statements for the new development. Does this concern the Tiwi Land Council?

**Mr Clancy:** That is a good question, thank you, Senator. The Tiwi Land Council's core business is looking after the land and the sea—that is our No. 1 priority. The leaders in the past, and followed up by our young guns coming through today, have always been about using 10 per cent of their land for economic development. Environment is key—and I have got a list here, which I do not think you want me to read out, of the different awards that the Tiwi Land Council has won over the years. We are in for another—we are shortlisted for an award this year. But the vision of the Tiwi is really very clear: look after your land, look after your environment, but use up to 10 per cent while doing that; still use up to 10 per cent for economic development. And the governments of all persuasions these days are all asking: how do we fix up Indigenous disadvantage? And it is about economic opportunities, employment and all that sort of stuff. Andrew Forrest is doing magic stuff with the stuff that he is doing., but we are all Johnny-come-lately people. The Tiwi Land Council for decades—and you go back 30 years of the land council and go through the minutes—have had the answer. How do you solve Indigenous disadvantage? It is jobs, jobs, jobs.

**Unidentified Speaker:** Here! Here!

**Mr Clancy:** If you have got a job, your kids are never hungry; your fridge is always full; and you can afford to buy a car and a boat to take your kids out to your country. You feel good about yourself, because you know you are looking after your kids and your family. With all the stuff that comes with working and providing for your family—and we are lucky—the Tiwi Land Council's vision of the leaders in the past and carried on now: we

have got job opportunities. Forestry is just coming online. Port Melville is coming online. Township lease—and we copped a bit of a hiding when Walter Kerinaia did the deal with the township leasing—is providing opportunities, employment opportunities, and that is the answer—we all know it.

But in terms of the environmental stuff, this is front and centre. Their land is who they are. Andrew spoke before about how, traditionally, land is based on your father. Whoever your father is, you get his area—one of his eight land-owning groups, plus you get his dance. From your mother, you get your skin group and who you can marry, relationships, and how you sort out any arguments or fights, which is just as important as which land group you are in—but they are different roles.

You asked me before about elections. The Canberra world view is different to the Tiwi world view. How the Tiwi do business is based on culture and tradition. But there are some things that are exactly the same. Tiwi parents and grandparents, like we have got here, want exactly the same thing for their kids and their grandkids as any of us do—a good education, safety.

**Senator PERIS:** I agree.

**Mr Clancy:** I am transgressing, I guess. I am on a rave, sorry.

**Senator PERIS:** You are preaching to the converted. The reason we are asking these questions is that I am a senator for the Northern Territory and I have concerns through my constituents about all the development that is happening. I want to put it on the record that the Tiwi people are not opposed to development, but they are opposed to things happening without being fully informed and given full consent of what is happening. You have been speaking about jobs and opportunities. Does the Tiwi Land Council have an employment strategy that has been given to the Tiwi people on what opportunities there are in the forestry and in the port. Is it something that you have taken on board? You talk about a vision and all that sort of stuff. Have you done one? Also, have you done a social impact study? These are concerns that have been raised with me by the people of the Tiwi.

**Mr Clancy:** The way the land council has set it up to assist traditional owners is to set up their Tiwi plantations corporations, for example. They have their own employment strategies. The Tiwi Land Council does not directly micro manage all this sort of stuff. The old leaders of the land council have got the vision. They have got the Tiwi plantations, for example. There is a Tiwi owned company, and they have got their own employment strategies and all that sort of stuff. We are nowhere near where we need to be, so a lot more work has to happen in it. We have been running on the smell of an oily rag in terms of trying to get these businesses up and running. We are almost there. I was told yesterday that they will start the first harvest, cutting the trees down, on 17 June. So we are almost there. Those companies have put in their employment plans.

The other thing that the land council have done, which Andrew spoke about before, is that we have got eight land owning groups, and I think probably about five of them have set up their own proprietary limited company or organisation. There are lots of women, as Andrew said, on those committees. Those companies are effectively the business arm for those traditional owners, and they make business decisions. I know that where the port is there is lots of work, and we are working continually with the Munupi people and talking to them all the time, because there are opportunities that they will be able to access.

**Senator PERIS:** With the business side of things, you are saying that it is up to the Munupi people, those traditional owner groups, to come up with their business plan or their employment strategy; it is not up to the Tiwi Land Council.

**Mr Clancy:** We will assist them where we can and when opportunities come across our table. It is not for us to enter into a business to buy a bus or something, but if it is up in a particular area we will say: 'Okay, you need to take that proposal to Mantiyupwi'—which is the chairman's area. 'You need to take that to the Mantiyupwi Pty Ltd, and they will work up the business from there.'

**Mr Tipungwuti:** Can I just add that in regard to the Munupi people, who are traditional owners for where Port Melville is, they have got some great ideas with their own jobs planning and development strategy. We have got to keep in mind as well that the port itself was thought about 30-odd years ago when the elders were around. Sadly, we did not have the education tool for our younger people to take on these jobs, and it is still the case today. We just cannot go and facilitate for the wrong reasons that someone should get a job. It is all about training. You have got to do your training and get your qualifications. Come and see us, present that and show us your commitment, and then you will get a job. It is as simple as that.

**Senator PERIS:** We are talking about the harvesting. Mr Clancy, you were saying you are expecting your first lot of harvesting in June?

**Mr Clancy:** I start cutting the trees down in June.

**Senator PERIS:** Do you have a buyer, because I know that you entered into a memorandum of understanding with Mitsui last year?

**Mr Clancy:** The Tiwi Land Council does not have a buyer, but the Tiwi Island Plantations Corporation—

**Senator PERIS:** Do Tiwi plantations have a buyer at the moment?

**Mr Clancy:** My understanding is that they do, but that is probably a question for Tiwi plantations, I would think, and the people they are dealing with. That could be commercial-in-confidence stuff. It is probably not—

**Senator PERIS:** We do not know whether your exports are going to occur yet?

**Mr Clancy:** As a land council, our information is that, yes, this is going to happen, but I probably cannot go into detail.

**Senator PERIS:** It is going to happen, but you are not sure 100 per cent if you have got an exporter, a buyer, as yet?

**Senator Scullion:** That should be unsurprising as this is the Tiwi Land Council. They are not cutting down trees. They are not exporting trees. They are not in a business venture with anyone. It is not reasonable to ask them to answer questions about another organisation.

**Senator PERIS:** Is the Tiwi Land Council aware of any environmental concerns regarding the port?

**Mr Clancy:** Yes.

**Senator PERIS:** With regard to the fuel storage facilities that you have got there, are there any environmental concerns that have been given to you around the—

**Mr Clancy:** The proponents are going through all the processes with the NT EPA and EPBC—whatever it is down here in Canberra. They are going through that process and they will have the plans and all the strategies in place to deal with that.

**Senator PERIS:** Has the Tiwi Land Council been briefed on all potential for the facilities to be used by US Marines or any other US military organisation?

**Senator Scullion:** Mr Chairman, I wonder if you could rule on the question. They are asking the Land Council whether or not they have been briefed about the use of land that has already been leased out and subleased in some cases. I am quite happy for them to provide the information, but, again, we are talking about whether or not a particular piece of land may be used by the US Marines and whether you have been briefed by that. I am not sure why it would be the case that they have been or have not been briefed. Again, the questions are coming from a position as if the Land Council would still be in some sort of control of the land or there would be some sort of obligation—

**CHAIR:** Minister, I take your point. It is one you have made repeatedly. I do have to agree that, ultimately, if a piece of land is under a lease or a sublease, questions about usage and things should be directed to the leaseholder. I would remind you of that, Senator Peris.

**Senator SIEWERT:** All Senator Peris asked—I would have thought it was a fair question to ask—was: have you been briefed? It is a pretty important issue and the council has a pretty central role in the life of the Tiwi Islands. I would have thought it is a fair question to ask: have you been briefed?

**CHAIR:** The question has been asked and, indeed, it may be a fair question. I have just reminded Senator Peris that questions should be directed to the Tiwi Land Council about their business rather than the business of third-party entities, on what they are doing on land or what they are doing with lease agreements and things of that nature. It may be that Mr Clancy is in a position to answer that question. It may be that he is not and he wants to take it on notice. It is entirely up to him.

**Mr Tipungwuti:** Senator, we might take that on notice because we have been briefed on that in part, not to the full extent. We want to be sure exactly.

**CHAIR:** You have answered the question: you have had a partial briefing on it. That is sufficient, thank you.

**Mr Tipungwuti:** With regard to that partial agreement, if you would really like to know, once the port gets to a development stage and through the processes, there is going to be opportunity for any vessels floating around the Tiwi Islands to pull in a fuel up.

**CHAIR:** Thank you. Senator Peris. Can you give us the background to that? What consultations were done?

**Mr Clancy:** We had been working with the NT government probably back from when the Blue Mud Bay thing happened, so over a number of years. Back in December last year, after consultations with the communities and with traditional owners—I have not got the details here but I am happy to take that on notice.

**Senator PERIS:** If you are able to provide the details of that lease: how long it is for, what benefits the Tiwi people get. If you are opening up waterways, I would assume that the Tiwi Land Council would monitor what is coming in and out. I know the Tiwi Land Council has strict liquor licencing. If you are able to take that on board and the method of consultation.

**Mr Clancy:** Thank you, Senator.

**CHAIR:** Any further, Senator Peris?

**Senator PERIS:** Yes, just going back to what you were talking about just previously—what responsibility do you, as the Tiwi Land Council, take with matters representing the traditional owners of leasing? Is there any more oversight? You are saying that the proponents deal directly with the companies?

**Mr Clancy:** With the subleasing.

**Senator PERIS:** Subleasing, yes.

**Mr Clancy:** My understanding is that our role is to facilitate and assist the traditional owners, if they decide to do a lease. The case in Port Melville—we did the headlease back in 2004 to a Tiwi owned company, Port Melville Pty Ltd, and then it is up to their business for any subleases. As part of the rules of the Land Rights Act, we will need to follow that to the law, and we are pretty good at that, I think.

**Senator PERIS:** One final question, Chair. You are saying that the traditional owners of country, whose business is being done on their land, can go directly to the proponents to ask for details around lease arrangements. They do not have to go through you—can they go directly and ask? You said it was commercial-in-confidence, but business is being done on their land. They want to know what agreement has been reached.

**Mr Clancy:** We have advised some people who have asked that question. The land council has advised them: if it is Port Melville, for example, they need to go to Port Melville company and the current operators for those details.

**Senator PERIS:** In your duty as the peak body for traditional owners, do you then go in and support them to ensure that they are able to get as much information as they request and require to know what lease arrangements have been reached?

**Mr Clancy:** The issue is that, if there is commercial-in-confidence stuff, that is matter between those companies. There might be legal reasons why not all the information can be given.

**Senator PERIS:** With the Port Melville Pty Ltd, if they are operating on traditional owners' land—explain how this has come into fruition. If it is done on Manupi Land, is it up to them to go and say, 'Yes, we want to do business on the land?' Who sets up that business arm to then enter into an agreement with the proponents?

How do those people on whose land business is being done benefit? Like you said, we want to be able to allow the people to be part of economic development and progress and have a good future for their kids. How do they then benefit? What extends to those people?

**Mr Clancy:** For Tiwi Islands there is one trust. Tiwi Islands is owned in trust by the Tiwi Land Trust. There are eight groups within that trust and within the eight groups there are subgroups. Manupi, for example, has probably got four or five different subgroups. This agreement that the land council did with Port Melville was 11 years ago. There is currently some financial benefit going to the traditional owners in that area. We envisage that will be significantly increased once the port and forestry are operational, but the real benefit for these things is, potentially, whether they need a transport bus service—there is currently talk about that—and whether a laundry service is needed. This is an opportunity for that traditional owner land group to put in for those contracts and manage those contracts. There are financial opportunities that will come, there is employment on the port and in forestry as well, and the individual groups where that business is will also have opportunities that lead off it.

**CHAIR:** The Tiwi Land Trust granted a lease to Port Melville Pty Ltd. Does it receive a lease payment for that annually?

**Mr Clancy:** Yes.

**CHAIR:** So there is a benefit to the land trust directly?

**Mr Clancy:** Yes, that is right. Those funds go directly to those landowners in that area, through their company.

**Mr Tipungwuti:** If I might add. The other opportunity is that the port is within the leased boundary, with easy onshore and offshore logistics. Outside that there is a 130-man camp that the sublessee has developed, and they are offering opportunities of hospitality, whether the landowners want to get on board and do the laundry or the catering or the bus service picking up workers—those opportunities are there.

**CHAIR:** A whole range of flow-on effects come out of the commercial operations.

**Mr Tipungwuti:** It is up to the landowners to put in a proposal to the sublessee and say: 'This is what we want to do. Can we have that opportunity?' Of course they will, because they are the landowners. There are no problems there.

**Senator PERIS:** With regard to the sublessee, the business side of things, how are they awarded? How do they get this contract of the business over what you are talking about, the traditional owner groups?

**CHAIR:** Once again, I come back to this and remind you that the sublessee has a deal with Port Melville Pty Ltd, and it is not the responsibility of these officers to provide information about the operations of Port Melville Pty Ltd and their dealings with another third party.

**Senator PERIS:** I understand. But their statutory obligation is to fully inform the traditional owners of the area.

**CHAIR:** Their obligation is that they have granted a lease to Port Melville Pty Ltd, and how Melville Pty Ltd determine how they want to engage in commercial contact is a matter for them. It is not a matter for the Tiwi Island's council. That has become very clear from the evidence today.

**Mr Clancy:** I am happy to table and leave copies of a newsletter, *The Tiwi*, that we produce every couple of months. We have put together for the last four years all the information specifically about the port. We print off nearly one for every two people. It also goes up on *The Tiwi* online. There is one for the port and there is one for the forestry, just so people are aware of part of our communication strategy and consultation. Some people say we do not tell them anything. We have got four years of *Encyclopaedia Britannica* here.

**CHAIR:** Perhaps you could table that for us, Mr Clancy; it would be appreciated if you could leave some copies. Are there any further questions?

**Senator PERIS:** I just wanted to also put on the record that I understand that, yes, you do provide Facebook and your newsletters, but, my understanding is, you have reached a point, and then that is when people are up in arms and saying, 'How have you reached this without first all the other consultation?' So, if you are going to table that, I will also table some letters that have been written to you, to the Land Trust saying that they have not been fully informed, and signatures from the Munupi people.

**CHAIR:** Are there any further questions? No? Mr Clancy, how long does it take you to travel to Canberra? Just briefly.

**Mr Clancy:** We went via Melbourne. From Tiwi Islands to Darwin to here, it is probably eight to nine hours.

**CHAIR:** So it is a fair trip. I appreciate you making the journey, and we are very grateful for it. Thank you for your evidence. Yes, Mr Farmer?

**Mr Farmer:** I am the chairman of the Tiwi Land Council. What we are doing up in the Tiwis is: we are working for our people and our children. We are not hiding anything. We are being honest. That is the message I want to leave behind here.

**CHAIR:** Thank you very much.

**Mr Farmer:** I do not want to come back here again. I have got to travel a long way.

**CHAIR:** You do want to, or you do not want to?

**Mr Farmer:** No, I do not want to.

**CHAIR:** You are not the only one to say that, Mr Farmer!

**Mr Farmer:** We have been on this; we are not hiding anything. That is what I wanted to let you guys know.

**CHAIR:** Thank you very much. It is appreciated. The committee will now suspend and resume at 10.30 with the Office of Township Leasing.

#### **Proceedings suspended from 10:16 to 10:31**

#### **Office of Township Leasing**

**CHAIR:** The committee will resume. We are dealing with cross-portfolio Indigenous affairs matters and will now move to the Office of Township Leasing. Mr Roche, would you like to make an opening statement?

**Mr Roche:** Good morning. Yes, I would like to make a short opening statement. I would like to provide the committee with an update on the work that my office and I have been undertaking since my last appearance here. As you might recall, the township lease model has been designed as a form of individual property rights, which can drive economic development and give community members the choice of private home ownership through a clear, transparent and efficient land administration system on Aboriginal land in the Northern Territory. The

model, without affecting the underlying status of Aboriginal land, provides efficiency, transparency and certainty for individuals, businesses and lending institutions in particular.

As part of my role to facilitate economic development and assist for those who wish to avail themselves of private home ownership, my office and I have been working very closely with the Northern Territory government Department of Housing to finalise the procedures to facilitate the sale of public housing for those families who wish to purchase their own homes under the Northern Territory's Remote Home Ownership Program. I am pleased to advise the committee that this work has now concluded and the Northern Territory Department of Housing has agreed to formalise the arrangements, and we are now working with the families who may wish to avail themselves of this opportunity.

The township leasing model provides certainty for security of investment through the efficient dealing in land such as transfers, whether acquired by sale but also recognising the rights for access by mortgages. This is undertaken in a culturally inclusive manner by which traditional owners provide valuable advice to me through a consultative forum mechanism and within the framework of the township lease provisions. All consultative forums in each of the townships have been enthusiastic about their business entities investing in their own communities or attracting suitable developers. You heard in the evidence just before the break of some of those organisations on the Tiwi Islands.

I have previously stated to this committee there are issues with working with financial lending institutions to ensure that perceptions about problems with tenure do not inhibit lending opportunities for suitable developers. This work, in particular with the larger banks, is progressing well. Noting that I have no role in negotiating township leases, my office and I do however provide technical information to traditional owners, who may during the negotiations or prior to the negotiations request information on how a township lease operates. There are two townships which are currently the subject of leasing negotiations—one of those is Pirlangimpi, the last remaining township on the Tiwi Islands not covered by a township lease, and Gunbalanya in Arnhem Land.

My office, at the request of both traditional owner groups, has provided regular information of particular interest, particularly about how the consultative forum operates and about helping to identify economic development opportunities.

Recently the Pirlangimpi traditional owners requested that my office provide information to a wider stakeholder group, in particular businesses and other organisations in the community. The Gunbalanya traditional owners also requested further information during the final stages of their negotiations with the Commonwealth.

The issue of unwelcome visitors and the operation of trespass orders in the Alice Springs town camps has been of particular concern to me for some time and particularly in the light of recent tragic events there. The Alice Springs consultative forum members and I have raised the issue again with the Northern Territory government and recently there have been some encouraging indications of movement on how the trespass orders in particular can be improved and I am hopeful that we will see a resolution in the very near future.

Finally, I am also pleased to report that all the consultative forums continue to be very engaged in the discussions on the future of their communities. We had a meeting of the Ranku Consultative Forum, which had 56 traditional owners and their families present, which was considerably larger than the population of Ranku itself. They were a very enthusiastic meeting which discussed how economic development at Ranku can be stimulated and in particular also how services such as education and health can be improved. Thank you, Chair.

**CHAIR:** Thank you, Mr Roche.

**Senator McLUCAS:** Thank you, Mr Roche. In fact your opening statement has answered some of my questions. Were you invited by the Munapi people to discuss township leases with them? When I say 'you' I mean the office.

**Mr Roche:** The office—we have played a role. The Munapi negotiations have been lengthy. Stretching back from memory to 2009—I could be corrected on that—but certainly some years. We have attended at Pirlangimpi on a number of occasions over the years to provide information on township leasing but it has always been at their request.

**Senator McLUCAS:** Could you perhaps give us a list of that dates of those meetings that the office has attended at Pirlangimpi? That would be helpful.

**Mr Roche:** If I could take that on notice, Senator.

**Senator McLUCAS:** No, I thought you would have it in your head!

**Mr Roche:** No, not today.

**Senator McLUCAS:** Thank you. Can you also indicate what their response has been?

**Mr Roche:** To township leasing or to the information?

**Senator McLUCAS:** To township leasing for their community.

**Mr Roche:** The difficulty I have in answering that is of course we have not been involved in all of the meetings with the traditional owners because we do not negotiate the township leases. The department in its various guises has negotiated, so it has really been only informal indications. The actual formal discussions have often occurred without us being present. I am happy to give an indication that at all stages they have been interested in township leasing without necessarily formally committing themselves. I should also note that there has been something of a change over in the leadership in the last six to eight months in the Munapi traditional owners, in their commercial entity. There have been some new members who have not been as involved in the negotiations, so in a sense it has been a continuous process of education. Individuals have from time to time expressed greater interest than others, but I would say broadly speaking they have been supportive of the concept but of course very interested in the details as to how it would work.

**Ms Carroll:** Perhaps under 2.1 the Prime Minister and Cabinet officers responsible for those negotiations could respond to that question?

**Senator McLUCAS:** Thank you, Ms Carroll. Can I ask some questions about Yarralin, which is as I understand near the Victoria River Downs.

**Mr Roche:** And not my responsibility, Senator. I think questions about Yarralin should be directed to the department. I have not had any role in relation to Yarralin.

**Senator McLUCAS:** I have no further questions, Mr Roche. Thank you very much.

**CHAIR:** Are there any further questions for the Office of Township Leasing? There being none, thank you Mr Roche for your appearance today. We do appreciate it.

**Mr Roche:** Thanks Chair.

### **Indigenous Land Corporation**

[10:39]

**CHAIR:** Welcome. Mr Dillon, I would invite you, if you wish to do so, to make an opening statement.

**Mr Dillon:** Thank you, Senator. No opening statement.

**CHAIR:** Let's go to some questions. Senator Siewert.

**Senator SIEWERT:** Thank you. I will ask one about in fact my own bill. You would have seen the report that was tabled from the committee on the bill and the various reports that went with that. Given that you have a strong position—I also have a very strong position—on changes to the bill and the comments that were made during that process, have you discussed whether you have a position on the bill now?

**Mr Dillon:** I might need Ms Gumley's assistance but, yes, we have written back to the committee and to all members of the committee with a detailed position in relation to the ILC's response to the committee report. We responded in two parts: a substantive policy response; and then there were also some concerns by the ILC board in relation to material that was tabled by a witness.

In terms of the substantive response, we have laid out in detail the ILC's position. There is too much for me to summarise very quickly but, in essence, the ILC remains committed to seeing the Land Account strengthened. It is an iconic institution for Indigenous Australia. It arose out of the native title debate and, in the board's view, it continues to be under threat.

**Senator SIEWERT:** Thank you. You made a second comment, sorry, about materials, which I did not quite hear.

**Mr Dillon:** There was some evidence tabled at the very end after hearings by Mr David Baffsky and, in that evidence, he tabled a range of material which went to both policy matters but also, if I can be blunt, was a complete sledge of the ILC—both their members and their staff.

**Senator SIEWERT:** Thank you.

**Mr Dillon:** So we wrote to the President of the Senate and, consequently, he directed the board back to the chair of the committee, Senator Seselja. As I understand it, the legislation committee is still considering its position on all that.

**Senator SIEWERT:** I am very conscious of the fact that the committee needs to address that, so it probably is best to let that process run; however, I did want to ask around an issue that came up during the inquiry that ILC has been quote outspoken about and it is the issue about which Mr Baffsky wrote or what led to him making those

comments. During the inquiry, the point was made about the ongoing debt that the ILC has to service as a result of that process.

**Mr Dillon:** That is correct.

**Senator SIEWERT:** Is that still the current situation? Where is that situation up to, and how is the ILC addressing it?

**Mr Dillon:** So the ILC has a view that too much was paid for the resort, and that is one issue. Secondly, in the transaction itself, there are currently borrowings accrued or the ILC has a debt of \$198 million—\$138 million of that falls due in May next year and a further \$60 million with the ANZ bank falls due in 2017. In essence, what this means is that the debt needs to be refinanced before May next year. It is a very complicated process.

The ILC have taken action to engage a firm of experts to assist us in the refinancing process. We have had a draft report from them, and the board is considering that, but in essence the advice that has come back to us is that the ILC would only be able to refinance at bank interest rates around \$120-odd million of that \$198 million. Another \$40 million or so will be able to be financed at non-traditional interest rates—that is, venture capital lenders or whatever—at around nine, 10 or 11 per cent, and we will have to put in somewhere between \$30 million and \$35 million of our own funds. The reason is that the normal financiers will apply a loan-to-value ratio, and the resort, which was originally acquired for \$317 million if you add in the uplift factor, is on our books at \$225 million following an expert valuation. You can only borrow so much from an asset worth \$225 million.

**Senator SIEWERT:** So that is a significant drop in value. There was an expert valuation at the beginning of the process for the acquisition of the resort?

**Mr Dillon:** Yes, there was a detailed due diligence. The McGrathNicol report that the ILC commissioned told us that the then ILC board, when they made their decision, relied on a due diligence process that was 17 months out of date. So, yes, there was a valuation there that said that there was an asset worth somewhere in the region of \$300 million, but we have major concerns about the appropriateness or the quality of that due diligence. In fact, we have been calling consistently for an investigation into this. We believe that the former directors of the corporation, or at least a small number of them, may have breached their duties under the CAC Act, as it then was. We have a senior counsel's opinion that says that *prima facie* that is the case.

We wrote to Senator Cormann, the Minister for Finance, and sought for him to exercise his powers to step in because he is effectively the public sector regulator equivalent to ASIC for public sector corporations. Senator Cormann—Minister Cormann, sorry—indicated that he thought an investigation was warranted. Letters were tabled at the last estimates that indicated that, but the minister, for reasons we do not quite understand, countermanded the Minister for Finance, and so no investigation has taken place. One of the reasons given by the minister has been that there have already been a number of investigations, including McGrathNicol. The ILC board believes that the other investigations that have taken place were general or generic and did not go to the detail of the probity of directors' actions, so there is that issue.

But, in any case, the minister has also indicated in a comment to the journal of record *The Australian*, as recently as this morning, that no new information has been provided by the ILC to warrant such an investigation. I need to inform the committee that the ILC two days ago wrote to the Prime Minister and provided him with detailed information that justifies, in our view, a further investigation. We identified six areas of potential breaches of the CAC Act and the ATSI Act, and we copied that letter to the Minister for Finance. Out of respect to the minister we did not provide it to him, because we believe that he has a conflict of interest in at least one of those areas or may have a conflict of interest. We thought it was best if the Prime Minister dealt with that rather than the minister. It makes it a bit easier for the minister to deal with that. That is the state of play at the moment. There is a letter with the Prime Minister and the Minister for Finance. It is 38 pages, it is very detailed, it is documented and it lays out six areas of extreme concern to the ILC board.

**CHAIR:** Senator Siewert, before I go back to you for questions, a number of statements have been made there. I will invite the minister to respond. Minister, do you want to respond to anything that has been said in respect of Mr Dillon's evidence?

**Senator Scullion:** I have a couple of points, just in terms of accuracy. When he refers to 'minister' in the context of the minister countermanded, I am assuming that he was referring to me. What actually happened was that the finance minister asked for particular information about the circumstances surrounding the potential for an inquiry. We provided them with the information around quite a number of inquiries that had taken place. He took that into consideration, I understand, and quite wisely decided that another investigation into exactly the same things would not be useful. As Mr Dillon has indicated, there was an implication in a letter to me from Ms Casey that other information in fact existed. I have said: 'If it does exist, under the CAC Act you are required to provide

it to me, and if you could that would be great.' I understand that that information has in fact not been provided to me but has been provided to the Prime Minister. I now understand this morning, from Mr Dillon's evidence, that it has also been provided to the Minister for Finance. In terms of the clarification around the so-called countermanding from me, I did supply information to the Minister for Finance under which he made a decision—that he did not believe it was useful to conduct yet another inquiry into the same information—and, at that stage, there was no other information available. No doubt the Prime Minister will respond to the letter he received two days ago in due course.

**CHAIR:** Thank you, Minister. Senator Siewert.

**Senator SIEWERT:** I have questions for the minister, but maybe I will just ask Mr Dillon a few more and then I will ask the minister a couple of questions. As to the letter that you have written to the Prime Minister, are you able to table that letter?

**Mr Dillon:** Providing it meets the requirements of the parliament—and I do not see any reason why the parliament should not be apprised of the issues that we see as matters of concern—I would be prepared to table it.

**CHAIR:** This is the letter—

**Senator SIEWERT:** The letter that has been written to the Prime Minister and Minister Cormann.

**CHAIR:** If you are seeking to table that letter—

**Mr Dillon:** No, I was asked to table it.

**CHAIR:** Fair enough; I cannot stop it, I do not think—as much as I might like to!

**Senator SIEWERT:** Minister, I have a couple of questions and I am conscious of time. For an organisation to so doggedly pursue this issue about itself surely sends some pretty clear signals that they are very worried about it. This is an issue that ILC have raised, you have got to admit, time and time again, and it has not been addressed. Does that not send signals to the government that actually we need to relook at this?

**Senator Scullion:** Not at all. I am not privy to the recent letter to the Prime Minister, but the evidence that is before us is that there has been substantive inquiry into all of these matters, and anyone who has—and, I am sure, you, Senator, have—read those reviews would see that there is no particular mischief that has come up in the evidence of all those reviews.

This is something that happened well before my time or even my understanding of these matters. Yes, it is remarkable that the current board of the ILC—it is the same name but there are substantially different characters and personalities and different chairs and different membership of the board—has sought to challenge and, in fact, hold to account individual members of the board. I cannot recall the exact details, but the amount of money they have been asked to repay is in the millions. It is all on the public record. They are seeking restitution for poor decisions or poor probity. As you would be aware, millions of dollars were spent on due diligence during that period of time. That is also being investigated—whether the due diligence was 'due' enough. So we have quite sensibly said that, if you have some information that has not been considered yet—and you have indicated that you have it—you should provide it to us.

**CHAIR:** Mr Dillon, I am reviewing this document which you have been asked to table. Every page is stamped 'in confidence'. I am loath to accept a document that is only a day-old and has been sent to the Prime Minister with every page stamped 'in confidence'.

**Mr Dillon:** I did not come here intending to publish it, but that is how we would normally send a letter to the Prime Minister.

**Senator McKENZIE:** You just carry it around in your back pocket?

**Mr Dillon:** It does have sensitive information in it, so that is normal.

**CHAIR:** If it is sensitive information, if it is not in the public interest for it to be made public, the committee should not accept this document, or should not table it, until it has had an extensive opportunity to consider the contents of it or at least the minister at the table has had that opportunity.

**Senator Scullion:** I have not. The letter is not even cc'ed to me. The letter, I understand, is in part a response to a letter that I had sent as part of an exchange of correspondence with the chair of the ILC. But they have chosen to send a response not to me but to the Prime Minister and the Minister of Finance along with an allegation that I have some sort of conflict of interest so it would not be appropriate to send it to me. I am not sure why I would be involved in the contents of the letter.

**CHAIR:** This document is not even signed.

**Mr Dillon:** I can assure you there is a signed version.

**Senator McKENZIE:** So you have got more than one copy of a document you were not planning to make public?

**CHAIR:** The committee does not have to make a decision on this. I think there has got to be a private meeting of the committee before we table this.

**Mr Dillon:** I have a signed version here.

**Senator McKENZIE:** Who signed it?

**Mr Dillon:** Dawn Casey, the chair of the ILC.

**Senator McLUCAS:** I wonder if we could seek advice from the Clerk of the Senate about whether we can accept that. Until we have got advice, I would suggest that you not accept it.

**CHAIR:** That is a very good suggestion. We will not table it. We will seek advice.

**Senator SIEWERT:** Ask whether we can accept it in confidence.

**Ms Carroll:** I think the senator's solution is a good one. I was going to suggest that we could look at what other advice could be provided.

**CHAIR:** We will seek some advice from the Clerk. We will receive it in confidence at the moment, pending a meeting of the committee, subject to that advice.

**Senator SMITH:** Mr Dillon, if it is signed by the chair of the ILC, I want to be sure that the chair of the ILC is happy for it to be tabled.

**CHAIR:** Mr Dillon, have you discussed tabling this document with the chair?

**Mr Dillon:** The chair has indicated to me that I would be able to table it if asked to.

**CHAIR:** Even though it is in confidence?

**Senator McKENZIE:** But you were not planning to. You said five minutes ago that you were not planning to table it.

**Mr Dillon:** I used the word 'if'.

**CHAIR:** I have received this document in confidence. I will seek advice from the Clerk. We will have a private meeting of the committee before we do anything with it. Senator McKenzie, do you have some questions?

**Senator McKENZIE:** Yes, I do have a series of questions that I want to ask the ILC, but I will just follow the line of questioning Senator Siewert has been going on. You spoke about the new evidence that has not been provided to the minister. Are you able to table that legal advice that former directors have breached—

**Mr Dillon:** The legal advice that the ILC has was in relation to the first set of advice that we gave to government, which was based upon the McGrathNicol report and matters around that. It was writ large that the transaction was appropriate. The minister has actually requested that the ILC provide that advice to him. The ILC chair wrote to the Prime Minister almost two months ago that this seemed to be an extraordinary request because it potentially breaches the issue of legal privilege for us because we are potentially in litigation with former directors. To date we have had no acknowledgement and no response from the Prime Minister.

**Senator McKENZIE:** I am asking you to table that legal advice to this committee—not to the minister but to the Senate Finance and Public Administration Committee.

**Mr Dillon:** I would have to take advice on that.

**Senator McKENZIE:** Are you taking that on notice?

**Mr Dillon:** Yes, I will take it on notice.

**Senator McKENZIE:** Chair, I would like to discuss that at the private meeting.

**CHAIR:** Indeed. Noted.

**Senator McKENZIE:** Mr Dillon, given the enormity of the conversation Senator Siewert has been having, and indeed the document you have just tabled, I find it incongruous that Mr Farmer can travel from the Tiwi Islands to sit before this committee and show us respect and answer questions from senators who have sought the advice, and yet Dr Casey—where is Dr Casey based?

**Mr Dillon:** On the south coast.

**Senator McKENZIE:** Of which state?

**Mr Dillon:** New South Wales.

**Senator McKENZIE:** A couple of hours down the road?

**Mr Dillon:** I would say three hours.

**Senator McKENZIE:** Three hours down the road. Mr Farmer can travel more than a day to get here to answer a senator's questions, and Dr Casey—we are tabling documents she has signed; we are discussing and debating—does not have the respect to actually rock up to this committee when she lives three hours down the road. I think that is absolutely shocking.

**Mr Dillon:** With respect, she was not asked to return; if she had been asked to attend, I am sure she would have. I would just make the point that I do not see Mr Thawley at the table. What is good for the goose is good for the gander.

**Senator SIEWERT:** I want to finalise questions around the issue of the debt. In terms of the process, you have got a draft report and advice. You said you are going to have to use \$35 million as a payment in order to transition to the new debt restructure.

**Mr Dillon:** That is correct. We have preliminary advice from our advisers—they are experts in raising this level of commercial finance—that we will need to put up between \$30 million and \$35 million to raise the finance required as well as borrow a component at a higher interest rate and a component at bank interest rates. The ILC board has asked them to take the next step and start working up the details of what it would actually involve. So that figure of \$30 million may come back to \$20 million or it may go to \$40 million. It depends on the negotiations that the ILC and our advisers have with potential financiers.

**Senator SIEWERT:** When do you have to finalise that? It is due next year. So you have got until next year to restructure this debt?

**Mr Dillon:** In theory, we have until next year. These are complex matters and they can take three, four or five months to put in place. The ILC board has taken on board the responsibility to try and do this this year. If we get to Christmas and the matter is not resolved, there could be a number of new members of the board and they would have to come up to speed and there could be a change of direction and policy. And suddenly you would be trying to raise \$198 million in six weeks or something like that. So we are trying to get on the front foot and move ahead.

**Senator McKENZIE:** Can I ask that that preliminary advice that you have received be tabled with the committee.

**Mr Dillon:** I think I can table it.

**Senator McKENZIE:** Great!

**Mr Dillon:** I would like to take advice as to whether it would be tabled in confidence or publicly. It certainly involves and includes a whole series of commercial-in-confidence issues.

**Senator McKENZIE:** I appreciate that. Thank you.

**CHAIR:** I have a question about the resort. I was reading a press account of it dated 29 May this year. It says the resort is profitable but its returns are failing to cover the financing costs. Is that right? Have the commercial operations of the resort diminished since the purchase? I do not need to know specific numbers. I do not need to know anything that is commercial in confidence or anything else. I just want to know whether it was making X and now it is making Y—or has it gone up the other way?

**Mr Dillon:** There have been 10 years of declining revenues in occupancy. The due diligence advisers, Grant Samuel, forecast that, from the date of acquisition, there would be five years of upward revenue and occupancy. In fact, the revenue and occupancy has gone upwards but at a slower rate than the forecast. The difference between the forecasted revenue over the first four years and the actual revenue is \$87 million. Grant Samuel told the ILC that we will be getting \$87 million more than what we have actually received to date.

**Senator McKENZIE:** Yes, but that was a forecast. What due diligence did you do on that?

**CHAIR:** Mr Dillon, people buy businesses that are run down or whatever with the idea of refurbishing them and recovering and things of that nature. Sometimes it goes to plan and sometimes it does not. They can use best estimates and forecasts and all those sorts of things. In that respect, it is a commercial transaction.

**Mr Dillon:** Absolutely. It is a forecast, and no-one says otherwise. However, if you read the letter that has been requested, one of the issues we raise is the engagement terms for Grant Samuel. Not only were they on a retainer of the percentage of the transaction—so the higher the price we paid the higher the fee they were paid—but those terms of engagement were so restrictive that, if they turn out to be negligent, we can only sue them based on wilful negligence or gross misbehaviour.

**CHAIR:** I am conscious that this may be subject to legal proceedings—

**Mr Dillon:** All I am saying is that this is a very strange engagement.

**CHAIR:** You have made that point very clearly, but I was just inquiring about the current trading operations of the resort. I really would encourage you not to cross over into potential legal cases or anything else.

**Mr Dillon:** The current operations have been improving. The real issue is not with the resort. Today's headline in *The Australian* is actually inaccurate. It is not a loss-making resort; it is actually doing very well. The problem is that the ILC paid too much and borrowed too much. The whole financial implication is on the ILC, not the resort.

**CHAIR:** I understand. You would not be the first organisation—Aboriginal, government or private—that has paid too much and financed too much.

**Mr Dillon:** Absolutely.

**Senator SIEWERT:** The point is whether the normal commercial reality is that too much was paid at the time or money was paid beyond what it was actually worth. That is the point at issue, isn't it?

**Mr Dillon:** That is right.

**Senator SIEWERT:** Whether it was knowingly done.

**Mr Dillon:** That is reflected in the fact that \$300 million was paid and is now worth \$225 million. It is also reflected in the fact that the ILC board had two commercially—

**Senator McKENZIE:** A point of order, chair. I just want to clarify with Mr Dillon that he is not putting on the public record information that is contained in the in-confidence document that this committee has yet to decide whether to make public or not.

**Mr Dillon:** No, Senator. I am putting on the public record material that has been released under FOI and is effectively in the public domain.

**Senator SIEWERT:** Earlier you said \$317 million, and just then you said \$300 million.

**Mr Dillon:** This was a complicated transaction with an uplift factor. In fact, had the resort exceeded the forecasts by the due diligence advisers, the price would have actually gone above \$317 million. One of the concerns of the ILC is that this transaction was financed with vendor financing, and there was a complicated negotiation with the vendors to, in a sense, share the upside. It was called this uplift factor. Effectively, the price was \$300 million, but then there was \$17 million to be paid to GPT, the previous owners, in return for them investing \$25 million in capex before the transaction occurred. It is quite a complicated issue.

**Senator SIEWERT:** It has totally done my head in. I do not know if it has done anybody else's head in.

**CHAIR:** It is just you, Senator.

**Senator SIEWERT:** Is it possible to write that down, or have you actually sent it before and I have just not got my head around it?

**Mr Dillon:** I will provide a dot point of the transaction and what the price was and how it was comprised.

**Senator SIEWERT:** That would be appreciated, because I confess I am not keeping up with the two different figures and what you just described.

**CHAIR:** Could you take that on notice. Are there any further questions for the ILC?

**Senator McKENZIE:** It is good to see you again, Mr Dillon and Ms Gumley. I would like to start with some questions about staffing arrangements and other corporate costs for the ILC. How many people are employed by the ILC?

**Mr Dillon:** Our FTE is 94, but the ILC group is much larger. Voyages has around 700 staff. Another subsidiary is National Indigenous Pastoral Enterprises, which has around 100 staff.

**Senator McKENZIE:** 100 heads, or 100—

**Mr Dillon:** I do not have an exact figure. I can get you that on notice, but it is around 100. NCIE has around 80, but a lot of those are casual and part time.

**Senator McKENZIE:** In terms of the 94, how many locations are these staff working in?

**Mr Dillon:** I think I am correct in saying four. Our head office is in Adelaide, and we have divisional offices in Brisbane and Perth. We have a small office here in Canberra.

**Senator McKENZIE:** Is it challenging operating an organisation across such a dispersed group?

**Mr Dillon:** Absolutely.

**Senator McKENZIE:** Has there been any shift in the location of the executive of the organisation?

**Mr Dillon:** There is a small executive team—

**Senator McKENZIE:** How small?

**Mr Dillon:** Five people. I am just counting names. They are located in Brisbane, Canberra and Adelaide.

**Senator McKENZIE:** Two of them are together—where are they?

**Ms Gumley:** Canberra.

**Senator McKENZIE:** What are the roles of the two who are here in Canberra?

**Mr Dillon:** They are Kate and myself. I am the CEO, and Kate is the Executive Director strategy.

**Senator McKENZIE:** Excellent.

**Senator SMITH:** But I thought you said, Mr Dillon, that the head office was in Adelaide.

**Mr Dillon:** That is correct.

**Senator SMITH:** But the CEO is in Canberra?

**Mr Dillon:** That is correct.

**Senator SMITH:** Wouldn't the head office be where the CEO is?

**Mr Dillon:** The bulk of our staff are in Adelaide; that is how I think about it—but your interpretation is probably just as correct.

**Senator SMITH:** I think mine is probably more common.

**Mr Dillon:** Perhaps.

**Senator SMITH:** No. I am very, very confident that mine is more common. Just going back a bit, there are 94 over four locations. Explain to me how many people are at each of those four locations.

**Mr Dillon:** I would have to take that on notice but, in broad terms, there are around eight or nine in Canberra. We have four or five NIPE staff in Canberra as well. We have 15 to 20 in Brisbane. We have around 10 or 12 in Perth and around 60 in Adelaide. If those numbers do not add up to around 100, I have made a mistake.

**Senator SMITH:** Going back to Senator McKenzie's other question about the difficulty of operating across numerous sites, you said it was 'very difficult'. Now you have told us that you are actually in Canberra and the bulk of your staff are in Adelaide.

**Mr Dillon:** That is correct.

**Senator SMITH:** I am not surprised it is very, very difficult. How does the management structure work? You are in Canberra—

**Mr Dillon:** Yes.

**Senator SMITH:** How many direct reports do you have?

**Mr Dillon:** It is the executive committee. There is the director of strategy, the general counsel, the executive director of corporate governance, the chief operating officer and the executive director of programs delivery.

**Senator SMITH:** So there are six.

**Mr Dillon:** Yes.

**Senator SMITH:** So when you said there was a small executive team of four or five, you actually meant six?

**Mr Dillon:** Correct.

**Senator McKENZIE:** Plus you.

**Senator SMITH:** You are the CEO. Where is the chief operating officer located?

**Mr Dillon:** Adelaide.

**Senator SMITH:** Where is the director of strategy located?

**Mr Dillon:** Canberra.

**Senator SMITH:** Where is the general counsel located?

**Mr Dillon:** The general counsel works out of Melbourne but he is in Adelaide. He has an arrangement where he commutes from Melbourne.

**Senator McKENZIE:** How often?

**Mr Dillon:** As necessary.

**Senator SMITH:** He is the general counsel?

**Mr Dillon:** Yes.

**Senator SMITH:** I will come back to that in a moment. Just to be clear, you are operating across five locations, not four?

**Mr Dillon:** There is no office in Melbourne.

**Senator SMITH:** Is he commuting every week?

**Mr Dillon:** No.

**Senator SMITH:** Where is the executive of corporate governance located?

**Mr Dillon:** Canberra.

**Senator GALLAGHER:** Do you have an organisation chart?

**Ms Gumley:** Yes, we do.

**Mr Dillon:** I can draw it for you now.

**Senator GALLAGHER:** It might be quicker and simpler.

**Senator SMITH:** You have the bulk of your staff in Adelaide but the CEO is in Canberra. The director of strategy is in Canberra. You have the general counsel in Melbourne but commuting to Adelaide. Who is managing the 60 staff in Adelaide?

**Ms Gumley:** They are distributed according to their line reports. In some ways, it is very similar to Prime Minister and Cabinet. It is a national organisation.

**Senator SMITH:** No, sorry; it is not like the Department of Prime Minister and Cabinet. I am happy for you to draw another analogy, but that is not one. The chairman is not the same as the secretary of the department.

**Ms Gumley:** In relation to the ILC, the staff that are involved in our delivery and operations on the ground are operating out of Perth, Brisbane and Adelaide. They report to Craig North, our executive director of program delivery.

**Senator SMITH:** Where is he?

**Ms Gumley:** He is based in Brisbane. My staff are split between Brisbane, Canberra and Adelaide. That reflects the capacity of some of the businesses we are running and where they need to be. The centre operations of our finance team and our HR team is based in Adelaide.

**Senator SMITH:** Going back to your earlier comment, Mr Dillon, about how difficult it is to manage staff over what is now four locations, because Melbourne is not a location—

**Senator McLUCAS:** That is not what Mr Dillon said.

**Senator SMITH:** even though that is where the general counsel is, have you reflected on any—

**Senator McKENZIE:** He did say that, Senator McLucas.

**Senator SMITH:** sorts of organisational improvements that might improve not just the efficiency? I cannot help but think that there are a lot of costs involved in managing such large numbers over such diverse areas. What have you done to put your mind to improving the efficiency of the organisation?

**Mr Dillon:** I have been in the job for just under two years. I suppose my approach has been to address issues as they arise. I have made a swathe of changes, when I look back, but I have not come in with some agenda to turn the organisation upside down—in fact, the reverse, because it is a unique organisation. We have unique staffing requirements. We have highly skilled people, and it is just not easy to suddenly say, 'It would be better to move this function from X to Y,' so you work around people. One of the reasons why the general counsel is working from Melbourne is that we are a distributed organisation. We have good mechanisms for working as a distributed organisation. For reasons that I do not need to go into, I made a clear assessment, in approving that, that it would not affect the work performance of the organisation.

**Senator SMITH:** As the CEO of the organisation, how often do you get to Adelaide, where over two-thirds of your staff are located?

**Mr Dillon:** I would say not often enough, but it varies.

**Senator McKENZIE:** Once a month?

**Mr Dillon:** On average, probably once a month, but it depends on the exigencies of the organisation at the time. I suppose I say this within the organisation quite a bit. The bulk of my activities is focused on the broader organisation, managing our subsidiaries, so to just take the core ILC and say, 'That's the role,' is actually not the best perspective.

**Senator SMITH:** No, I accept that to a degree, Mr Dillon. How would you describe the culture of the organisation?

**Mr Dillon:** Positive.

**Senator SMITH:** And would those subordinates describe it as positive as well?

**Mr Dillon:** Yes, I think so.

**Senator McKENZIE:** Can I finish my line of questioning, please. Can you just outline the roles and responsibilities of the Canberra staff? There is you, obviously. You look after subsidiaries—sorry, Ms Gumley, were you going to go there?

**Ms Gumley:** Yes. In our Canberra office we have our governance team, which is headed up by an SES officer. There are two staff supporting her in that role. Those teams provide support to the various subsidiary company boards, as well as the ILC board. Also in Canberra we have the ILC's work health safety coordinator. We also have our NIPE—about four or five of our NIPE team—which is our pastoral team.

**Senator McKENZIE:** And?

**Ms Gumley:** Myself.

**Senator McKENZIE:** You and your role?

**Ms Gumley:** I am the Executive Director of Strategy in the ILC.

**Senator McKENZIE:** So what are we strategizing about?

**Ms Gumley:** It covers everything, really, across the operations of the ILC. It goes to the alignment between the parent company and the subsidiaries. It would go to—for instance, at the moment the COAG has put forward an expert working group on the land, and the ILC is preparing a submission to it. My team manage matters of policy advice around land holdings, the actual ongoing policies of the ILC such as divestment, such as when we give subleases, caveats—all of the matters relating to running the company and the subsidiaries. I also look after environment, carbon and heritage, and I also look after media and communications.

**Senator McKENZIE:** That is a big role, Ms Gumley—well done.

**Ms Gumley:** I should also add that the CEO's executive assistant is also based in Canberra.

**Senator McKENZIE:** Why has there had to be an increase in staff in Canberra?

**Mr Dillon:** I think it has just been an organic change—for a range of reasons, I guess. When the previous executive director of policy left the organisation a year or back, we advertised. Ms Gumley won the job. She actually lives here in Canberra. Because we are a distributed organisation, she was able to take up her role here. The agricultural team have always worked out of Canberra—it is a longstanding arrangement. The corporate governance executive director, who was recruited just before I arrived about two years ago, was recruited to Canberra. I do not know why that decision was made. I think it just organic growth. If you are asking for my assessment of whether it is more effective for us to have a unit in Canberra and some critical mass, I would unequivocally say yes—

**Senator McKENZIE:** Why? What is the strategic advantage of being in Canberra?

**Mr Dillon:** Being able to come to estimates without flying nine hours, being able to interact with the department easily and quickly and being close to Sydney where Voyages' head office and the NCIE are.

**Senator McKENZIE:** Ms Gumley, what about for your role: policy and comms? Is it strategic to be in Canberra or could you do your role anywhere?

**Senator GALLAGHER:** She lives here!

**Ms Gumley:** It happened to be where the position was offered, and I was here. I do think there is value in being in Canberra. Having staff who understand how parliament works, how the public sector works, the need for responsiveness to government in the context of parliamentary timetables, and how we work with the department—that is really important.

**Senator McKENZIE:** I just wanted to go to Senator Ludwig's question on notice, number 99, and just follow up on a couple of matters.

**Mr Dillon:** Sorry, I am not familiar with that.

**Senator McKENZIE:** Well it is QoN 99. Usually when you come to Senate estimates you will have a pack that has all of your QoNs in it. If you look up 99, it might help you. You will probably have the answers.

**Senator GALLAGHER:** Can we just treat the witnesses with a bit of respect?

**Senator McKENZIE:** Senator Gallagher, you have had four days uninterrupted.

**Senator GALLAGHER:** I am just asking that you treat the witnesses with respect; that is all. I am not trying to take the floor.

**CHAIR:** Order! Let us cease the debate across the room and just ask questions of the witness.

**Senator McKENZIE:** I am referring to this so that if Mr Dillon wants to—

**CHAIR:** The witness does not have the question, Senator McKenzie, so perhaps if you could proceed with your questions.

**Senator McKENZIE:** Maybe the secretariat can help him out there. Question number 19 was about how many positions had been made redundant since 2013. My understanding is there were two? Is that right?

**Mr Dillon:** It sounds right, but I would take it on notice.

**Senator McKENZIE:** I think the secretariat is going to get you the material—I have the QoN here. My understanding is that one of those positions was the director of policy.

**Mr Dillon:** Correct.

**Senator McKENZIE:** Can you actually go to what that role was—the director of policy? What did they actually do?

**Mr Dillon:** The incumbent had a role in overseeing ILC policies across the board and he played a broad role in supporting the CEO, who at that stage was based in Brisbane. That position was based in Brisbane so there was, in a sense, a critical mass of people there in Brisbane. I could get you the position description.

**Senator McKENZIE:** That would be great. It sounds quite similar to Ms Gumley's role.

**Mr Dillon:** I would say there are similarities.

**Senator McKENZIE:** So in relation to the redundancy payout of close to \$210,000, are you concerned at such a significant payout figure, given that the roles are so similar?

**Mr Dillon:** I always watch my budget and I always have concerns about payout figures. If you are asking me whether I was concerned about it, I did look at it very carefully. But I made an assessment at the time; I would need to refresh my memory as to what all the factors were. This was a senior position. The person involved had a long bureaucratic history, which meant that his termination payments were quite large, and it—

**Senator GALLAGHER:** Were they covered by industrial award or conditions of employment?

**Mr Dillon:** I think the answer is yes.

**Senator McKENZIE:** The roles are very similar, as you outlined, yet the reason for the former executive director of policy leaving was restructure of executive team and a redistribution of responsibilities. But it sounds like we just had somebody who took a redundancy payment, then we hired Ms Gumley to do a very similar role, and it cost us \$210,000 in the process. Is that an accurate assessment?

**Senator McLUCAS:** I think, Chair, we have to be a bit careful here. There is a person who is the person being discussed. Let us be a bit respectful of that person's—

**Senator McKENZIE:** We are talking about roles; it is not about—

**Senator McLUCAS:** We are talking about an individual.

**CHAIR:** There is always time for consideration and courtesy, and it is appropriate. I would ask all senators, including Senator McKenzie, to be mindful of that and of any sensitivities. But I do not think that the question is out of order.

**Senator McLUCAS:** No, I am not suggesting that. Just let us be careful.

**CHAIR:** I take your point, Senator McLucas, and I also the point that you are very keen to continue on to other agencies.

**Senator McKENZIE:** I will be quick.

**Mr Dillon:** To answer your question, I am confident that I made the decision in the best interests of the organisation, and I am also confident that I made it within the constraints or the parameters of the relevant legislative and policy requirements.

**Senator McKENZIE:** Did the ILC incur any legal costs in preparing the stronger land account bill?

**Mr Dillon:** Yes, we did.

**Senator McKENZIE:** Was that in-house or external lawyers?

**Mr Dillon:** We did drafting instructions in house. It was not the bill, because the bill was actually drafted by the Greens, but we prepared a bill that the Greens picked up and ran with.

**Senator McKENZIE:** Fantastic!

**CHAIR:** They claimed it as their own, did they?

**Senator McKENZIE:** Handy, Senator Siewert!

**Senator SIEWERT:** Just to correct the record: the ILC came out with a bill, they were very public about it and they went and consulted about it. If you want to read to the committee the report that had a look at the bill, you can see really clearly the history of that process.

**Senator McKENZIE:** Thank you for the history, and if you could let me know how much that cost?

**Mr Dillon:** I would be happy to.

**Senator McKENZIE:** Thank you. I have some questions around how many staff worked on the development of that bill and if we have seen an increase in the political activity of the ILC now that we have had an increase of staff in Canberra, and I will be putting those on notice. I also have some on notice about the current process for appointing the CEO and how remuneration is determined.

**Senator GALLAGHER:** Before we move on, I want it on record that I have checked with the committee secretary and Dr Dawn Casey was not asked to be here today to appear. So in relation to the outburst by Senator McKenzie, I think there should be an apology for Dr Casey, who was not asked to be here and that is why she is not here.

**Senator McKENZIE:** If you are going to take advice—

**Senator GALLAGHER:** At the least, the concern is not shared by other committee members.

**Senator McKENZIE:** it is appropriate behaviour to do the right thing and just turn up.

**Senator GALLAGHER:** I just think it is important.

**Senator McKENZIE:** Do it yourself.

**CHAIR:** Senator McKenzie has made her point, and I think you have made your point as well, Senator Gallagher. With that, I will say thank you very much to you, Mr Dillon and Ms Gumley, for your appearance today.

### **Aboriginal Hostels Limited**

[11:34]

**CHAIR:** I welcome Ms Joy Savage, the Chief Executive Officer of the Aboriginal Hostels Limited, and officers. Ms Savage, do you wish to make an opening statement?

**Ms Savage:** No, Senator.

**Senator McLUCAS:** Of your staffing component, what proportion are Indigenous?

**Ms Savage:** It is one of the achievements of which we are most proud. Currently, as at the end of April, I believe overall it is 71 percent. As an organisation within the public sector, I believe it is the highest as a proportion of the overall workforce.

**Senator McLUCAS:** I am glad I asked the question. I now go to the issue that we raised last estimates around the Corporate and Community Partnerships Program? The reduction in funding happened in the 2014-2015 budget, and that was a reduction by about \$3 million. Is that accurate?

**Ms Savage:** That is right. It was \$4.2 million, I believe, and was reduced—

**Senator McLUCAS:** To \$1.8 million.

**Ms Savage:** That is right—\$1.8 million.

**Senator McLUCAS:** How did that happen? I know we are talking about last year's budget. Was that a decision of government, Minister?

**Ms Savage:** I am happy to answer the question in terms of the CCP program. AHL has operated the Corporate and Community Partnerships Program for the past 30 years. It has gone through a number of iterations—with regard to its title and so forth. In 2011-2012, we recognised that the issue of financial sustainability of the company was creeping up on us and the chief executive and the team needed to provide the board with some advice as to how to manage this over time. In about 2012 there was a declining number of grant recipients under CCPP so it was decided that we would need to make changes to the program. We did not take any further new entrants into the program and began the process of streamlining the funding arrangements and the reporting

requirements. Interestingly enough, over the last five years, the program allocation has become less and less. Last year and this year, the very difficult decision was taken by the board to phase out the program—to its full discontinuation. That occurred essentially from this financial year, but we recognise that some organisations may be affected, and particularly for non-SUR services—

**Senator McLUCAS:** Sorry, SUR?

**Ms Savage:** Non-substance use services. Many of the substance-use residential services were in fact in receipt of major funding through other programs through Health Department, subsequently transferred to the Department of the Prime Minister and Cabinet. Our small amount of grant funding was a supplementation, if you like, for the accommodation component. We worked with the department fairly closely to transition them—consistent with achieving flexibilities, reduction in red tape and so on. But, for the other organisations—I am categorising them as non-SURs—we recognise that they were, if you like, a mixed bag of residential services. They needed a little bit more time and some support. We entered into this financial year providing six months' worth of funding, and that has been explained in communications with all the organisations since about 2012.

**Senator McLUCAS:** How many non-SUR hostels do we have?

**Ms Savage:** At the point at which our funding agreements lapsed, there were 14 non-SUR—if we categorise it in that way—organisations.

**Senator McLUCAS:** My brief says there were 29 hostels altogether. That is correct?

**Ms Savage:** Yes, that is right.

**Senator McLUCAS:** Those organisations now have funding until when—the 29 hostels that were under the CCP program?

**Ms Savage:** Fifteen of the 29 organisations are residential rehabilitation services and, from the questions on notice and our communications with the department, we understand those organisations now have funding agreements that allow them to continue their residential programs.

**Senator SIEWERT:** Who gave you that assurance?

**Ms Savage:** I read it in the QONs, and as I understand it, from the lists that have been made available, that those organisations continue to be funded at least for periods of time under the Indigenous Advancement Strategy.

**Senator SIEWERT:** I will ask about that a bit later.

**Senator McLUCAS:** For that clarification, all of those hostels will remain open?

**Ms Savage:** My understanding is that those residential substance use services that were formally funded under the CCP program have been honoured and picked up under the IAS.

**Senator SIEWERT:** What about Bloodwood Tree Association?

**Ms Savage:** Then we are talking about the second category of hostels, if you like. For those hostels, we provided them with funding from 1 July to 31 December.

**Senator McLUCAS:** This year?

**Ms Savage:** Yes. We informed them that our program was discontinuing and we worked with them to advise them and keep them abreast of as much information as we had available but also encouraged them more broadly to think about applying for alternative funding. We had had these same conversations some time before, but this was coming to a particular period where things were changing in Indigenous affairs. We worked with those organisations and encouraged them. We liaised closely with the department to provide as much information as early as public information was going to be available to encourage them to apply through the IAS but also alternative funding sources.

For those 10, my understanding is that five did not formally apply, and some may have got funding, but Bloodwood Tree—in particular, its Bunara Maya Hostel operation—has not been funded.

**Ms Carroll:** I am wondering if we need to take the questions now of what the department has funded, if that is the most useful way. Ms Edwards or I can answer those questions of what has been funded out of the IAS to be very clear, or if you want to continue with AHL.

**Senator SIEWERT:** I am happy to leave it till that particular time but I do want to pursue that side of it.

**Senator McLUCAS:** Let's do it all now, and then it is all sorted.

**Senator SIEWERT:** I was trying not to dig into your time.

**Senator McLUCAS:** That is okay. In terms of Bloodwood Tree, they applied under the IAS—is that correct, Ms Edwards?

**Ms Edwards:** Yes, they did. Bloodwood Tree was an organisation—there are a few streams of funding here. Obviously, it runs two hostels: one in relation to drug and alcohol; and another for homelessness or other forms of housing support. They are treated separately for various purposes. After the funding from AHL ceased, we then proceeded to fund nearly all of the 29 hostels for the period from 1 January 2015 to 30 June 2015, and they considered all the various applications. Most of them did apply under the IAS and then, from 1 July 2015, all of those, as Ms Savage has said, provided AOD—alcohol and other drugs—services that we also fund separately, have received the additional funding to make out the shortfall from the cessation of the AHL program.

**Senator McLUCAS:** That is the accommodation component from AHL.

**Ms Edwards:** In relation to the non-AOD ones, they were all considered separately on their merits. In relation to the hostel the Bloodwood Tree has run—which does not provide AOD services—it was unsuccessful in the competitive round. Officers are working with the organisation to transition out of that funding over the period of the interim funding we have provided until 30 June 2015. Funding for the AOD hostel has been provided under the IS.

**Senator SIEWERT:** What level of funding has been provided to the hostel that does provide those services?

**Ms Edwards:** We are still in the contract negotiation period. At this point those things are still under negotiation. We are not releasing the actual amount of funding to Bloodwood Tree, but the funding is similar to the way it was funded previously to provide the AOD hostel services.

**Mr Matthews:** The interim funding, which I think we talked about at last estimates, was provided and that has been made public. That was \$140,000 for the six months until—

**Senator SIEWERT:** Yes, but I am interested in the future funding. You cannot tell me yet what the funding is?

**Mr Matthews:** It is under negotiation.

**Senator SIEWERT:** But they have not been funded for the other hostel.

**Ms Edwards:** No.

**Senator SIEWERT:** Have you had any discussions with them about what happens to the services they provide—because they do provide a pretty essential service?

**Ms Edwards:** Yes, we have. That is one of the key things during the interim funding period in relation to that second hostel—to talk to them about what happens next. You might have more detail, Mr Matthews?

**Mr Matthews:** We have provided feedback to the organisation. I think the local office in Port Hedland has met with the Bloodwood Tree on a number of occasions. Between AHL and ourselves we met with representatives from Bloodwood Tree a couple of days ago to continue those discussions and provide an offer of support to help them through that process. If there is anything we can do to assist them, as they consider their model, other funding sources and so on, we are prepared to do that.

**Senator SIEWERT:** But not provide them with actual funding support.

**Mr Matthews:** Their funding application, at this stage, was unsuccessful.

**Senator SIEWERT:** But you are doing gap analysis—we know that. Additional funding was announced just yesterday. Is there a possibility that they can get funding through that process?

**Ms Edwards:** They have not been successful in that gap analysis.

**Senator SIEWERT:** There are a lot of organisations that were not successful that will obtain funding again through this new process, so my question stands.

**Ms Edwards:** It might be best, when we get to it, to talk about the whole gap funding analysis in general when the right officers are here. But in relation to Bloodwood Tree: there are always processes where we can talk to organisations, but we have looked at this particular organisation—what it does, how it fits into our overall safety and wellbeing strategy—and it is not one of the core funding priorities. It has been unsuccessful at this point. We are not expecting to change that decision.

**Senator SIEWERT:** But you acknowledge that it does do a lot of work with homeless people in Port Hedland and that there is no other like facility that provides those services.

**Ms Edwards:** I acknowledge that it has provided a service. I am not across the detail of services in the area.

**Mr Matthews:** It does provide homelessness assistance, yes. We are only one of their potential funding sources, however. I think they operate from a Western Australian government owned facility. Homelessness is generally something the states take a lead on. We have had some discussions about their building a stronger

connection into the Western Australian government going forward. In reviewing the model they operate, some of those issues will be looked at as well. I think that is part of the discussion. AHL is prepared to work with them around looking at that.

**Ms Edwards:** I might add that, when we looked at all these hostels, the non-AOD ones, we looked at them very carefully to see what their business was and whether it fitted within the IS or not. We provided the interim funding so there was not a sudden drop-off, but it was necessary for us to look at whose business it was to support them and so on. We could not, in every case, come to the party about it—and it is one of those.

**Senator SIEWERT:** When do you anticipate finalising the process of offer on the other one—the other hostel?

**Ms Edwards:** Certainly before the end of the financial year. Of course it will be made publicly available within 14 days after that.

**Senator McLUCAS:** Can I have a list of the 29 hostels—probably on notice?

**Ms Edwards:** We certainly can, although we did provide it on notice, I think, at last estimates.

**Mr Matthews:** Yes, I think that was provided at the last estimates.

**Ms Edwards:** So we are happy to provide additional—

**Senator McLUCAS:** No, I will have it here.

**Mr Matthews:** From memory, I think they also included information about the successful and unsuccessful ones, and how many have been supported.

**Senator SIEWERT:** Can I just check this. I have not seen that list. You have just mentioned that one of the issues with Bloodwood is that, as you have just said, the other hostels are owned by the state. Could you also give us who? Do you have that level of detail? You obviously know about Bloodwood.

**Ms Edwards:** We will update the table because, as to the one we provided last time, we still had not finally decided every single interim funding position, and we certainly had not finalised IAS funding. We will update the table and reprovide it with that information, and we will have a look at whether we have other information; it might be appropriate to add additional columns—

**Senator SIEWERT:** That is really relevant to the CCP Program.

**Mr Matthews:** It may be that our HO will know more about that than we do, in some ways. For most of these organisations, as I think Joy said, it was top-up funding, so there would be other funding sources and we would be unaware of what those other sources might be.

**Senator SIEWERT:** You have just hit the nail on the head. You are right: a lot of it is top-up, and, as you know, given your level of knowledge of these issues, that is how organisations cobble together funding, and I use the phrase 'cobble together' purposefully, because that is how they make these programs work—by getting bits of money from all over the place to provide a more holistic approach.

**Ms Savage:** We are fairly familiar with Bloodwood Tree, and the other 29 organisations. We have a longstanding relationship with them. It has primarily been a funding one, but, over the years, good working relationships have endured. From our perspective, one of the issues is—and was when we met with departmental officials as well, with Bloodwood tree earlier this week—that often communities, as you appreciate, cobble together different program dollars to make something happen, and, whereas the funding was a fairly insignificant or minor part of their broader funding for others, in this particular organisation it was a large input to their work and therefore has had an impact. We are happy to work with them through that. My understanding from our meeting is that they are considering what kind of service design they want for that hostel—whether it is homelessness, mental health or something else. So I think there is an opportunity to actually work with them and provide them some assistance as to what that might look like. Equally, if, in the event, it closes, we would also work to use the current community infrastructure in Port Hedland to support residents, particularly if they have to exit the service. You do not want it to get to that, but if it did get to that we would work with them accordingly.

**Senator SIEWERT:** I would normally pursue that, but I am very conscious of time.

**Senator McLUCAS:** Mr Matthews, you indicated that the states and territories have primary responsibility for homelessness. Can I extrapolate from that to understand that, under the IAS, there was no funding for Indigenous homelessness through that program?

**Ms Carroll:** I think that would be too big an extrapolation, but, effectively, what we tried to look at in the IAS, which we can get to later, was: if it was something that we were already funding with existing funding, then, even though we might think it is the responsibility of the states, we would primarily keep it going. But, in this

case—where it is something that we have just picked up for a short transition period to make sure it was appropriately assessed but was not something that we had been funding through the equivalent IAS funding for a long time—that is not something we would necessarily do. We obviously have to make assessments about where the funding goes, compared to the alcohol and other drugs services, where we were very concerned about those and they are very core to the directions of the IAS, and, in those cases, we have picked up all of that funding.

**CHAIR:** Anything further, Senator McLucas?

**Senator McLUCAS:** One further question: you did advise, in your answer to question on notice No. 144, which is the very, very long one that was amalgamated together, that the minister was advised from AHL about the changes to CCP funding on 13 March 2014. You said in estimates last February that you did not get a signal that that was going to happen, but you were told in March 2014.

**Senator Scullion:** Both are correct. I was not aware that we had actually received the letter, as my response to AHL was a number of calls and we had some meetings. I indicated that we needed to have another meeting with the board, but at the last Senate estimates I was unaware that an indication of some changes through—I am still unaware from that letter of the extent the CCP changes would have made. Certainly, there were no changes made in the forward estimates of the funding to AHL. So I am somewhat clearer now about what their intentions are. We still have some disagreement on perhaps one of the hostels, which we will be discussing with the full board. But it is correct that, when I asserted that I was unaware, a letter had been received that I was unaware of.

**Senator McLUCAS:** So you have the capacity to use the gap funding—I think that is the term we are using—to reinstate funding for those seven hostels that have not been successful under the IAS?

**Senator Scullion:** No, that is not correct. We are continuing to assess on a needs basis. I am also considering all those matters in regard to the responsibilities of AHL.

**Senator McLUCAS:** Ms Savage, how many beds are there at Bloodwood Tree?

**Ms Savage:** Bloodwood Tree is a 20-bed transitional, multi-purpose facility.

**Senator McLUCAS:** When it closes in December where will those people go?

**Ms Savage:** As I mentioned earlier, from our perspective if that is a decision, not just of IAS but of any other advocacy and lobbying to try to secure the necessary resources they need as an organisation with its own priorities and considerations, we would certainly avail ourselves to work with them and also draw in other facilities and operations in Port Hedland where we could help clients on a transitional basis, as we have done ourselves.

**Senator SIEWERT:** Sorry, I cannot let this go. What other facilities are you talking about?

**Ms Savage:** They are not the same sort of facility. In other words, they are not homelessness and they are not transient—

**Senator SIEWERT:** They are not Aboriginal facilities?

**Ms Savage:** Actually, they are.

**Senator SIEWERT:** Which ones?

**Ms Savage:** They just have some other specific purpose. AHL itself operates a 40-bed medical renal facility near Bloodwood Tree.

**Unidentified speaker:** The renal go—

**Ms Savage:** No—

**Senator SIEWERT:** It is a renal facility that is now being used for other things.

**CHAIR:** Order.

**Ms Savage:** All I am saying is that in terms of short-term accommodation infrastructure in and around Port Hedland, there is also a 40-bed employment related facility. As organisations who have a presence in that community, we can bring our heads together at least in the short term—we are not talking about long-term residential placement in a hostel. These are short term, generally for three months. We can work out some sort of cushioning plan so that no person goes without shelter.

**Senator SIEWERT:** Ms Savage, are you seriously saying that the facility that was built for renal accommodation, which I understand is being used for other purposes at the moment, could then be used for supporting the homelessness services that—

**Ms Savage:** No, it is not exactly what I am saying.

**Senator SIEWERT:** You just raised the fact that those services could be used.

**Ms Savage:** What I am saying is that in the event that Bloodwood Tree determines that it will close its doors we would be open to having a conversation about where there might be spare capacity, certainly in our own facility, and we would try to work with other local providers to find some solutions. We have an operating presence there. It is not the ideal. It is not the same type of service. But we would try to work on finding solutions, where that might be required, in the event that did occur.

**Senator SIEWERT:** If I understood you, you named two facilities. There is the renal accommodation. What was the other one?

**Ms Savage:** There are actually other local services as well that I do not know off the top of my head, but some of the bigger pieces of short-term accommodation infrastructure, which is designed for specific purposes—so it is not the same as what Bloodwood Tree has been doing. But certainly on a very basic level of no-one going without a roof over their head, you would come together and try to find some solutions. The other facility I referred to is one that is actually operated by YMCA. It is a 40-bed employment related accommodation facility.

**Senator SIEWERT:** It is not a homelessness service?

**Ms Savage:** No, you are absolutely right. Neither of them is a homelessness service.

**Senator SIEWERT:** You would acknowledge—and I am sure you would—that homelessness requires a specialist service and support services, which Bloodwood Tree currently provides.

**Ms Savage:** Accommodation for homeless folk definitely is what I would categorise as a specialised service. In terms of the service that Murra Mia has provided, all I can attest to is the funding we provided for the cooking and cleaning and the very basic hospitality components of accommodation. In regard to the additional programming that makes a homeless service specialist, we did not have that type of relationship. The designation was Bloodwood Trees' designation and we provided the accommodation components. So the homelessness and the aspects of the specialist type of service are ones that only Bloodwood Tree could really attest to.

**CHAIR:** As there are no further questions, I thank the officers of Aboriginal Hostels Limited for their attendance today. We will now go to the Office of the Registrar of Indigenous Corporations.

**Ms Carroll:** While we wait for the new witnesses, I can advise that the Tiwi Land Council is able to table the names of the members of the council.

**CHAIR:** Thank you very much. That was requested by Senator Peris. Each case has to be determined on its circumstances, and natural justice requires me to consider the circumstances that are put to me. If one is put to us, we will consider that on its merits.

**Senator SIEWERT:** I am not for a minute implying this about any particular organisation. I will go to a general question—what is to stop any organisation from continuously seeking an extension?

**Mr Beven:** The natural justice process, the way the legal system operates in Australia is that any entity is entitled to make a request for an extension. Obviously that has to be reasonable and I have to consider it on its merit. I look at the circumstances of each case, the factors that the corporation puts to me—but as I said, in the usual practice, I cannot recall more than one extension being granted.

**Senator SIEWERT:** Following on from the questions I asked last time, when you are determining whether directors of prescribed bodies corporates have complied with the directors duties, does that include looking at the compliance where the duties that are imposed by the general law of trust and trustees in respect to the trust as it relates to native title payments held by that PBC?

**Mr Beven:** My role is to regulate the statutory directors duties under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. In terms of the duties that may be imposed by the general law in relation to trusts and trustees, that is not my statutory remit. The applicable law applying to those duties is the common law and most of the states and territories have trust acts or trustees acts—that is the applicable legislation that regulates those duties.

**Senator SIEWERT:** What if the rules the PBC has established has a statutory requirement for them to hold the native title payments?

**Mr Beven:** The way the Constitution or rule book works is that it is a contract between the members and the corporation and the directors in the corporation. The common law that has developed over centuries is that the only people that can enforce the terms of that contract are the people that are parties to the contract.

**Senator SIEWERT:** What if the rules that they establish for the PBC say that they have to hold the native title payments and that they can only deal with them at the direction of common-law holders?

**Mr Beven:** That is the requirement under the native title legislation and PBC regulations.

**Senator SIEWERT:** In relation to native title funds, if the common-law holders have not given them the direction then you still cannot get involved?

**Mr Beven:** No, because as I said my statutory remit is the statutory directors duties that are prescribed in the CATSI Act. In terms of trustee obligations and the enforcement of a trust or the provisions of a trust, that is regulated under state and territory law—so beneficiaries may have rights under the trust deed or under the trust act or under the trustees act in the various states and territories. That is not part of my statutory remit.

**Senator SIEWERT:** Do you consider that PBC accounts—I may be asking for an opinion here but I will ask it, and then you can make a ruling on whether it is appropriate or not—should transparently identify any native title held by the PBC on trust, and its dealings on those payments?

**Mr Beven:** In relation to the management of trust funds, the accounting treatment of those is in accordance with Australian accounting standards. The Australian accounting standards do not require, in most cases, the assets and liabilities of the trust to be disclosed in the accounts of the trustee corporation. That is under the framework for the preparation and presentation of financial statements, so it is part of the accounting framework that operates in Australia.

**CHAIR:** Mr Beven, thank you for your attendance today. We do appreciate it.

### **Department of the Prime Minister and Cabinet**

[12:10]

**CHAIR:** I welcome officers of the Department of the Prime Minister and Cabinet. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*The extract read as follows—*

#### **Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders, pp 124-125)

Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirement of the 2009 order, so witnesses are required to provide some specific indication of the harm to the public interest that could result from disclosure of the information or the document. The committee has set 10 July 2015 as the date by which answers to questions on notice should be returned. Ms Carroll, do you wish to make an opening statement?

**Ms Carroll:** No.

**Senator McLUCAS:** Thank you for providing the questions on notice a day early. I appreciate that. We need to tell Health that they were a little bit late, but not too late. Thank you for doing that. Can I just make one comment about the QoNs? We submitted a series of questions on the IAS in batches, in tranches. I think what has happened in the process is that you have put them all into one very long answer, which is part of the reason I could not find that list of hostels. If we send them in in a theme—they are usually themed—can they stay in those sections? It is just a request.

**Ms Carroll:** Yes.

**Senator McLUCAS:** Have you had any redundancies within the Indigenous Affairs Group since September 2013? That is a long time ago, I am afraid.

**Ms Carroll:** That is a long time ago. We definitely have. I think we have answered that before, but Mr Neal might be able to provide an update on redundancies.

**Mr Neal:** Can you please repeat the time frame for the question?

**Senator McLUCAS:** No, I am not going to, because it is the wrong question. Can I have from you, probably on notice, the number of redundancies that have happened in this current financial year?

**Mr Neal:** I should be able to provide that for you. I do not have that breakdown for the Indigenous Affairs Group. I can tell you the numbers for the whole of PM&C, noting that 80 per cent of those voluntary redundancies did come from the Indigenous Affairs Group, if that would be helpful.

**Senator McLUCAS:** Could you take that on notice for me?

**Mr Neal:** Absolutely. I am happy to do so.

**Senator McLUCAS:** Could you also then indicate how many were voluntary, at what APS level they were and whether they were ongoing or non-ongoing?

**Mr Neal:** We only provide redundancy payments to ongoing employees. All of the voluntary redundancies conducted by Prime Minister and Cabinet were voluntary.

**Senator McLUCAS:** In the current financial year?

**Mr Neal:** Yes, that is correct.

**Senator McLUCAS:** Are there any other internal processes happening around staffing numbers?

**Ms Carroll:** There are no additional processes around any reductions to staffing numbers.

**Senator McLUCAS:** So you are not expecting that there would be any further staffing reductions?

**Ms Carroll:** We are settling our departmental budget for the next financial year, but there is no need. I think we have talked previously about the fact that, through a range of processes, our numbers came down relatively quickly to our forward budget. Those budgets adjust because of different measures coming on and off over the forward years, but we believe that we can live within our budget.

**Senator McLUCAS:** The Remote Community Advancement Network—where is that up to?

**Mr Eccles:** Since the last estimates hearing, the network is full steam ahead. We have now divided the nation into 12 regions. We have got either substantive or acting regional managers in place. We have appointed a national manager for the network, Mr Cahill—

**Senator McLUCAS:** Congratulations, Mr Cahill.

**Mr Eccles:** and the new way of doing business in the network is taking force.

**Senator McLUCAS:** What powers, authority and discretion do the regional managers have?

**Mr Eccles:** It is the standard delegations within the Australian Public Service. The regional managers are responsible for all the staff in those regions. We have spoken of previous hearings about the rationale for the new network to have more senior people closer to communities to make sure that the way that we roll out our services and fund things have the best chance of making a difference on the ground.

**Senator McLUCAS:** Is there a cost that you can identify of transferring to this regional model? Or is that all departmental costs?

**Mr Eccles:** It is all departmental. The cost is within the amount of money that we assumed through the machinery of government changes. There is been no additional cost.

**Senator McLUCAS:** Can I go now to remote locality housing.

**CHAIR:** I just want to ask Senator McLucas: would this come under program 2.5?

**Ms Carroll:** I think are we speaking about staff housing?

**Senator McLUCAS:** I am talking about staff housing.

**CHAIR:** You just want deal with staff.

**Senator McLUCAS:** It is just staff housing in remote locations.

**CHAIR:** Okay; we are in the right spot.

**Senator McLUCAS:** Yes.

**CHAIR:** You will keep me informed, won't you, Ms Carroll?

**Ms Carroll:** Yes.

**Senator McLUCAS:** What is the current policy around staff housing in remote locations from the PM&C point of view?

**Mr Cahill:** We have PM&C housing in a range of locations and, where those locations are, we will accommodate staff as need be. We also have housing where staff that are visiting the four to six weeks can be accommodated. Similarly, we have somewhere where there is some rental assistance, depending on whether there is local accommodation that they can rent.

**Senator McLUCAS:** Is there any intention to sell any of this staff housing?

**Mr Neal:** There is a divestments strategy that will see us look to areas where we currently have owned properties. We have 130 staff houses in our network. Where there is an active rental market in the future, we may well look to divest ourselves of those properties and seek to provide staff with a rental contribution or something like that so that we are not in the business of owning properties.

**Senator McLUCAS:** Do you have a number you are going to divest?

**Mr Neal:** We are still working through that, because it will be a location-by-location proposition. There will be some areas where there clearly is not a rental market, and we will need to make decisions about keeping those properties and maintaining them.

**Ms Carroll:** We are certainly looking across all of our properties. A number of them actually have been vacant for a period of time, and we are looking at, where they are perhaps in a market, whether they are still necessary. There is a strategy which Ms McIntyre might be able to add to where across government it is being looked at; however, within Department of the Prime Minister and Cabinet, we would not want to relinquish any properties where we absolutely need them and there is no market for housing. Where they are not being used for different reasons, we are looking at those properties.

**Senator McLUCAS:** When do you think that policy will be finalised?

**Mr Neal:** Are you talking about the impact that has on staff—the staff housing policy or the divestments strategy?

**Senator McLUCAS:** No. The divestments strategy.

**Mr Neal:** I think I will have to take that on notice. I do not have the actual date that that will be finalised by with me.

**Ms McIntyre:** Can I add to that. We made a commitment through the 2015-16 budget to return \$10 million to the budget over the forward estimates.

**Senator McLUCAS:** You must have my brief, Ms McIntyre. That is return to budget?

**Ms McIntyre:** Yes. That represents about 28 houses, or just over seven a year, based on the current valuation of our properties. We think that that is very sensible, given there are about 49 properties that are currently vacant. We may seek to utilise some of those in the future. As Mr Cahill indicated, we need to make sure that our staff are housed in them, but we think 28 of those would be a reasonable target to sell and to return that money to budget.

**Senator McLUCAS:** Are they properties that are not in very remote locations?

**Ms McIntyre:** We have not identified the specific properties at this stage. We have sold one, though.

**Senator McLUCAS:** Did you get a good price?

**Ms McIntyre:** We got a price that was less than the current book value, but not too much less.

**Senator McLUCAS:** Sorry.

**Mr Neal:** That sold for \$420,000.

**Senator McLUCAS:** I was being a bit naughty. Thank you for those answers. Does the department have a new Aboriginal and Torres Strait Islander recruitment and retention policy in terms of your staffing?

**Mr Neal:** We have a piece of work in train for that which is consistent with our broader strategy around diversity. The rate of Indigenous employment is something that is significant to us, and in which we want to set a high target. We are looking at strategies internally for how we might attract and retain Aboriginal and Torres Strait Islander employees to the department.

**Senator McLUCAS:** What is the current percentage?

**Mr Neal:** It is 15.3 per cent.

**Senator McLUCAS:** You have got a long way to go to reach Aboriginal Hostels.

**Ms McIntyre:** Yes.

**Mr Neal:** Acknowledged.

**Senator McLUCAS:** What is going to be the target?

**Mr Eccles:** What is going to be the target under the new policy? It is a little bit linked in with the recently-announced commitment by the government to have an APS-wide target of three per cent. Under that policy each portfolio is going to be given their own target. We are in the process of finalising that now but, as you would expect, it would be higher than what we are at now.

**Ms Carroll:** Could I give a little bit of additional information. The 15 per cent is across the whole department; in the Indigenous Affairs group we currently have Aboriginal and Torres Strait Islander staff at 22.7 per cent. That is an increase from December last year, where it was 20.2 per cent. We are very conscious of this and we are trying to focus on it, but we are also part—as Mr Eccles said—of a broader, whole-of-government process about retention and attraction of Aboriginal and Torres Strait Islander staff.

**Senator McLUCAS:** My question, though, is: what is the target going to be for the Indigenous section of PM&C under the new Aboriginal and Torres Strait Islander recruitment and retention policy?

**Mr Eccles:** The targets for each portfolio have not been finalised. We would be able to advise that in the coming weeks.

**Senator McLUCAS:** So you are being told what your target is going to be?

**Mr Eccles:** Yes.

**Senator Scullion:** This is a really important issue. When we are talking about allocating each of the numbers, the Australian Public Service has a target that they have to meet. This particular section is already at 22 per cent, and so it would be an anomaly in any of the settings that we would see across the APS. Within the Indigenous Affairs division of PM&C, which demonstrated they were able to increase that by two per cent over a short period of time, we are settling on our own target. But this will be a target that will have a slightly different approach from the rest of the APS; I would expect a higher level, obviously, because of the nature of the engagement of the Indigenous area. When we provide the answer to what we have settled on, it should not be seen as a reflection of the remainder of the APS—there will be a higher level of engagement, and I would expect a higher target and a high mobility to that target.

**Mr Eccles:** It is important to note that the Australian Public Service Commission, appropriately so, is taking responsibility across the public sector for the policy that underpins it, which also includes the allocation of targets to each department.

**Senator McLUCAS:** I find it interesting that you are receiving a target for the APS, which is fine.

**Mr Eccles:** We have a very strong commitment to increasing the number of Indigenous people who work in PM&C. What that target end up being, it is just a little bit too early to say. But the target will be in excess of where we are now.

**Senator McLUCAS:** Good. When you have it we will get it on notice, I suppose. That is all I had around corporate.

**CHAIR:** Do we have anything further on corporate? I would like to move to the outcomes if we can.

**Senator SIEWERT:** Not corporate per se but overarching.

**CHAIR:** Okay. Go with it, Senator Siewert.

**Senator SIEWERT:** Minister, I wanted to go to the issue around the additional funding announcement that you made yesterday about the \$140 million and the process that was undertaken to allocate that additional funding.

**Ms Carroll:** You are referring to the additional funding through the IAS process.

**Senator SIEWERT:** For the IAS process.

**Ms Carroll:** I will start, and then my colleagues, I am sure, can add some additional details. Effectively, I think, as we described last time, the process was an initial announcement and then talking to the service providers that were successful and those that were unsuccessful and going through a negotiation period. Through that period, we also identified if there were any unintended gaps that had emerged through the funding that had been allocated to particular services et cetera. The announcement that the minister made this week was the finalisation of that process where we had gone through negotiating and talking to different service providers. We got to the point where we were able to say, yes, we have looked at the unintended consequences, we had looked at what the negotiations brought us, and the additional funding and additional service providers that got funding were the outcome of that process.

**Senator SIEWERT:** Minister, you will remember that I asked you about the gaps, and Central Australian Youth Services was one of them, and I understood from that answer that there was going to be a process undertaken to identify those gaps. Can you take us through that process and what the actual process itself was and what has been identified out of that process?

**Senator Scullion:** There are two parts to that question. By inference, Central Australian Youth Services was not dealt with as part of the gap analysis.

**Senator SIEWERT:** No, I did not mean to imply that.

**Senator Scullion:** Sorry, my apologies.

**Senator SIEWERT:** I was saying that was clearly a gap.

**Senator Scullion:** Yes, and we dealt with that at the time.

**Senator SIEWERT:** Yes, but when I asked at the time, 'What about others?' you said there was a process.

**Senator Scullion:** Yes.

**Senator SIEWERT:** So what I am trying to find out is what that process is and what the outcome was and who is getting the \$140m million.

**Ms Black:** As Ms Carroll said, it is largely through the negotiation process that we have done the gap analysis. It was not always clear from an application and the descriptions in applications where there were currently funded services within the projects that people were applying for. So when we have gone out and talked to people, it has become clear that they were currently funded front-line services that we needed to continue. It is largely through the negotiation process that we have picked up the gaps. I will just say though, on the dollars, that we also provide additional duration to providers.

**Senator SIEWERT:** I understand that.

**Ms Black:** We provided two- and three-year contracts as a baseline for people. A lot of the money in the further announcement that the minister made was in relation to duration.

**Senator SIEWERT:** Where organisations had got 12 to 18 months, it was rolling out to three years. I understand that, and I want to come to who has got the additional funding in a minute. But I just want to nail down a little bit the process of negotiation. Did you talk to organisations that did not get funding? All of them? If it was not all of them, how did you choose which ones?

**Ms Black:** We did it in the context of the rounds. We were looking at gaps in the context of the rounds. These are only people who applied through the round.

**Senator SIEWERT:** I understand that.

**Ms Black:** But what I was going to say was that I think we will probably have to do another little bit of gap filling, for example, if someone declines an offer, and we have already had one organisation decline an offer because their board has changed and they are changing directions. We would not do that within the round then. We will go outside and we will do another, probably a targeted or a direct sourcing arrangement, to make sure that we have got a gap filled there.

**Senator SIEWERT:** You have now opened up another area, so there are actually three categories. There is the talking to the people that were successful and talking to those that were not successful. In fact, no we have got four because you said you were talking to an organisation that turned you down.

**Ms Black:** I am just being speculative. We have had one turn it down. What we will need to then work out is, do we have a gap, and we have not done that yet. That has just happened.

**Senator SIEWERT:** And there is also a group that we are aware of, because I have actually spoken to them, who did not put an application in because they thought—and it was the conversation we went to last estimates—they could not meet the guidelines. So, there is, in fact, four areas. You have spoken to those that were successful and to those were not that had applied.

**Ms Carol:** In terms of the gap filling and identifying issues through the negotiation process, there were discussions with people who were successful as well as with organisations that were not successful. And through that process—effectively the new funding—was decided on, so it was not just with the successful people.

**Senator SIEWERT:** So you went back to all of those that were unsuccessful?

**Ms Black:** Yes. There was some criteria we used: we worked out whether it was a frontline service; whether it was a needed continued frontline service; whether people would be lacking a service if they did not get it; and did it aligned to the priorities. Within looking at a gap, we did apply those. We worked very closely with our network staff out of Canberra who were working with organisations every day in relation to the negotiation process.

**Senator SIEWERT:** Was this for when you decided who you were going to talk to about gap filling? When you were gap filling, did you look at whether the service was a frontline service or not?

**Ms Black:** Yes.

**Ms Carol:** Yes.

**Senator SIEWERT:** Okay, so you have not spoken to everybody?

**Ms Black:** We spoke to people who applied. So we have not spoken to people who did not apply.

**Senator SIEWERT:** Sorry, let's go back. You have already said you went to funded and unfunded services. If I understand the answer correctly, you did not go to all of them; you went to the frontline services. That was your first criteria for who you were going to talk to about gap filling. Is that correct?

**Ms Croft:** The commitment that we have always made right from the beginning was that we would not see a gap in frontline services. In answer to your question, 'was there a gap in frontline services', was pivotal in our decision making around that. Could I just say, in answer to your earlier question, in addition, all unsuccessful applicants were provided with details about how they could follow up with the department afterwards.

**Senator SIEWERT:** I have seen some of those letters.

**Ms Croft:** Yes, but, I am just saying, for all organisations successful or unsuccessful, whether or not we approached them, there was a mechanism also for them to approach us.

**Senator SIEWERT:** Okay, we are going down a hole that I think that we will address in the inquiry. The letter I have seen that you sent back, with all due respects, gives them no adequate feedback.

**Ms Croft:** It provided the mechanism for them to seek feedback.

**Senator SIEWERT:** They have not yet heard that feedback?

**Ms Croft:** That is not necessarily the case.

**Ms Black:** We had about 665 requests for feedback and we are about 83 per cent into providing feedback. I know some organisations were not happy with the feedback they got. I guess that is a different story than if they are not happy—

**Senator SIEWERT:** As much as I would like to go down that rabbit hole, we have got another opportunity to deal with this. I do want to come back to the gaps. Just be really clear, because even on my third attempt, I am still not clear.

**Ms Croft:** We certainly went to all of the successful service providers and started negotiations and identified anything. There was a separate process, which Ms Black referred to, where after that initial round our regional managers and our staff on the ground talked to local providers and identified themselves. We have noticed as we have gone out and talked to people that there are some front-line services here, here and here where organisations are saying to us—or we have identified ourselves—that there will be a gap in front-line services. We went out and spoke to those people. It was not for every single application. We went and talked to them about what gap that would create. It was the identification of that—

**Senator SIEWERT:** Yes. That is what I was trying to get to.

**Ms Carroll:** It was that identification by our staff on the ground of: 'Yes. This is going to create a front-line service gap, if something is not provided.'

**CHAIR:** With that, I am not going to stop you asking any further questions but I am trying to facilitate things here. In agreement with the deputy chair, we have agreed to reduce lunch to half an hour, so you will get an extra few minutes. We will adjourn a little bit early, because we have got to have a private meeting. Are you happy to move onto program 2.1?

**Senator SIEWERT:** There are issues here that still need to be resolved about the gaps.

**CHAIR:** We will break at 17 minutes to one. We have a couple of minutes for a private meeting and then we will have half an hour for lunch and resume at quarter past. I want to try and facilitate things here. I know you have got lots of questions.

**Senator SIEWERT:** I still do not understand what happened, but we have time constraints. We can go into more detail later, but the most important thing now is to find out who the money is going to and what services are being funded. If you have provided this publicly, I apologise: I could not find it. Ms Black, when you answered the question before about the criteria, was that the criteria that was used for the funding decision-making process?

**Ms Black:** I guess it was in the application kit—we went to very specific criteria for funding. Certainly when our assessment panels, our grant selection committee and our original assessment teams looked at it, they were looking at it from a front-line service delivery perspective. That was when we mapped services currently in an area and regional data, so we could inform ourselves of what were critical services in those areas.

**Senator SIEWERT:** That were gaps.

**Ms Black:** Yes.

**Senator SIEWERT:** I might get you to take that criteria on notice, because I know we are going to run short of time. Can we go to: who is getting money, what for, where and how much.

**Ms Carroll:** In the middle of July, we will probably be able to give you a very detailed list of 90 per cent of the grant recipients. We can give you the organisations' names. We do not have the funding amount just yet, because we are still finalising the negotiations—50 per cent of the negotiations are final; it is the exchanging and getting them signed off by boards and the Commonwealth et cetera. We would not want to release something that actually had not been signed by the organisation. That is why we have a list of service providers but without the length of contract and the dollar amount.

**Senator SIEWERT:** Are you talking about the broader list?

**Ms Carroll:** And there was an additional list.

**Senator SIEWERT:** Where is the additional list?

**Ms Carroll:** In the same place as the original list. We can table that for you.

**Senator SIEWERT:** That would be appreciated. For those who were successful on the second list, did you go through the same process that you went through for the original round? How did you make the decisions?

**Ms Carroll:** Effectively, they were part of the original round. They were scored. They had an assessment score—all of those things.

**Ms Black:** And a neat score.

**Ms Carroll:** And a neat score et cetera. So the assessment process was—

**Senator SIEWERT:** They were unsuccessful the first time.

**Ms Black:** They were 'not recommended', rather than 'unsuccessful'. We always knew that, should we end up with a gap, we would have to go back to the original set of applicants that we had looked at. That is why we assessed every single application that we got.

**Senator SIEWERT:** So these are ones that you have pulled back up out of 'not recommended'?

**Ms Carroll:** They might have been. They had a score and, for whatever reason, we have gone back when we have seen the gap and said, 'What service providers applied that could provide this service? Who basically had the appropriate score?' We could then pull that service provider out and say, 'Yes, these people would be the next ones to fill this particular gap.' So we use the initial assessment process, and the scoring and the assessment in the gap process.

**Senator SIEWERT:** Okay. One of the other categories was where people had not applied: are they incorporated? I sort of understood from an answer from Ms Black that in fact there are ongoing processes occurring. Am I correct in that understanding?

**Ms Carroll:** That is right. There is a round process. So if they did not apply, then they cannot be successful in the round. Separately to that, if we have actually identified that we have a gap and nobody in the round could provide that service because the local service provider did not actually apply, we will have a process for going out and filling that gap.

**Senator SIEWERT:** Okay. And that is the demand driven, or one of those other categories under—

**Ms Carroll:** No, it is not. There is a demand-driven process but this is actually identifying where need is. We could do a little local round or—

**Senator SIEWERT:** Which category are you doing that under? Of the IAS, which category of funds does that come under?

**Ms Carroll:** It could either be a direct source or a targeted process. It will really depend on the particular location, what we would do there.

**Senator SIEWERT:** And under what time frame is that process occurring?

**Ms Black:** We have only had one organisation thus far that has declined the offer, so it is a little hard to answer that question just now until we see the extent to which we have situations like that.

**Senator SIEWERT:** How did you decide which organisations got the top-up for two to three years?

**Ms Carroll:** That was also part of the negotiation process. As we talked to service providers, certainly a number of them raised concerns about the length of their funding agreements. That encouraged us to go back and look across the board at what would be reasonable. Effectively then, with some feedback from a number of service providers, we looked across and said, 'Well, it would be reasonable to provide a lot more services with a longer contract,' and so that was the recommendation.

**Senator SIEWERT:** So has everybody now been topped up?

**Ms Carroll:** No, not everybody.

**Ms Black:** Not everybody, the vast majority.

**Senator SIEWERT:** So my question remains: how do you decide?

**Ms Carroll:** Effectively, we have a look at if there are particular reasons why we would want some groups of service providers: either we are already going through a reconsideration of what that funding might be used for in the future or it might be the type of service providers that they are, that we are a bit concerned about their capacity, and that therefore we want to make sure at the end of that year that we have an ability to change service providers if required. There will be a range of reasons.

**Ms Black:** And maybe it is a capital project that only lasts a year. There has been a range of reasons as to why we left some—and that is quite a small minority—at a year.

**Senator SIEWERT:** Thank you. I am conscious I am supposed to stop.

**CHAIR:** With that, the committee will now suspend and resume at 1.15 pm in continuation with the Department of Prime Minister and Cabinet.

#### **Proceedings suspended from 12:43 to 13:15**

**CHAIR:** I resume the Finance and Public Administration Legislation Committee cross-portfolio Indigenous matters for budget estimates. We are now dealing with the Department of the Prime Minister and Cabinet, program 2.1, jobs, land and economy.

**Ms Carroll:** Just before we go in, Mr Neal has an update on those staffing figures that Senator McLucas asked for.

**CHAIR:** Would you like to table them, or do you want to read them into *Hansard*?

**Mr Neal:** I do not have a clean copy with me, so I could read them into *Hansard*, if that is okay. Voluntary redundancies for Indigenous Affairs for 2014-15 financial year are 119. The classification breakdown is: APS2—two; APS3—two; APS4—five; APS5—14; APS6—40; EL1—34; EL2—22.

**CHAIR:** I am sure Senator McLucas appreciates that.

**Senator SIEWERT:** Before we go to 2.1, could I confirm that in this document that has just been tabled the list that says funding for 27 June is the full list of those that got more money? Is that correct?

**Ms Carroll:** That additional group are the ones that previously had not been funded. So some of the ones that had already been announced will have got some additional funding, but they are the ones that have not been announced before.

**Senator SIEWERT:** Can you take on notice, because I am very aware that we are going to totally run out of time, to give us the list that have already been funded that have been given additional funding?

**Ms Carroll:** The top up?

**Senator SIEWERT:** Yes, the top up.

**Ms Carroll:** Would you like that broken into whether they have got an extension of funding versus additional funding for a new activity?

**Senator SIEWERT:** Yes, please. It does not look like the Dampier Peninsula women's shelters are on this list. What is happening there? I appreciate your letter, Minister, that I found on my desk this morning, but that did not tell me anything other than, I think, it did not get any funding.

**Senator Scullion:** We knew you would ask that. It will be fine.

**Senator SIEWERT:** Does that mean they are actually going to get funding?

**Senator Scullion:** No, because we are in negotiations. We all want a positive outcome in this regard. In terms of the detail, I am not actually doing the negotiation, unsurprisingly, but if somebody else can help, that would be useful.

**Ms Carroll:** We are still talking to the service provider and going through those negotiations. Obviously, the minister is aware of the issue and the service provider, but we are not in a position to finalise that funding yet. But we are aware of the issues and we are certainly in close discussions and negotiations with them.

**Senator SIEWERT:** Can I take that to mean that it is likely that they will get funding, subject to your negotiations?

**Ms Carroll:** I am not the decision maker, so all I can say is that we are negotiating.

**Senator SIEWERT:** You are the decision maker, Minister.

**Senator Scullion:** Indeed. The only caveat that makes me reluctant to make a very positive remark on this is that because we are in negotiations, I am also very aware that we need to not signal any particular area—

**Senator SIEWERT:** Drive a hard bargain?

**Senator Scullion:** We always drive a hard bargain. Part of the negotiation is not only about money; it is about sustainability. Part of the negotiations, I know, is to ensure that the circumstances we find now are not happening in the future, instead of the cobbled together things that you talked about before, which in some ways are just a convention, but in some other areas are really not sustainable. That is their biggest challenge. So one of the things that the IES has changed in a number of areas is that instead of having this cobbled together, they actually have some security of tenure in terms of funding into the future. This is one of them. All I can say is that I think this is a very important service, and we are negotiating in a very positive sense.

**Senator SIEWERT:** Are we going on to 2—Senator McLucas is here now; I do not know whether she wants to—

**CHAIR:** I would like to go through 2.1 and start with that: jobs, land and economy.

**Senator McLUCAS:** As much as I would like to myself, I think that is going to be hard, because I think a lot of us do not know which application fits in which program.

**CHAIR:** I am perfectly happy, then, for the next 40 minutes, to have general questions. It may be a bit awkward for some of the officers, Ms Carroll, but such is life.

**Senator McLUCAS:** I am also keen—and I want to flag this—that we will go to health at two o'clock. That is the plan.

**CHAIR:** That is our intention.

**Senator McLUCAS:** My question follows along from some of Senator Siewert's questions. Let me ask the question in a number of ways. It is very difficult to get information from the website. You can get it, but you have to go in individually, take out a name of an organisation and then put that into a document. I was wondering if we could be provided with a list of organisations that currently have agreed and where contracts have been finalised for all IAS projects in an Excel spreadsheet and then following the two weeks after 30 June—if we could then have a completely updated one showing those contracts that have been signed.

**Ms Carroll:** So, you are asking for our existing contracts, before 1 July—a spreadsheet of all the existing service providers and contracts, and then post 1 July—

**Senator McLUCAS:** No, I am not.

**Ms Black:** Are you asking just for contracts in the—

**Senator McLUCAS:** Under the current round of IAS.

**Ms Black:** Only three contracts have been signed to date, and 480 are nearly ready to go, as Ms Carroll said earlier, so they are just in the process of finalising. But I think we could do that as they get finalised.

**Senator McLUCAS:** Is it sensible to ask for a list by, say, the end of next week? Or is that too early?

**Ms Carroll:** I would suggest probably at the end of the following week. In the next two weeks we will get most of them back, signed. As I indicated before, they have been negotiated; it is just the process of waiting for the next board meeting et cetera—those sorts of things.

**Ms Black:** The organisation just has to go through its governance arrangements.

**Senator McLUCAS:** So, today fortnight? Is that what you are suggesting?

**Ms Carroll:** Yes.

**Senator McLUCAS:** And then the final list.

**Ms Carroll:** Yes.

**Senator McLUCAS:** And I am wondering whether we can pick up on the questions that Senator Siewert is asking around the way the funding has been applied. So, column A would be that these ones went straight through the process, got funded for the amount and did not have to negotiate anything differently, and then ones that came through as gap funding, ones that came through as top-up funding. If that could be identified in this master list, that would be extremely helpful.

**Ms Carroll:** We will look at what is possible, taking those different categories into account. The other thing I will say is that from 1 July we still will not have all contracts signed, because a number of them run on a school-year basis.

**Senator McLUCAS:** Of course.

**Ms Carroll:** Those service providers are in a hurry. They have gone through the negotiations, but there is no hurry to sign the actual contract, whereas with the ones that need the funding from 1 July, obviously we will have those settled. So, obviously there will be a continuing update post 1 July.

**Senator McLUCAS:** I think you understand what the committee is looking for, though.

**Ms Carroll:** Yes.

**Senator McLUCAS:** Thank you. Tell me if I have gone over this already. How many projects were recommended by the department for the initial announcement—that is, prior to the \$860 million allocation? And what was the total value of the department's recommended projects?

**Ms Croft:** Are you after the original amounts in that decision?

**Senator McLUCAS:** No.

**Ms Croft:** What went to the minister?

**Senator McLUCAS:** Yes.

**Ms Black:** I do not have that with me. As we said at last estimates, the minister overturned a small number of the department's recommendations. I think we responded to the question on notice that it was in the order of eight. There was not much difference between what the department recommended and what was signed off, but I do not have those figures with me.

**Senator McLUCAS:** If you could provide that on notice that would be good. I have a question on the eight that were not approved by the minister. Thank you; you did answer that in a question on notice.

**Ms Carroll:** Can I just clarify that it is not that they were not approved; it was the fact that the minister did not agree with the recommendation. In fact, it might have been that we recommended that they were not funded and the minister overturned that recommendation. It is the fact that the minister did not go with the recommendation of the department.

**Senator McLUCAS:** How many of those eight were ones where the minister made a decision to approve?

**Ms Carroll:** I think it was all of them.

**Senator McLUCAS:** Then I have misunderstood you, Ms Carroll. I thought you were saying some of them were where the minister made a different decision to the department.

**Ms Black:** The department may have put up, not recommended, and the minister said, 'I don't agree with that; I am recommending ...'

**Senator McLUCAS:** And all of them were 'not recommended' and changed into 'recommend'?

**Ms Black:** That is my recollection.

**Senator McLUCAS:** There were none that were recommended by the department, and the minister said, 'I am not approving that one'?

**Ms Black:** We will double check, but not to my recollection.

**Senator McLUCAS:** Minister, you have to write to the Minister for Finance—and, thank you, that is explained in that answer. Can you tell the committee, though, which of the recommendations from the department you did not agree with?

**Senator Scullion:** I think there were eight but, in the interests of clarity, I am more than happy to take that on notice. We have not actually sent the letter off for those. I understand it is fairly soon. We need to complete the process and when the process is completed that is when the reporting process happens to the minister. I do not think there are any real issues around that. We can provide that to you on notice. I am sure the Minister for Finance will not get his nose out of joint if you heard before he did.

**Senator McLUCAS:** My understanding is you do not have to write to the minister until 31 March next year.

**Senator Scullion:** If you would like to have it now that will be fine.

**Senator McLUCAS:** You could tell the committee as well.

**Senator Scullion:** We will take that on notice and provide those.

**Senator McLUCAS:** And that eight is the total number of changes from departmental recommendations subsequent to the first round?

**Ms Carroll:** Yes, there were no additional changes. In the subsequent recommendations there were no additional changes.

**Senator McLUCAS:** If we get that full list that will answer a lot of questions. The eight is also of interest as well.

**Senator SIEWERT:** Minister, were there any approvals—not that recommendations were not agreed with—that were funded that the department had not put up to you?

**Senator Scullion:** Perhaps you could ask that again, just so I get it.

**Senator SIEWERT:** Were there applications that you approved that the department had not recommended? You put up a list of projects for approval. Were there any that were approved that were not on that initial list?

**Ms Croft:** Only the eight that we have already talked about.

**Senator SIEWERT:** Only those eight where the recommendation was not—

**Ms Carroll:** The only other ones were ones that were not part of the grant process per se; they were the demand driven applications. As well as the grant process, which was picking up the majority, obviously a number of the demand driven applications were still occurring. It is not that the minister made a different decision. I wanted to be clear that there were other approvals the minister made during that time.

**Senator SIEWERT:** Are they included in this list of the IAS round?

**Ms Black:** No.

**Senator SIEWERT:** No, I did not think they were. Can we have a list of those?

**Ms Carroll:** Yes we can provide that on notice.

**Senator SIEWERT:** Under the same criteria, if we can. Were any of the applications approved for organisations that were in administration?

**Ms Black:** No.

**Senator SIEWERT:** Have you double checked that?

**Senator Scullion:** That was four 'nos' in a row.

**Ms Black:** We will double check it. We have some, obviously. As Ms Carroll said before, we have some issues. We are working closely with them in terms of governance arrangements, but not administration to the best of my knowledge.

**Ms Carroll:** We will double check that.

**Senator SIEWERT:** Can you double check that and could you also tell me how many organisations, not the names of, but the organisations that you have some issues with in terms of their governance?

**Ms Carroll:** Yes.

**Senator SIEWERT:** I presume you have to take that on notice.

**Ms Carroll:** Yes.

**Senator SIEWERT:** I want to go to the RJCP and get a bit of an update of where you are at. In particular, how have you responded to the providers and the rather substantive submission they provided in feedback on RJCP? And what has been your response to the rather large number of recommendations they have made?

**Mr Eccles:** I will start with a bit of a high-level thing. I think it is fair to say that the general architecture of the new approach to RJCP is settled. We are continuing to consult with the providers. We had a meeting of all providers in Alice Springs last month, where we went through all elements of the program, the funding model, right the way through. We got a consultant in to develop up for them a funding system so that they could do modelling based on their communities. We went through what we would imagine work-like activities to be. We talked about the funding stream for intermediate labour markets and local economic development aspects. We got a lot of feedback at that point. We have had a lot of discussion between now and then. Next week the RJCP providers will be gathering with us in Darwin and we will go through what we are calling the micro-policy, the details of implementation, and continue to work with them to refine and finalise it.

**Senator SIEWERT:** Did you say the meeting was next week,?

**Mr Eccles:** Yes it is.

**Senator SIEWERT:** In terms of that micro-policy, does that include responding to the recommendations that they made to you?

**Mr Eccles:** Not explicitly. Everything that they have told us, we have taken in to account and looked at and considered. In quite a number of instances, we have held discussions with them, particularly around some of the financial matters—how the money will flow, what the options are, the incentive that we are providing to actually get people in to work, and the incentives that are going to be available to employers as well. There is beginning to be quite a strong level of acceptance of some elements.

There are still going to be some issues that we need to thrash out next week. We have not gone through and responded bit by bit, but when we gather with them next week, we will be able to take them through where we are at.

**Senator SIEWERT:** So next week is the beginning of June. I know it is being rolled out over the twelve months, but their No. 1 recommendation was that it be delayed at least six months because they are not ready.

**Mr Eccles:** Some will be ready, and some are ready, and some are looking forward to picking up the ball on 1 July and running with it.

**Senator SIEWERT:** Who are those some and where are they?

**Mr Eccles:** I would prefer to talk to you next week about that: we are in discussions. I know of a couple off the top of my head, but I would be reluctant to telegraph that without us having the final discussions. But I can certainly take that on notice. t

**Senator SIEWERT:** If you could take on notice where the rollout is starting and who the providers of that are in those regions. In terms of some of the activities that are going to be provided, there was media speculation that things like 'school attendance'—getting your kids to school—are going to be part of those requirements that could be classed as Work for the Dole. Is that in fact what is going to happen? What are those criteria?

**Mr Eccles:** I will ask Ms Williams to go into it. We are taking a very pragmatic approach to what a work-like activity is. It could be rehab, it could be training, it could be getting the kids to school, it could be looking after your aged parents. But if you are doing something like that, we would look to offer you training as well so that

when inevitably their circumstances change you might be able to find some sort of employment in the caring sector. Ms Williams and Mr Bulman can go into a little bit more detail.

**Ms Williams:** There is a broad flexibility in how we are defining a Work for the Dole activity. The key criteria that we are looking at are essentially that those activities will be work-like—that is, they will involve a basic routine, they will be supervised and they will be rolled out over five hours a day, five days a week. That is the broad criteria for an activity and, as such, it does mean that that could involve a broad range of things, such as, as Mr Eccles mentioned, taking your kids to school, volunteering in the school, or working in the school canteen, activities that relate to rehabilitation or things that are necessary for a person in order to get into a job at some point—those sorts of pre-employment services and supports that are needed in order to get someone work-ready. The intent is that all of those things will be able to be captured under that work-like activity definition.

**Senator SIEWERT:** From a Work for the Dole perspective, what is the process to check that you got your kids to school. What happens if you don't? Are you going to be breached?

**Ms Williams:** All of the activities will be supervised. They will be part of the package of activities that are agreed between the provider and the job seeker. They will be the things that the person does within their five hours a day.

**Senator SIEWERT:** So your service provider is now going to check whether the kids are in school?

**Senator Scullion:** Senator, I know you were not trying to verbal my department there, but perhaps I can assist—

**Senator SIEWERT:** That is exactly what you could take from that answer.

**Senator Scullion:** You could; but you could also perhaps take a more sensible interpretation.

**Senator SIEWERT:** Are you saying I'm not sensible?

**Senator Scullion:** Advice from you on a number of occasions, Senator, has been that we need to be very flexible, very pragmatic about what people think is a practical work-like contribution to their own community.

**Senator SIEWERT:** Now you are verballing me. I have never said getting kids to school should be part of Work for the Dole or regarded as work.

**Senator Scullion:** We are working on a number of fronts and always we are looking for synergies. If somebody says, 'I really can't get to work because I have some difficulty trying to get my kid to school for the first hour of the day,' we would say, 'In those circumstances, for sure; it's difficult.' With these more challenging circumstances, we would be able to validate that through some of the other services that we provide—and so that would be in the spectrum. That might be one end of the spectrum. But certainly it has been suggested to us. When I am talking to the communities, they are saying, 'Well, sometimes it is really difficult to get to work at a particular time when we have got six kids,' or 'I'm in a house where there is some fostering going on.' So we have said, 'Yes, of course, that would be acceptable.'

We have said to the communities that we do not want to dictate, because what happens is that we put a circle around what is possible. We say, 'You're from the community, you should be front and centre about working out the sorts of things that you think are a real contribution to the community.' That is our approach. Instead of us dictating what we think is a work-like activity in their own community, we are relying on the community to do so. That philosophy extends to the homelands and outstations. We are saying to them: 'You make up your mind what they are here. You also select who you are going to have supervising your teams. You sort out what you want and make a submission to us and then we will work with you to ensure that we meet somewhere in the middle.'

**Senator SIEWERT:** When you talk about the community, are you saying that the community then decides what is acceptable? How are you facilitating that process? Am I understanding what you have just said correctly?

**Mr Eccles:** This cannot be seen in isolation to the new work that we are doing with our network, that we would expect in communities with each provider there would be PM&C staff working with them, working with local leaders and it will differ on a community-by-community basis, obviously, as you would know. The discussions with the community leaders will be facilitated by the providers and our staff to understand what they see are the most appropriate ways to get people active, to give them opportunities for training, to make sure that we minimise the time that people are doing anything. That is going to be an emerging and really important job for our network staff.

At the meeting next week our regional managers will be there so that they are part of the design as well. They have been working closely with us. Those discussions will take place with each of the providers and, depending on the nature of the community, whoever the right leadership group is.

**Senator SIEWERT:** I will go back to the original question that started this round of questions, which was: who then decides whether you have actually got your kids into school or some of those other mechanisms—

**Mr Eccles:** This is a facilitating measure not a compliance measure about schools. This is about, as the minister said, if someone said, 'I can't get to the nine o'clock start for this training' or 'I'm doing some road work' or whatever it might be, and they say 'I've got to get my kids to school' then that is okay. That is considered as being active and contributing to the community. I just want to be clear that this is not about school compliance.

**Senator SIEWERT:** I am sorry you are not making it clear at all. Is it part of the five hours or not?

**Senator Scullion:** Yes, it can be part of the five hours.

**Mr Eccles:** It can be if they want it to be.

**Senator Scullion:** But whether or not they get their child to school is not necessarily the outcome. The fact that they are attempting to and continuing to find and locate their children—you would understand the complexities—so, no they are not can be in breach because the kid is not at school. But if they are not making an attempt to assist the child get to school, yes, that would indeed be a breach.

**Senator SIEWERT:** Thank you for that clarification. How do I know as the provider whether—and I was going to say Mr Smith, but I apologise for that—they have actually made an attempt.

**Mr Eccles:** That is the role we see for the committee leaders, the RJCP providers and our staff. These people know their communities really well. And so it is going to be part of the job of the providers.

**Senator SIEWERT:** Is it still 52 weeks?

**Mr Eccles:** No.

**Senator SIEWERT:** What is it?

**Mr Eccles:** It never was.

**Senator SIEWERT:** What is it?

**Mr Eccles:** Again, it is going to be a sensible approach. There will be cultural leave. These are things we are discussing with the providers and we have discussed with communities. It is likely there may be some provision for a Christmas stand-down to align with Christmas holidays because we know a lot of people like to leave communities during that period of time. It is not going to be a 52-week.

**Senator SMITH:** My questions follow Senator Siewert's but at a more granular level going to the Kimberley RJCP alliance. Are you familiar with the concerns that they have raised around the program and program implementation?

**Mr Bulman:** Yes. We are aware of the alliance. I believe it is four RJCP providers up in the Kimberley that come together regularly. They work closely with our regional managers at their in Broome office.

**Senator SMITH:** How would you categorise their concerns that have been communicated to the local officials?

**Mr Bulman:** They have raised a number of elements in a letter to us, including that they would like a period of flat rate payment for the first six months of the program to help them establish some extra support along establishing some concerns around CDEP. We found a lot of them aligned with some of the feedback that we have received more broadly that we have included into program guidelines. When we sit down with providers next week and step them through more of the micro policy that Mr Eccles was talking about, we think that will allay their concerns.

**Senator SMITH:** They raised concerns first around communication and lack of information, but that sounds like that is being addressed—I accept that; client risk, commercial risk to corporations and then perceived government risk. If I understand your evidence, you are aware of their concerns and, as far as possible, incorporating their concerns—reflecting on what Mr Eccles said in terms of the program is set, it is happening—and that next week's meeting might continue to allow some of the outlying concerns to be addressed.

**Senator Cormann:** Indeed.

**Senator SMITH:** Thanks very much.

**Senator LAZARUS:** I will not take up too much of the committee's time. I just have a couple of questions in two areas. The first one is the Indigenous rangers program. How many employees does this program currently have?

**Mr Eccles:** The question was how many employees, so Mr Smith is well placed to answer that.

**Mr Smith:** Across the whole Working on Country program, as of February this year, we had 759 Indigenous rangers employed nationally over 104 ranger teams.

**Senator LAZARUS:** When it comes to funding of this program, what sort of guarantees have they got at this stage? How long has the funding been guaranteed for?

**Mr Smith:** Back in 2013, there was a five-year funding agreement across the whole program, which is a total of \$335 million. There has been some additional funding through the Northern Territory's expansion of their ranger program, but that is a fully committed program up to 2018.

**Senator LAZARUS:** So that is guaranteed to 2018?

**Mr Smith:** That is correct.

**Senator LAZARUS:** Is there any chance of expanding the program?

**Mr Smith:** The organisations that host the rangers did put applications in to the Indigenous Advancements Strategy funding round, so they are able to apply.

**Senator LAZARUS:** In the current budget and in correspondence with the current government there has been no talk of cuts to this program?

**Mr Smith:** No.

**Senator LAZARUS:** None at all?

**Mr Smith:** No.

**Senator LAZARUS:** That is good to hear.

**Ms Carroll:** In the Indigenous Advancements Strategy grants round, a number of ranger programs were extended to that 2018 point so that they are all aligned to finish at the same point in time.

**Senator LAZARUS:** Okay, so we cannot talk about beyond 2018?

**Senator Scullion:** We can be very clear: I do not think anywhere across parliament that we do not recognise how important it is. The fact that it is 2018 is because that is the end of forward estimates. That is the only connectivity, and I would expect any usual circumstances for that it be a continuation of that. I think there are still not weaknesses in the program, but there are opportunities that have not been taken, whether it is weed or feral animal control, that is getting on top of pastoralists in places. There is a great opportunity for a lot of their work to move out.

There is the interoperability. If any Commonwealth agency is now working in an area that has a ranger group in the area—for example, if someone is doing some collecting or even the AFP or fisheries are moving through the area—this has to happen. We do not need you to bring some wonderful young men and women from Melbourne university to help with the collecting. We have got rangers here who really know their stuff, so I only want core people and scientists, for example. That is the incubator for real jobs. They will say: 'This is fantastic, mate. Why don't you come and do this or that?' Whether it goes to working eventually with the AFMA patrol boats, Customs or the Navy—it is a bit far offshore at the moment—there is that same philosophy, because I think they are just a fantastic bunch of young men and women. But their opportunities in life should not end at just being a ranger, and I think that interaction between these other agencies hopefully will incubate some more movement there.

**Senator LAZARUS:** Who is going to instigate and take the initiative in doing more in this area? Is it the government or is it—

**Senator Scullion:** In terms of my most recent comments, that will be me. I am contacting all of the other agencies as part of this, and I have spoken to many of the ranger groups about this and they are obviously pretty enthused. But it is just about ensuring everybody understands that, if you are in an area—and not all areas are covered, but they should be; that is the other issue. For example, the rangers around Normanton start here in Normanton and it is around Normanton. It did not start because it was a particular bias for here or anything like that. They work as far out of that area as they physically can, rather than saying, 'Here's an area of Australia that should be eventually looked after by some Indigenous ranger groups.' So we have got a little ways to go, but, in terms of sustainability and the financial sustainability of that, we have had no thought processes and I am quite sure across government there have been no questions about continuing the program.

**Senator LAZARUS:** How is that—is it \$335 million?—

**Senator Scullion:** Yes.

**Senator LAZARUS:** How is that distributed? Is it the size of the area or the number of issues that are in that area?

**Senator Scullion:** I understand it is actually pro rata for the numbers of rangers, to a degree, and there are some additional materials on top of that.

**Mr Smith:** Essentially we work out a funding agreement with the host organisation, depending on the activities that they want to do. We then pay them wages and operational costs, and that is usually done three times a year, based on receipt of milestones. The first milestone is usually the project plan, which we sit down and work with on what they can realistically achieve. The second payment is on the mid-year report, and then the third payment is on the final report. If there are any issues with receipt of those, we go back and talk to them and work out what the problems may be.

**Senator LAZARUS:** Are they given KPIs and things like that? Are they achieving them or are they falling down in some areas?

**Mr Smith:** We work quite closely with the groups, so, if some groups are having particular issues—they might have had changes of personnel; they may have had sorry business to deal which has disrupted their project plan—we obviously get our people on ground to work out what those issues are and we take a very flexible approach to that, depending on circumstances.

**Senator Scullion:** Most of the groups have a plan. You can say, 'What are you going to do in the next three years?' and they are able to show you a plan of what they are doing for the next three years. Most of them revolve around managing land and country and managing threats—protecting areas of iconic biodiversity like riverbeds or billabongs. So they are protecting those areas, but also, where they have invasive species, they are dealing with those. And there is a significant part of this that takes people back to country with them, so they take elders back to country—so the rangers themselves are becoming quite a font of knowledge, of cultural knowledge and cultural history as well.

**Senator LAZARUS:** I just want to ask just one question in the area of Indigenous Protected Area programs. Which minister is responsible for that? I know it could sort of go over to Environment.

**Senator Scullion:** I am responsible for the rangers.

**Senator LAZARUS:** Yes, but the protected areas program?

**Mr Smith:** The Indigenous Protected Area program is administered by this department, in my branch, but the funding comes out of the Natural Heritage Trust, which is the responsibility of the Department of the Environment and the Minister for the Environment.

**Senator LAZARUS:** So Minister Hunt? Okay.

**Mr Smith:** Just for the funding.

**Senator LAZARUS:** The funding, yes. So, if someone wanted to send in a submission on decisions of funding, they would have to write to Minister Hunt?

**Mr Smith:** Usually how this works is, if there are any particular issues on IPAs, they come to us in the first instance, and then we will liaise with our colleagues in Environment, who we talk to on an almost daily basis on these issues. But, if it is a funding decision that needs to be made, that needs to be approved by the Minister for the Environment.

**Senator LAZARUS:** I have a couple of questions on the Learn Earn Legend! programs.

**Mr Eccles:** Ask the question, we will get the right people coming up as you ask it.

**Senator LAZARUS:** Have there been any cuts and has it been rolled into another program?

**Mr Eccles:** It has been rolled into the broader IAS, but Ms Hefren-Webb is—

**Ms Hefren-Webb:** The Learn Earn Legend brand, if you like, had a number of activities under it. Quite a lot of those activities have received funding to continue under the Indigenous Advancement Strategy, and have been funded out of program 2.2, which is the children and schooling program. We no longer have a badged program that is called Learn Earn Legend within the department. Some of the providers are still using that badging as well, which is fine. They are still using it.

**Senator LAZARUS:** Are there any cuts to that or it just does not exist anymore and it is now something else entirely?

**Ms Hefren-Webb:** Some of the providers applied to continue; some were successful and some were not. There were no cuts as in the contracts had come to their end point, and some of the providers have been refunded to do activities now under the children and schooling program.

**Senator LAZARUS:** Why were some not renewed?

**Ms Hefren-Webb:** It was a competitive assessment process.

**Senator LAZARUS:** Can you please tell me what that is?

**Ms Hefren-Webb:** We assessed a whole range of applications under specific criteria and rated them accordingly, made a series of recommendations to the minister who made decisions on the basis of those recommendations.

**Senator LAZARUS:** Based on what though?

**Ms Carroll:** It goes to the type of activity that the Learn Earn Legend participants might have done. In the last budget, we collapsed all the microprograms into five new programs. What we were really looking at was the activity—was it about mentoring, what was the activity that was being provided—and different service providers applied through that competitive funding round for that. Quite a number of the service providers that have Learn Earn Legends have been successful and will continue to provide that, and they can keep using that brand. It was through that normal competitive round in that they had to apply for the funding and against other people who might have been doing a similar type of activity.

**Senator Scullion:** Perhaps, without verballing you, I think what the senator is looking for is how much we spent on the Learn Earn Legend—and it has for some time ceased being a program—and how much money was allocated to similar sorts of programs with the NRL. I think on notice, we can come up with that—this is what we used to spend on it when it was Learn Earn Legend, here is the whole suite of different programs and different things. In a very similar vein to the Learn Earn Legend that we have now done under IAS, I am happy to provide that on notice if it can help.

**Senator LAZARUS:** What I am actually getting to is that I have spoken to some people who have worked in this Learn Earn Legend program and turned it into a success, and now they are frightened that their funding is going to be cut and will have to cease doing it. I just want to know how we came about deciding who gets funding and who does not. Does the whole thing cease 30 June 2015?

**Senator Scullion:** No. The only reason the Learn Earn Legend is still in context is that people have continued to use that banner, as sometimes happens. But the investment and engagement through NRL and similar programs was done through the IAS. None of those are stopping on 30 June; there are new contracts starting then. If there are people who are concerned and if you would like to confidentially provide them to me, I am happy to provide exactly where we are up to with those. All the IAS decisions are in fact starting—the contracts will start on 1 June not finish on 1 June. If the people who have concerns—obviously they are in the process, but I am more than happy to provide you as quickly as we can, if you can provide me with some of those names.

**CHAIR:** Senator Lazarus, Senator Peris has some questions. Have you concluded?

**Senator LAZARUS:** No, but I will allow Senator Peris, because I am a nice bloke.

**CHAIR:** Indeed, you are a nice bloke, and we will get that on the record, but we would like to move on to health. We are a bit pushed for time.

**Senator LAZARUS:** That is fine.

**CHAIR:** Thank you very much.

**Senator PERIS:** This is a question to the minister. How many remote communities in the Northern Territory does the Commonwealth currently fund essential services for under the Stronger Futures national partnership?

**Senator Scullion:** I am sure we will have that number for you, but just to clarify: the circumstance in the Northern Territory is entirely different from all other parts of Australia. In other parts of Australia, as part of this process of states and territories taking on responsibility for municipal services, the Commonwealth actually deliver them in other places. The Northern Territory, for some time before this government came in, have been delivering the services, so they physically deliver the services, for example, in Western Australia. The Commonwealth would contract people to deliver services, but the entire time the Northern Territory government are the ones who have been either contracting people to deliver the services or delivering the services themselves. That is the fundamental difference, but I am sure we will know what those communities are.

**Ms Taylor:** I understand there were 376 communities to which services are provided, and they are homelands and outstations.

**Senator PERIS:** So there are 376 that the Commonwealth currently fund essential services for under the Stronger Futures policy?

**Ms Carroll:** As the minister said, we provide funding to the Northern Territory government and the Northern Territory government fund them, but they report to us where their funding goes so that is how we know the number.

**Senator PERIS:** Out of the 376, how much were you previously funding annually from the Commonwealth level to the NT government?

**Ms Edwards:** As you have mentioned, the municipal services funding is part of the Stronger Futures national partnership agreement; it is one of the measures under that. There has been a schedule, which no doubt Ms Taylor will have for you in a moment, of what has been paid to date, but you would also know, from the budget announcement this year, that that partnership will come to an end and from 1 July there will be a replacement national partnership agreement, which carries over the funding from Stronger Futures. There will be a particular arrangement for the municipal services funding, which Ms Taylor can tell you about, which is effectively bringing forward the funding and providing it in a lump sum to the Northern Territory.

**Senator PERIS:** Are you going to give me the answer? How much annually?

**Ms Taylor:** I have the number for 2014-15, and that is \$20,879,000.

**Senator PERIS:** Sorry, \$20 million?

**Ms Taylor:** \$879,000.

**Senator PERIS:** That is to provide municipal services?

**Ms Taylor:** To homelands and outstations.

**Senator PERIS:** For 376 homelands?

**Ms Taylor:** Yes, correct.

**Senator PERIS:** This might be to the minister. Obviously, we have seen in the budget recently that the Northern Territory government will be getting a one-off payment of \$155 million to take full responsibility for those deliveries, although you have said that. Minister, given that the Chief Minister and the Treasurer for the Northern Territory government have publicly said that they did not know that this was coming, did you inform them at all?

**Senator Scullion:** It was not identified in the budget as having to be paid to it. It was available subject to a negotiated outcome with the Northern Territory government. I had to make that available, and it is now available over forward estimates, if we wish to make that change. That was reflected in the budget. But that does not hold me to having to do this. This is subject to negotiation with the Northern Territory government, and I want to ensure that their word is that these are the things that will happen. The motivation for this is, as you would be well aware, infrastructure is very important in some homelands and some of the outstations. Some people cannot get to school when it rains because there is not a small culvert to go over the road. There is a whole range of issues, whether it is from water tanks to small additions, that the normal monitoring and maintenance of these processes through municipal services would not actually catch up with. It is a great opportunity to have a conversation about these things. My offer is pretty basic: at the moment, we trickle the payment out annually, but if they can see a better program over a period of time where they can say, 'We can put some infrastructure in here; that's going to save us costs in the longer term', then obviously it is going to be much better for outstations and homelands, and it is going to be more cost-efficient for both the Commonwealth and the Territory.

**Ms Edwards:** I might just add that you would recall that last budget, the 2014 budget, there was an announcement that we were going to relook at the Stronger Futures national partnership as a whole. We have been discussing the options across the whole of the partnership, including this element, since then intensely. So there have been ongoing discussions for 12 months.

**Senator PERIS:** Those ongoing discussions have been with whom?

**Ms Edwards:** With officials of the Northern Territory government.

**Senator PERIS:** So the Northern Territory government did know that this was coming.

**Ms Edwards:** They knew that it was under consideration. We had canvassed a lot of options with them, and they were informed shortly before budget night of where we had landed.

**Senator PERIS:** But no agreement has been reached at this moment.

**Ms Edwards:** No.

**Senator PERIS:** Minister, you were just talking about the possibilities. There might be road culverts and other infrastructure. You have put no conditionality to the government if this is to be paid out over a 10-year program. Is it just totally in their hands to use how they—

**Senator Scullion:** That would be subject to negotiations.

**Senator PERIS:** You made the introduction that money was given to the Western Australian government in excess of \$90 million. Hence, we have seen the national profile given to the concerns expressed when the Western Australian government says, 'Okay, we're not gonna do this. We'll shut the communities down.' That leads me to the question: do you have confidence that this is not going to happen in the Northern Territory?

**Senator Scullion:** In the Western Australian scenario, which is well-known to everyone, we did come to an agreement—a clear agreement. Some time after the agreement, the Western Australian government declared that they were going to close communities or rationalise communities because of the agreement that we had made. It later came to light—which is well understood—that as early as, I think, July 2010 a decision to rationalise communities was commenced by the Western Australia government. That is just the background. Since that time, we have come to a negotiated arrangement with the South Australian government, and we would note the huge support that it got from the Indigenous leaders in South Australia as well as from my state Labor counterpart in Indigenous Affairs, Mr Kyam Maher. We have gone through that process without a hitch. The Western Australian process is most unfortunate. All of that rubbish that has gone on over there—the nonsense from the Western Australian government—had nothing to do with the fact that we had made any changes in regard to the municipal services funding. Since all that stuff has happened, we have gone through and discussed this with South Australia. We have come up with a very good agreement in South Australia, which has been supported by everyone, and I would imagine that that would be the sort of scenario that will happen in the Northern Territory. It is in the budget. We have a long period of time, but I would like to get on with it. I will be speaking in a more formalised sense with the Northern Territory government about these matters.

**Senator PERIS:** You said that the Western Australian government were informed around this back in 2010?

**Senator Scullion:** No. Since that stage, it has come to light that the decision to rationalise their communities in Western Australia was made as far back as 2010. What I am doing is disconnecting properly any decision to rationalise communities in Western Australia from the decision for them to take over their responsibilities in municipal services.

**Senator PERIS:** It goes to the fact that what the Western Australian people have said, especially in the Kimberley, is that there was no consultation done with regard to how services would be delivered.

**Senator Scullion:** As I have said, we came to an agreement with the Western Australian government. It should be noted that Western Australia—as does the Northern Territory, as does New South Wales—who never ever had municipal services funding arrangements; these were ad hoc arrangements that grew over time—gets money for municipal services under the financial assistance grants. The Commonwealth funds people under the financial assistance grants based on the numbers of people, remoteness and the last one, which is Aboriginality. So that is taken into consideration in those grants. So they get the money anyway. The convention of providing municipal services has been in addition to this.

As I understand it, because it was some time ago, the convention is that from time to time building infrastructure—all of the normal infrastructure—is sometimes beyond that state or territory government. So they have started this municipal services fund. It was a very long time ago, but I am very confident that this will be a seamless transfer over to the Northern Territory—

**Senator PERIS:** Okay, but when you talk about infrastructure that should come from an infrastructure budget. Two last questions: do you, Minister, have the confidence that this current government has the capacity to deliver?

**Senator Scullion:** It is delivering at the moment. The Northern Territory government is delivering municipal services through payments from the Commonwealth. But if there is an opportunity to say, 'Here are the funds available for the next eight years, so how do we go about ensuring that we get the best efficiency and the best effectiveness from those funds?' there is an opportunity to discuss that and come up with an agreement.

**Senator PERIS:** Last question: have you sought a guarantee that no remote communities will close?

**Senator Scullion:** I did not actually have to. The Chief Minister has said that himself before we have even started any negotiations. I think, in fact, it is a little irresponsible to start even asking questions around any change and, 'Are we going to close communities?'

I already note that there has been a bit of mischief around that in the Northern Territory. A few people have rung me saying that apparently we are going to close communities. It is complete nonsense. This is about continued provision of municipal services in homelands. We think the homelands and outstation process will in fact be strengthened by this, and we will have the sort of infrastructure that we should have been investing in in the past.

**CHAIR:** Before we move on to health, are there any further questions?

**Senator SMITH:** Just to be clear: is it true that the department is aiming for a 12 June signature date on the IDCP contracts?

**Mr Eccles:** I will need to check. I think we are looking to get some people to sign up as soon as possible. RJCP providers are currently under contract. Some of them go out for several years. When the program was designed, I think they entered into three-year contracts. We are talking to them about changing their contracts. As I mentioned in response to some of Senator Siewert's inquiries, we are confident that we are going to get some of those change of contracts in the very near future. But I am not sure if there is a date of 12 June—

**Mr Bulman:** We have spoken to some of the providers and said that that would be the ideal date for processing et cetera, but we have left it flexible. We understand that in some areas that is not possible because of board meetings et cetera, and we can accommodate that.

**Senator SMITH:** That is exactly the point that has been raised with me—that the 12 June date does not allow enough flexibility to go through the necessary internal governance processes for some. Thanks very much.

**Senator McLUCAS:** I will put all the rest of my questions in outcome 2 on notice. But it does raise the broader question of how we have managed time in this committee, I am sorry.

**CHAIR:** Senator McLucas, this is the third barb you have had about managing time. May I remind you—

**Senator McLUCAS:** I am not having a go at you, Chair.

**CHAIR:** May I remind you, for the fourth time, that I am constrained by the standing orders. I cannot move on until these questions have been exhausted. If you want to talk about time management then perhaps you should negotiate with some of your colleagues. It is not my position to say that they cannot ask any more questions.

**Senator McLUCAS:** The reason that we have that standing order is—

**CHAIR:** Are there any more questions in outcome 2?

**Senator McLUCAS:** We will have a spillover day then.

**CHAIR:** Are there any more questions in outcome 2? There being no more questions, we will now move on to health issues.

Whilst the changeover is happening, the committee had a private meeting in which it resolved not to accept the tabling of the document by the Indigenous Land Council. The committee has resolved that. Just to prevent any further enquiries—principally from Senator Siewert's office—it has not been accepted.

**Senator McLUCAS:** I want to go to the Aboriginal and Torres Strait Islander Chronic Disease Fund, please. Is the government continuing its commitment to closing the gap through the funding of chronic disease programs?

**Ms Jolly:** At the last budget, the one before the one we have just had, the chronic disease fund was combined with three other funding streams into the Indigenous Australians health program. The elements of the funding you are referring to under the fund continue.

**Senator McLUCAS:** They are just not identified in the budget any more.

**Ms Jolly:** Because they have been moved into larger program, it is the larger program which is now in the budget and there was no change to a program in the recent budget.

**Senator McLUCAS:** What chronic disease measures have been funded in this 2015-16 budget and the out years?

**Ms Jolly:** In the 2015-16 budget, some of the activities that you would be familiar with have continued. We are continuing care coordination supplementary support, we are continuing medical outreach, we are continuing PBS co-payments. All of the elements are continuing.

**Senator McLUCAS:** They used to be identified quite clearly in the budget, is my recollection. Am I not looking at the right part of the budget anymore?

**Ms Jolly:** Certainly in the annual report we would talk about elements that have been successful and there are various elements of that fund that have particular performance indicators associated with them, but they were themselves part of a broader fund. So at a budget level the fund itself, prior to its consolidation, would have been the level of reporting the PBS documents.

**Senator McLUCAS:** In the PBS, yes.

**Ms Jolly:** Yes.

**Senator McLUCAS:** What is the funding profile for each of the elements of what used to be called the chronic disease program over 2014-15, 2015-16 and the out years? Is there a table you can point me to that will show that?

**Dr Southern:** That level of detail we would have to take a notice today, but happy to do so.

**Senator McLUCAS:** So from the old chronic disease program, if you could go through—I think was called that—

**Ms Jolly:** Yes.

**Senator McLUCAS:** the elements of that and then what has happened from last year and this year into the future, that would be good. Have there been any cuts in those programs from this budget and into the future?

**Ms Jolly:** Sorry, are you talking about the budget that has just been? There were no cuts to Indigenous Australians health program in this budget.

**Senator McLUCAS:** Compared to the chronic disease fund. I am trying to compare apples and apples.

**Ms Jolly:** At the last estimates, we talked about a couple of measures that did not continue—and I just need to identify whether they were part of that fund. I can confirm that the local community campaigns and the chronic disease self-management initiative were two elements that were not continued, but all other elements of the fund were.

**Senator McLUCAS:** Regarding the primary health networks and the NACCHO funding, can you explain what the changed arrangements mean for aboriginal controlled health services?

**Dr Southern:** The change from Medicare Locals to primary health networks?

**Senator McLUCAS:** And the way the funding will be provided to Aboriginal controlled health services under the PHN model.

**Dr Southern:** In the transition to PHNs, there will be a period, basically the first 12 months, where we do have some transitional arrangements. At the moment, arrangements for Aboriginal and Torres Strait Island health programs that are currently delivered through Medicare Locals will be transitioned to PHNs. There are two or three programs which fall into that category.

**Senator McLUCAS:** What are they?

**Ms Jolly:** That is the care coordination and supplementary support program and the—

**Dr Southern:** Improving Indigenous access to mainstream primary care—they are the main ones that we will transition.

**Senator McLUCAS:** But I understand that it is proposed that funding that would have usually been provided directly to Aboriginal controlled health services will now be channelled through the PHN.

**Dr Southern:** My understanding is that for this transition period we will transition those funds which had been channelled through Medicare Locals through to PHNs and that there is no change to funding that was provided directly to NACCHOs.

**Senator McLUCAS:** There is no plan to change that?

**Dr Southern:** Not that I am aware of.

**Senator SIEWERT:** Can we just be really clear about that? That will not go out for competitive tender?

**Ms Jolly:** There are the two programs that were just mentioned. They currently go through all of the Medicare Locals and they will move to PHNs. PHNs will then commission those roles. At the moment, out of the 61 Medicare Locals, about 21 of them already outsource those programs directly to a community-controlled health organisation and we would not anticipate that would change. But the commissioning role would be a competitive process.

**Senator SIEWERT:** So there is a potential for the NACCHOs to lose that funding if the PHNs decide they are going to commission it through competitive tender?

**Ms Jolly:** I think that is a potential, but—

**Senator SIEWERT:** Yes. That is what they are worried about.

**Senator McLUCAS:** But that is not their base funding? We are not talking about the base funding? It is those two programs?

**Senator SIEWERT:** No, it is those programs that they have been delivering. The potential is that those programs that NACCHOs have been delivering will actually then be put out to competitive tender.

**Dr Southern:** But as part of that process we will certainly work with the PHNs to make sure that the commissioning process for any specific Aboriginal and Torres Strait Islander health activities would include a thorough assessment of any commissioned agency or organisation to actually engage with them and deliver those sorts of services to Aboriginal and Torres Strait Islander people.

**Senator SIEWERT:** You would set the criteria by which they would do a commissioning? Is that what I understand?

**Dr Southern:** Yes, that is how it would work.

**Senator McLUCAS:** Is that in the PHN contracts?

**Dr Southern:** The contracts for PHNs are currently still in the process of being negotiated. I am sorry, I do not have any visibility of what those contracts contain. One of the priority areas for PHNs to consider is around the delivery of health services to Aboriginal and Torres Strait Islander people. But we could take on notice your specific question.

**Senator McLUCAS:** I think you answered Senator Siewert by saying that you would make it a condition of the contract that it be provided to an appropriate service provider. I am probably verballing you a bit here.

**Dr Southern:** May I clarify?

**Senator McLUCAS:** Yes, please.

**Dr Southern:** I think, perhaps, there are two different things that I am talking about and that you are talking about. One is the actual contracting process which is underway at the moment following the tender for PHNs. There are contracts to be put in place for the delivery of the PHNs and their services.

During the course of this coming year, 2015-16—which we are looking at as a bit of a transition year—there will be work with the PHNs to work out how they will be commissioning certain services and who will be delivering those services. As part of that process to commission any Aboriginal and Torres Strait Islander-specific health services, we would make sure that the assessment of a service provider's ability to engage and to deliver Aboriginal and Torres Strait Islander-specific health services would be taken into account. Whether that forms a very specific set of criteria, I am not sure at the moment. I just do not have visibility of that.

**Senator SIEWERT:** But in the contract? Surely, if it is not written in the contract, what leverage do you then have to ensure that they actually meet those criteria?

**Dr Southern:** As I said: as I understand it, in the set-up arrangements for the PHNs one area of focus and priority is how Aboriginal and Torres Strait Islander health services are delivered. That is a priority area. The question that Senator McLucas asked—if that is in the contract specifically—that is the thing that I would have to take on notice.

**Senator SIEWERT:** We can chase that up next week.

**Senator McLUCAS:** Yes.

**Dr Southern:** Yes, that is certainly correct.

**Senator McLUCAS:** I now want to move to trachoma funding. There was a figure of \$4.2 million in the 2014 budget papers, to be funded annually to improve trachoma until 2017-18. But in the 2015 budget it lists funding until 2016-17, with zero funding for 2017-18. Is that an accurate statement of what happened?

**Ms Jolly:** We are sure that there is an ongoing commitment. We will double-check the documentation and confirm that that \$4.2 million is ongoing.

**Senator McLUCAS:** You do not have them with you?

**Ms Jolly:** No, I am sorry. I can confirm that it is ongoing. We think the budget paper does not reflect that, but we will double-check.

**Senator McLUCAS:** Is that a mistake?

**Ms Jolly:** We will check whether it was a mistake, but our understanding is that it is an ongoing figure.

**Senator McLUCAS:** Will there be a—

**Ms Jolly:** If I take that on notice, I can provide you with the exact detail.

**Senator McLUCAS:** This current budget paper shows nothing in 2017-18. You think that is a mistake?

**Ms Jolly:** We will take that on notice, but our understanding is that is the work towards the 2020 commitment and we have seen no change in that. As I said, though, we will take that on notice and confirm that that is the case.

**Senator McLUCAS:** Maybe someone in the department who is listening can confirm what is happening. I will now go to the National Aboriginal and Torres Strait Islander Health Plan. The government has indicated its support for the adoption of the National Aboriginal and Torres Strait Islander Health Plan 2013-2023. Can we have an update on the implementation strategy for the plan, please?

**Dr Southern:** The implementation plan is being developed by the Department of Health in close consultation with the National Health Leadership Forum. We are in the very final stages of its development, so we anticipate that it will be released very soon.

**Senator McLUCAS:** What has been the process of developing that plan? Over what period of time did that happen?

**Ms Jolly:** The plan has been under development since midway through last year. There has been a group working on the detail of the plan. That group has included the National Health Leadership Forum, our colleagues from Prime Minister and Cabinet and Institute of Health and Welfare. We have looked at the breadth of the health plan and how we can reflect that in an implementation document. That group has met periodically over that period and worked through the various domains of the health plan to develop the detailed implementation plan.

**Senator McLUCAS:** When do you expect it to be finalised and available to the public?

**Ms Jolly:** We are anticipating that the final document will be publicly available in the next month or two.

**Senator McLUCAS:** In developing the implementation strategy, what consideration has been given to the social determinants of health?

**Ms Jolly:** The social determinants of health are part of the health plan and have been considered in the implementation plan. What actions are to be taken specifically in relation to social determinants of health will be spelled out in the implementation plan. They are certainly part of the framework as they are in the Aboriginal and Torres Strait Islander Health Plan.

**Senator McLUCAS:** There will therefore be recommendations in the plan aimed at improving some of those social determinants of health?

**Ms Jolly:** The implementation plan will outline the actions we are intending to take and the strategies we are intending to adopt to implement the priorities in the health plan. It will not necessarily contain recommendations as such. It will contain the actions that we are looking to do.

**Senator McLUCAS:** What funds have been identified for the implementation of the strategy? Is there money identified specifically in the budget?

**Ms Jolly:** The plan will cover the full scope of activity. It does not have a particular identified budget. We have the Indigenous Australians' Health Program, which itself has a budget that grows. There are other elements. As you know, we have programs that have growth elements within them. It will guide future investment, but it does not necessarily have a particular budget assigned to it.

**Senator McLUCAS:** Did it used to?

**Ms Jolly:** Not that I have been aware of.

**Senator McLUCAS:** But it would identify elements of the budget that achieve the outcomes in the plan?

**Ms Jolly:** The document that precedes the health plan was the National Strategic Framework for Aboriginal and Torres Strait Islander Health. It was an AHMAC document which again had a series of actions. It did not have an identified budget. Particular projects would have had elements that were funded, but it—

**Senator McLUCAS:** I think what we used to do was collect up those items and attach them to the plan.

**Ms Jolly:** The document did not have a dollar sign and resource associated with it. It was a series of actions that the Commonwealth and states agreed to do, and some of those would have had funding, but it was not as a document itself funded.

**Senator McLUCAS:** Coming back to trachoma, I think you said that it that the funding was ongoing. Ongoing until when?

**Ms Jolly:** I will need to take that detail on notice. Usually we publish the forward estimates, as you have indicated, so it is not currently reflected in that final year. We will need to double check why that is so, but our understanding is that that 4.2 is available in that final year.

**Senator McLUCAS:** Ongoing until the end of 2017-18?

**Ms Jolly:** That would be the current forward estimates, yes.

**Senator McLUCAS:** I want to go back to the national health plan. To what extent have you had negotiations with states and territories? What is the format and forum that you use to talk with the states and territories around the Indigenous health plan?

**Ms Jolly:** We have, in every state and territory, a forum that consists of Commonwealth, state and territory representation and the Aboriginal and Torres Strait Islander affiliate. In many states and territories that forum also has a Prime Minister and Cabinet and Medicare Local, or soon to be the PHN. That is the forum that we are using to discuss general policy directions. We have not specifically taken the implementation plan to that forum. We have taken the general direction that we would like to use the forums as part of the discussions around the framework agreements. We have a three-way agreement that we are negotiating in each state and territory, which covers Commonwealth, state and the affiliate. That is a principles based discussion around priorities in Aboriginal and Torres Strait islander health.

**Senator McLUCAS:** So when you mean the affiliate, you mean—

**Dr Southern:** The NACCHO affiliate

**Senator McLUCAS:** In the broad, how have those negotiations been going? Are there any states and territories that you want to advise us about?

**Ms Jolly:** My understanding is that the state forum discussions are productive. Every state and territory has different priorities and different ways in which they use the forums. Some forums use the mechanism very actively. For example, in the Northern Territory there is quite a lot of health service planning that happens and discussions through that forum mechanism. Other states and territories might use it more as an information sharing mechanism. It really depends in every jurisdiction as to how that is being used.

**Senator McLUCAS:** Information sharing between what the state is doing—

**Ms Jolly:** Between the parties and around what the Commonwealth is doing.

**Senator McLUCAS:** Does it actually inform decision making at all, or is that then pushed up the tree in each jurisdiction?

**Ms Jolly:** We are using it to inform decision making. For example, in the expansion of some of our maternal and child health services, we are talking, through those forums, about where the priorities and priority areas are. We are using not only the regional data we have but also those discussions to inform where our priority areas will be into the future. We are looking to use those forums to inform that decision making, as part of our programs.

**Senator McLUCAS:** With the advent of PHNs, will there be any changes in the way not only funding of services but service design occurs? I think it was pretty embryonic with the Medicare Locals, but for Indigenous health, what is the thinking around using the avenue of a PHN to better deliver Aboriginal and Torres Strait Islander health services?

**Dr Southern:** I think the jurisdictional forums will certainly provide a good avenue to engage with the PHNs—where relevant.

**Senator McLUCAS:** It is a 'where relevant' question.

**Dr Southern:** Yes. As Ms Jolly said, the Medicare Locals have been involved only in some circumstances. Once we have them up and running, getting early engagement with them—again, where relevant—would be really important, particularly during this 2015-16 transition year as we work through the issues around commissioning and areas of market failure where there might have to be direct provision of services. It will be an important discussion to have, particularly around the priorities question—what the priorities are for the different jurisdictions, how each of the parties at the table can contribute to those priorities and the necessary judgements around whether we are duplicating effort or whether we have gaps.

**Senator McLUCAS:** I think I might withdraw my 'where relevant' comment, because in fact Aboriginal and Torres Strait Islander people live in the areas of every one of the Medicare Locals. We cannot completely frame our conversation on 'rural and remote'. The challenges for some of our city people are as challenging as those faced in rural and remote areas.

**Senator SIEWERT:** I want to ask about the \$10 million for Central Australia.

**Dr Southern:** For the Northern Territory?

**Senator SIEWERT:** Yes. I know that comes as a big shock!

**Dr Southern:** We would have been very disappointed if you had not asked about it.

**Senator SIEWERT:** Where are we up to?

**Dr Southern:** At the last estimates hearing, I think we talked about the fact that we had received a proposal from the Northern Territory government. We worked with them earlier this year and received a revised proposal from them in early April, which is the one we are now currently working on with them. The proposal basically provides for accommodation for end-stage renal patients in Alice Springs and Tennant Creek and some further projects which support in-community accommodation for renal patients in Central Australia.

**Senator SIEWERT:** I was trying to scribble down very fast what you were just saying—accommodation in Alice Spring and Tennant Creek for end-stage renal patients?

**Dr Southern:** And their carers and families.

**Senator SIEWERT:** And some in-community—

**Dr Southern:** Some in-community accommodation for renal patients.

**Senator SIEWERT:** Do we know which communities?

**Dr Southern:** Not off the top of my head.

**Senator SIEWERT:** Can I take a positive note?

**Dr Southern:** Absolutely.

**Senator Scullion:** Very much so.

**Senator SIEWERT:** What is the time line for signing off on this?

**Dr Southern:** We are working through the final negotiations on project milestones and reporting arrangements. The details of the project agreement just need to be agreed between relevant agencies here—ourselves and our central agencies. Similarly for the Northern Territory government, it is the Department of Housing, the Department of Health and its central agencies as well. So we are very close.

**Senator SIEWERT:** Can I ask two very quick follow-up questions? One is: does it fully commit the \$10 million?

**Dr Southern:** Yes, it does.

**Senator SIEWERT:** The community organisations that take a very clear and deep interest in this issue in central Australia—are they are aware of and have they been included in the process?

**Dr Southern:** On that question, I am not—

**Ms Jolly:** Not that I am aware, because we have been negotiating with the Northern Territory government on the detail of the proposal.

**Senator SIEWERT:** I would need to obviously ask them to see if they had spoken to the organisations—and you know the organisations I am talking about—and whether they had been consulted.

**Senator Scullion:** If 'other community organisations' is code for the Purple House, I can say that I am aware that the Northern Territory government are engaged with the Purple House and similar sorts of community organisations in the rollout of this very long-winded—

**Senator SIEWERT:** I am so hopeful that next estimates, I never have to ask about expenditure of this again, other than its implementation.

**Senator Scullion:** Senator, I can undertake that, as soon as that is signed, I will personally give you a ring.

**Senator SIEWERT:** Thank you.

**Senator Scullion:** I will also, on notice, provide that to the committee.

**Senator SIEWERT:** That would be very much appreciated. I want to ask a specific question about Western Australia. Has there been any engagement with the government of Western Australia around Professor Holman's report on the Aboriginal health sector and AMSs?

**Ms Jolly:** Not that we are aware of.

**Senator SIEWERT:** Have they provided you with a copy of that report?

**Ms Jolly:** Not that I am aware of.

**Senator SIEWERT:** Did you have any engagement with Professor Holman when he was doing the review?

**Ms Jolly:** Sorry, Senator; I did not, and I am currently heading the division, so I am not sure whether other parts of the department have, but I certainly have not had any contact.

**Senator SIEWERT:** In terms of the approach that they are taking with the budget in Western Australia, where there has been a 50 per cent cut to direct services, and then they are still looking at how they make up the rest, are you aware of that cut?

**Dr Southern:** We are certainly aware of it today, yes.

**Senator SIEWERT:** Were you aware of it prior to today?

**Ms Jolly:** Obviously in budget announcements, but not in any detail other than in the budget announcements or in the related press.

**Senator SIEWERT:** Given the significance of the review that Professor Holman has done, would it be normal for states to provide you with that information?

**Dr Southern:** It varies, I think. Some of those reports are often held quite closely within state and territory governments while they are being considered, and this one, I suspect, was caught up in their budget deliberations. But it just varies, depending on the nature of the report.

**Senator SIEWERT:** In terms of the work that you do with AMSs, how does a state cutting 50 per cent of the direct funding they give to Aboriginal-run health services affect the Commonwealth's decision making?

**Ms Jolly:** You would be aware that we have recently reaffirmed the commitment to community controlled health services, and that commitment stands. The level of funding that we are negotiating with services has not been changed due to decisions in WA, and at this stage we have not heard from any individual services. If an individual service has problems with viability, then I am assuming that we would have to have some discussions with them, but, in terms of level of funding, there has not been any specific change based on the issue that you are raising.

**Senator SIEWERT:** The issue then goes to the viability of the organisations, and I know they are still dealing with what the ramifications are. If their viability is affected by that, how does that affect the delivery of the resources that you provide?

**Ms Jolly:** We would have to look at that. If a service, at any time across the country, is having viability issues, then we need to look at how you would deliver services in that region. That is something we do just as a normal course of action.

**Senator SIEWERT:** I suspect I will be following this up at estimates later in the year. I have a question about petrol sniffing. I understand there are about four retailers who are still stocking standard unleaded.

**Ms Edwards:** Yes. I might note that petrol sniffing is now in Prime Minister and Cabinet and it is part of program 2.3—just for your information.

**Senator SIEWERT:** I think I made this mistake last time.

**Ms Edwards:** I know it is on the agenda in the health section. We are happy to be here, of course, but it is actually part of our integrated service in 2.3.

**Senator SIEWERT:** I will remember for next time.

**Ms Edwards:** Are you asking about the retailers who—

**Senator SIEWERT:** Yes.

**Mr Matthews:** The suspects.

**Senator SIEWERT:** How many are—

**Ms Edwards:** Mr Matthews will be helpful. It is basically the similar suspects as previously. We did have one retailer who changed to supplying only premium unleaded which does not have the same issues. We had a success there. Also, the minister recently wrote to all of the recalcitrant retailers, who Mr Matthews can provide details on, saying basically, 'It is really time for you to turn over to the new process please guys, and if not I am going to consider my options under the Low Aromatic Fuel Act'. We are in the middle of that consideration process now. Do you want some more detail on who is who in the zoo?

**Mr Matthews:** We can provide lists or—there were 10 retailers who were written to and one that has subsequently changed to stocking only diesel and premium.

**Senator SIEWERT:** So we are down to nine.

**Mr Matthews:** Yes, nine are causing problems. There is some ongoing discussion with them.

**Senator SIEWERT:** I am conscious of time. Do you have that list with you that you can table?

**Mr Matthews:** Not before me to table, but it would be no problem to table a list, for sure. I do not have one in front of me that would be suitable for that.

**Senator SIEWERT:** Could you table that list?

**Mr Matthews:** Sure.

**Senator SIEWERT:** That would be great so I do not take up the time writing down the list. What is the time line that you have put on those nine to change?

**Ms Edwards:** You would be well aware of the requirements of the act. Obviously, what we are looking at now is what the consultation process would look like. We are just briefing the minister on the options for how we could make sure we do do the consultations as requisite in the legislation; but also make sure we do what is actually the right level of consultation for those people. That will differ depending on the areas. We are also having a look at whether we would think about one particular area to start with or do them as job lot. I am sure by next estimates we would be able to give you a much more detailed response on that; but we are hoping to move quite quickly, assuming the minister is interested in looking at this as an option, over next month or so to start the process.

**Senator SIEWERT:** Thank you, that is good.

**CHAIR:** Is this your final question?

**Senator SIEWERT:** I will put the rest of my questions on notice. I will put the health questions on notice.

**Senator McLUCAS:** I want to go to the tackling smoking program. What was the allocation for tackling smoking in the 2015-16 budget?

**Dr Southern:** In 2015-16, it was \$35.3 million.

**Senator McLUCAS:** What was it in 2014-15? I do not have it in the brief.

**Dr Southern:** I do not have 2014-15 here either, I am sorry. We can find it. It was \$46.4 million.

**Senator McLUCAS:** So it was \$46.4 million in 2014-15.

**Dr Southern:** In 2014-15.

**Senator McLUCAS:** That is another cut.

**Dr Southern:** Not an additional cut, no. That was announced in last year's budget.

**Senator McLUCAS:** It is not an additional cut to the cut that was announced last year. So \$30 million is the total that has been taken out of the tackling smoking program from the forwards—from prior to the change of government.

**Ms Jolly:** It is \$130 million over five years.

**Senator McLUCAS:** We have had the University of Canberra review that was finished last year.

**Dr Southern:** Yes, late last year.

**Senator McLUCAS:** Are we going to publish it? Is the government responding to it? What is happening to that?

**Dr Southern:** In terms of the publication of the review, I am not quite sure. We could take that one on notice for you. It will be a decision for the government to take. The government has announced today the new arrangements; the redesigned program going forward.

**Senator McLUCAS:** Today?

**Dr Southern:** Today.

**Senator McLUCAS:** I missed it, I am sorry. Can you tell us what it is going to be?

**Dr Southern:** Basically, the redesigned program will consist of a number of components, as you would expect. It will include grant funding for regional tobacco control activities and a range of national supports for workforce development, performance monitoring and evaluation, and leadership and coordination. The main change that we are looking at is about focussing on accountability for improved outcomes through the program rather than looking at the inputs and the way programs might be delivered. What we are looking for, obviously, is a reduction in smoking, and those will be the measures that we will be looking at and the funding will be tied to the delivery of those things. Service providers will have some flexibility in how they select mechanisms and tools to reduce tobacco use in their individual region. One of the things that the review showed us was that some things worked better in some regions than in others. Of course, the people who are on the ground are best placed to know what will work for their community.

There will be a new best practice unit established within the department, which will be about supporting the grant recipients to deliver the best possible tobacco control activities and to share best practice across the different providers across Australia.

**Senator McLUCAS:** Back to the review: I wonder if you could ask your minister if she is prepared to publish that review. It is an important document for people to understand what the academics think of how we did, and maybe we can ask that question on Monday.

**Dr Southern:** Certainly what we think. We will be prepared with an answer.

**Senator McLUCAS:** What were the recommendations of the review?

**Ms Jolly:** I do not have the detail of the review with me. It talks about, as Dr Southern mentioned, the breadth of activity and the need to replicate good activity, where you know that it works, and to base it on evidence. The need for stronger accountability and an evidence based framework were certainly the areas that the review commented on—hence the need for stronger performance monitoring outcomes and a stronger framework to support the program going forward.

**Senator McLUCAS:** Did it make any recommendations about how that performance monitoring might occur?

**Ms Jolly:** Not in any specific detail, but we will certainly take up the recommendation to have the report released and then you can have a look at the detail of it. It was a fairly broad analysis of the program and did not have very targeted and specific recommendations. It was more broad areas of activity that needed to be strengthened.

**Senator McLUCAS:** On today's announcement, is it proposed that there will be a recontracting of organisations to deliver the program? What are the next steps now?

**Dr Southern:** In the short term, we will be contacting all of the existing funded organisations to try talk to them about transition funding to ensure continuity of service while a broader invitation to apply process is underway.

**Senator McLUCAS:** Their contracts finish at the end of June, don't they?

**Dr Southern:** At the end of June, that is correct. Our first step—apart from the transition funding—will be to have an invitation to apply process for service providers to deliver the redesigned program.

**Senator McLUCAS:** The transition funding will go for how long?

**Ms Jolly:** It is up to six months.

**Senator McLUCAS:** How many organisations are contracted under that program?

**Dr Southern:** It is currently delivered through 49 organisations.

**Senator McLUCAS:** Have they been contacted today?

**Ms Jolly:** They are in the process of being contacted.

**Senator McLUCAS:** Someone is ringing them. My next question is now redundant, which was: has the recruitment freeze been lifted? Obviously, there will be no lifting of the recruitment freeze, because this is now going to go for probably another six months. So they not allowed to employ any new staff to replace the many who have left?

**Ms Jolly:** Those are the current arrangements.

**Senator McLUCAS:** What was the current staff load of people who are working to tackle smoking in Aboriginal and Torres Strait Islander communities?

**Dr Southern:** As of May, it was 194.3 full-time equivalent positions, which was a head count of 227.

**Senator McLUCAS:** So that has gone from 284 in May last year down to 193—that is nearly a hundred.

**Dr Southern:** That is correct, yes: 90.

**Senator McLUCAS:** That will continue for another six months. It is a long time to go slow on tackling smoking in the cohort of Australians who smoke the most.

**Dr Southern:** During the transition period, while we do the invitation to apply, that is a time for service providers to be thinking about what is the best form of workforce going forward with the redesigned program and to make provision for that in whatever transitional arrangements they might have.

**Senator McLUCAS:** The allocation in this financial year of 35.3.

**Dr Southern:** That is 2015-16.

**Senator McLUCAS:** Sorry, the one coming up. That is still a huge cut from the original design of tackling smoking when we first designed the program. Is it proposed that we need further money to do the work that the UC study told us?

**Dr Southern:** No, the redesigned program will be delivered within the budget that appeared in last year's budget papers.

**Senator McLUCAS:** Did the review make any comment around what level of funding will be required?

**Ms Jolly:** No, not that I am aware of.

**Senator McLUCAS:** It went into program design and monitoring rather than activity and cost of activity. Did it make any comments around the type of activity that would be most efficacious in reducing smoking rates?

**Ms Jolly:** There are some activities that have stronger evidence around them than others, so we know that brief interventions work, for example, which has more evidence around its effectiveness, and so the review reflected some of that evidence.

**Senator McLUCAS:** It did not recommend funded replacement therapies?

**Ms Jolly:** One of the things about the redesigned program is that it sits on top of all the other activity that we currently do, and so through AMSs, tobacco is a national key performance indicator. The PBS pharmaceuticals that are available—nicotine replacement therapy—continue, and this additional effort sits on top of that system effort.

**Senator McLUCAS:** Why was the announcement today?

**Dr Southern:** Decision of the minister.

**Senator McLUCAS:** There being 40 seconds left, I might thank you very much for attending and look forward to seeing you all on Monday.

**CHAIR:** Thank you, Senator McLucas. That concludes Senate budget estimates for the Finance and Public Administration Legislation Committee. May I thank the secretariat; Hansard; the department; Minister; the deputy chair for her assistance; and the senators for their participation. We will now adjourn.

**Proceedings adjourned at 14:59**



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FINANCE AND PUBLIC ADMINISTRATION  
LEGISLATION COMMITTEE

**Estimates**

FRIDAY, 28 FEBRUARY 2014

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

**Friday, 28 February 2014**

**Members in attendance:** Senators Lundy, McKenzie, McLucas, Moore, Peris, Seselja, Siewert, Smith.



## **CROSS-PORTFOLIO INDIGENOUS MATTERS**

### **In Attendance**

Senator Scullion, Minister for Indigenous Affairs

### **Department of Health**

#### **Outcome 8**

Mr Mark Booth, Acting Deputy Secretary

Ms Samantha Palmer, First Assistant Secretary, Indigenous and Rural Health Division

Dr Anthony Hobbs, Principal Medical Adviser

Ms Alison Killen, Assistant Secretary, Indigenous Health Programmes Branch

Dr Masha Somi, Assistant Secretary, System Effectiveness Branch

Ms Meredith Taylor, Assistant Secretary, Rural, Remote and Indigenous Access Branch

Ms Janet Anderson, First Assistant Secretary, Acute Care Division

Mr Adam Davey, First Assistant Secretary, People, Capability and Communication Division

Mr Keith Tracey-Patte, Assistant Secretary, Regional Service Grants, Grants Services Division

Dr Richard Bartlett, First Assistant Secretary, Medical Benefits Division

Ms Ann Smith, Acute Care Division

### **Department of the Prime Minister and Cabinet**

#### **Outcome 1**

#### **Overview**

Ms Rebecca Cross, Head of Domestic Policy

Ms Elizabeth Kelly, Deputy Secretary, Governance

Ms Liza Carroll, Associate Secretary, Indigenous Affairs

Mr Richard Eccles, Deputy Secretary, Indigenous Affairs

### **Program 1.1: Prime Minister and Cabinet**

#### **Indigenous Affairs Group**

Ms Ngaire Hosking, First Assistant Secretary, Schools, Youth and Evidence Division

Mr Brian Stacey, First Assistant Secretary, Land, Housing and Recognition Division

Ms Nadine Williams, First Assistant Secretary, Employment and Economic Development Division

Ms Caroline Edwards, First Assistant Secretary, Strategy Policy, Health and Communities Division

Ms Marsha Milliken, First Assistant Secretary, Delivery and Network Division

Mr Simon Crowther, Acting First Assistant Secretary, Programme and Support Division

Ms Kate Gumley, First Assistant Secretary, Employment Review Taskforce

Ms Kerrie Tim, Special Advisor, Indigenous Engagement Branch

Mr Mark Laduzko, Assistant Secretary, School Attendance and Community Engagement Branch

Mr Stephen Goodwin, Assistant Secretary, Education and Youth Branch

Mr Mike Fordham, Assistant Secretary, Remote Attendance Strategies Branch

Mr Matthew James, Assistant Secretary, Evidence and Evaluation Branch

Mr Pat Sowry, Assistant Secretary, Remote Infrastructure Branch

Ms Mandy Doherty, Assistant Secretary, Recognition and Reconciliation Branch

Mr Andrew Davitt, Assistant Secretary, Land Branch

Ms Belinda Campbell, Assistant Secretary, Remote Housing Branch

Ms Lee Emerson, Assistant Secretary, Coordination and Commonwealth/State Branch

Mr Neil Harwood, Assistant Secretary, Community Safety Branch

Mr John Shevlin, Assistant Secretary, Health Programmes Branch

Mr Robert Ryan, Assistant Secretary, Local Solutions Branch

Mr Gavin Matthews, Assistant Secretary, Remote Network Design Branch

Mr Paul Salmond, Assistant Secretary, Environment Programmes Branch

Ms Michelle Kinnane, Assistant Secretary, Indigenous Portfolio Bodies Branch

Mr Kamlesh Sharma, Assistant Secretary, Funding Management Branch

Ms Marian Moss, Assistant Secretary, Indigenous Affairs Branch

Mr Geoff Richardson, Assistant Secretary, Indigenous Workforce Strategies Branch

Ms Kari Ahmer, Assistant Secretary, Programme Office and Deregulation Branch

Ms Tania Rishniw, Assistant Secretary, Employment Review Taskforce

Mr James McDonald, Assistant Secretary, Welfare Reform and Employment Policy Branch

Ms Brenda Love, Assistant Secretary, Economic Development and Strategic Partnerships Branch

Mr James Atkins, Acting Assistant Secretary, Indigenous Employment Programmes Branch

Mr Ryan Bulman, Acting Assistant Secretary, Remote Jobs and Communities Program Delivery Branch

Ms Maria Jolly, Assistant Secretary, Programmes Review Branch

Ms Jennifer Goolagong, Acting Assistant Secretary, Network Operations Branch

#### **Governance Group**

Ms Michelle Crosby, First Assistant Secretary, Corporate Services Division

Ms Myra Croke, Acting First Assistant Secretary, Ministerial Support Division

Mr Ben Neal, Assistant Secretary, People, Capability and Performance Branch

Ms Amanda McIntyre, Assistant Secretary, Chief Financial Officer Branch

Ms Sarah Cruickshank, Assistant Secretary, Strategic Communications Branch

**Agencies—Committee to advise attendance**

**Indigenous Business Australia**

Mr Chris Fry, Chief Executive Officer

Mr Leo Bator, Chief Operating Officer

Mr Satish Kumar, Chief Financial Officer

Mr Rajiv Viswanathan, General Manager, Investments

Ms Kirsty Gowans, General Counsel

**Indigenous Land Corporation**

Mr Michael Dillon, Chief Executive Officer

Ms Janet Elizabeth Fiedler, Manager, Corporate Governance

**Committee met at 9:04**

**CHAIR (Senator Smith):** I declare open this meeting of the Senate Finance and Public Administration Legislation Committee. Today the committee will continue examination of the additional estimates, with cross portfolio hearing on Indigenous matters. The committee will examine outcome 2 of the Department of the Prime Minister and Cabinet and the Department of Health in relation to Indigenous health issues as listed on the program, Indigenous Business Australia and the Indigenous Land Corporation. The program has been grouped into the themes and issues that relate to the Prime Minister and Cabinet portfolio and the Health portfolio. The committee has fixed Friday, 11 April 2014 as the date by which answers to questions on notice are to be returned. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into the *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to

disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders, pp 124-125)

**CHAIR:** I welcome the Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion, and officers of the Department of the Prime Minister and Cabinet. We will begin the first session on Closing the Gap and Stronger Futures. Minister, would you like to make an opening statement?

**Senator Scullion:** I have a short opening statement. The transfer of 1,722 Indigenous staff over 35 programs from eight agencies to the Department of the Prime Minister and Cabinet has now been completed. We now have the capacity, the priority and the commitment across government to start really making a difference. Since the Closing the Gap strategy was introduced we have allocated billions of dollars across governments on Australian government Indigenous expenditure alone. In terms of the last Closing the Gap report, we should all acknowledge it paints a pretty grim picture. Life expectancy has increased slightly, but it is not on target because the life expectancy of the mainstream is increasing at a faster

rate. Only two out of the eight targets in reading, writing and numeracy have had significant improvements. The employment rate has, in fact, deteriorated. School attendance rates have not improved—in some cases we are going backwards—and in remote areas the situation is far worse. The reason we think it is far worse is that the aggregated figures are global figures, and the acceleration that we are getting in some areas in the cities masks how badly we are doing in some of the remote areas.

We need to find a new way, where Aboriginal and Islander people find their own solutions to problems, with parliament's support. The priorities of this government are simple—they are simple to say, but I do not think they are as easy to achieve—getting kids to school, getting people into full-time jobs and providing safe communities. It is clear that simply spending money is not the answer. I think we all acknowledge that. We need a strategy that produces a different set of results. I accept that the committee will quite properly examine who got money and who did not get money. That is the convention of an estimates committee, in particular. But it would be fantastic if we changed the convention of saying, 'How is it going in Aboriginal and Islander affairs,' and we say, '35 million, that's how it's going,' or, '50 million, that's how it's going,' or '12,000, that's how it's going,' and we actually start to say, 'Let's focus on the results, let's focus on the outcomes.' Whilst the convention of this committee, quite properly, is to examine the finance, it would be terrific if the committee, as a parliamentary committee, ensured that the focus is on outcomes and not so much on the dollars. That is all I have for opening remarks.

**CHAIR:** Ms Carroll, do you have an opening statement?

**Ms Carroll:** No, we do not have an opening statement.

**Senator McLUCAS:** Thank you for that opening statement, Minister. It does bring me to the justice target. I understand you, as shadow minister, committed an incoming Abbott government to providing bipartisan support for the target. Does the coalition government stand by its commitment to bipartisan support for the new justice target that was promised by you before the election?

**Senator Scullion:** At the risk of being verballed, can you provide me the exact statement where we made a commitment to a particular justice target?

**Senator McLUCAS:** You said in a media release on 9 August 2013:

The Coalition will provide bipartisan support for Labor's proposed new Closing the Gap targets on incarceration rates, higher education and disability services but I am worried if we get too many targets they will lose their impact and then we could lose focus.

**Senator Scullion:** You are referring to the Labor Party's target at the time—is that correct?

**Senator McLUCAS:** I am referring to words that went under your name.

**Senator Scullion:** I will just clarify that. The words that you have just read out mean that I was providing bipartisan support to a particular target that Labor had suggested they were coming up with. There has been quite wide debate, and I think there is broad support from both sides of parliament for ensuring that we have a suite of targets that lower incarceration rates. The issue was whether or not we actually had a firm target. We had a suite of options. We all agree that fewer people should be incarcerated, but we need to understand that, in around 80 per cent of Aboriginal incarcerations, particularly those involving violence and

assault, other Aboriginal people are also involved. So the notion was that the number of offences needed to drop but also that the number of victims needed to drop, because that is the whole idea. It was a general comment, and I stand by that comment—that we should have bipartisan support on those matters. But there has not been a target since then that would meet those particular measures. I certainly stand by our position that we would broadly support lowering the number of victims, in particular, of crime in those areas. We would see it as having a bipartisan approach to any of the targets. If you have a particular suggestion of a particular target, of course the government would like to hear it.

**Ms Carroll:** To add to what the minister said, obviously the setting of targets generally is a matter for COAG. As the minister indicated, there has been continuous consideration of these options. On the issue of taking something like this to COAG, that will happen over a period of time.

**Senator McLUCAS:** Which does fit with what you provided to the committee at the last Senate estimates. You said:

We are still in the process of providing advice and talking to the new government about those issues.

But I still have a concern. Minister, I did not quite follow everything you said there. My question is: does the government stand by its commitment to bipartisan support for the new justice target that you committed to prior to the election?

**Senator Scullion:** We do stand by moving towards a justice target in some form. But the notion that has been discussed has always been around incarceration and lowering, necessarily, incarceration rates. I would just put to you that this process through COAG needs to focus on minimising the victims, not so much on the incarceration, but—

**Senator McLUCAS:** That is fine. The words of the target can be negotiated; the COAG process would allow that to happen.

**Senator Scullion:** Well, as we have already indicated, this is a matter before COAG and subject to the ongoing discussion of COAG.

**Senator McLUCAS:** I think you are saying that, yes, you are committed to a justice target?

**Senator Scullion:** Consistent with the evidence provided at the last Senate estimates, this is a matter for COAG. Yes, we are still committed to ensuring that through COAG the matters around justice, incarceration and the high levels of Aboriginal and Islander victims need to be dealt with. That should be a process through COAG.

**Senator McLUCAS:** Given that and given that we are now six months into the first term of this government, what specific steps have you requested that the department take and what steps have you taken to progress the negotiations around developing a justice target?

**Ms Carroll:** I can answer from the department's point of view. As we gave evidence last time, we are continuing to work on the issue of justice. On the general issue of a justice target, the Prime Minister has committed to having Indigenous issues on the agenda of each COAG meeting. As we go forward those agendas will firm up. School attendance was discussed at the first COAG meeting. As the issues are brought forward for each of the COAG meetings, the issues of incarceration rates, justice et cetera, including consideration of a justice target, would come forward over time.

**Senator McLUCAS:** Without going to the policy advice question, has the minister or the Prime Minister asked the department to progress work on developing a justice target?

**Ms Carroll:** The department has been doing a lot of work around Indigenous incarceration rates. In fact, the Prime Minister's advisory committee had some discussions about Indigenous incarceration rates at their last meeting. It is ongoing advice that we provide to government around a range of issues including these.

**Senator McLUCAS:** Of course you would be doing that. A lot of that is data collection, I imagine, but the next step after data collection is prioritising the development of a target. Is that work being undertaken?

**Senator Scullion:** The vast of majority of the matters, everybody would concede, fall under the criminal code of the various state and territory jurisdictions. This is why the matter is through COAG.

**Senator McLUCAS:** That is right. That is why we established it that way.

**Senator Scullion:** Indeed. If we could move independently in any way on that we would be, but this is clearly a COAG agenda. As we have indicated, we would like to see this as part of the COAG agenda and that those negotiations will ensure that it has a level of priority on the COAG agenda. Beyond that, we will certainly report back on those elements of the COAG discussions at the next set of estimates. Or, if you would like to place a question on notice, I can give you an update on exactly where we are going in terms of the COAG agenda.

**Senator McLUCAS:** Thank you. Who within the government has the responsibility for considering a new justice target? Is it you, Minister Scullion?

**Senator Scullion:** In terms of any new target, this is specifically a target in consideration of closing the gap, so it will be under my responsibility. Of course, I will work closely with the Attorney and I will be working closely with the Prime Minister and the Prime Minister's office on those matters.

**Senator McLUCAS:** Who do you take advice from—other than the department, of course? How will you develop that? Will you have consultations? How will that happen?

**Senator Scullion:** Clearly, without the support of the states and territories this is going to go nowhere. Because it is a COAG decision, the fundamental consultations will happen with the various jurisdictions. They obviously have their various departments, whether they are attorneys or others, who have the roles and responsibilities parallel to my position. One would imagine that the consultation should happen through those bodies. Sadly, there is not necessarily consistency across the various jurisdictions on a whole range of those matters, which is why we use COAG to try to have a concise position. As I said, we are pursuing these matters through COAG and the normal process of consultation would be with those jurisdictions.

**Senator McLUCAS:** So states and territories only?

**Senator Scullion:** Yes, indeed. They are fundamental to COAG.

**Senator McLUCAS:** Do you think it might be useful to talk with Aboriginal and Torres Strait Islander people?

**Senator Scullion:** With respect, I thought that was actually a given in this place.

**Senator McLUCAS:** I would have answered that question by saying I was going to talk to Aboriginal and Torres Strait Islander people first. That might be the first stop.

**Senator Scullion:** We have been in discussions, in constant discussions. I have certainly been doing very little else for the last three years and I have a clear understanding from a whole broad range of individuals, from communities, from families and from representative organisations. They have all, particularly those who are in the area of legal advocacy and justice, been actively and very carefully considering a lot of those matters—

**Senator McLUCAS:** So you know that already.

**Senator Scullion:** not only within the legal area but also within the health areas to try to deal with the very difficult issue of lowering incarceration while keeping a really close eye on it so that that does not have the impact of returning perpetrators to a place where victims can come under further threat. It is a very difficult area, as you would appreciate.

**Senator McLUCAS:** I am not going to the policy; I am going to the process.

**Senator Scullion:** We have been consulting widely, and will continue to, with Aboriginal and Islander Australians. As I said, that is a given with this government.

**Senator McLUCAS:** As Minister for Indigenous Affairs, have you undertaken analysis of the potential impacts on Indigenous incarceration rates as result of the Commonwealth decision to cut funding to Indigenous legal service providers? Could you could give to the committee an understanding of what you have done following that decision.

**Senator Scullion:** The decision to cut funding to legal services has been analysed and an adjustment was made to ensure that the funds that were removed from front-line legal services were only in the area of advocacy and law reform. As I understand it, originally there was an announcement of around \$42 million across Aboriginal legal services. That is now down to \$3 million a year and I am satisfied, as is the Attorney-General, that these areas have been embargoed to impact only on advocacy and law reform. Front-line legal services will not be impacted on. Its impact on incarceration rates will be neutral. I understand that many of these questions, whilst I am more than happy to provide the answers, were provided to the estimates process through Attorney-General's.

**Senator McLUCAS:** What discussions did you have with the Attorney-General prior to that decision being announced?

**Senator Scullion:** We had some broad-ranging discussions. There was a broad agreement that the government would say there would be no impact on front-line legal services.

**Senator McLUCAS:** How can you say that? How do you know that?

**Senator Scullion:** Because the only areas that were to be affected were quantified. The only areas that were affected and intended to be affected were advocacy and law reform. We have had no feedback whatsoever that that reduction in funding to law reform and to advocacy has had an impact on front-line legal services.

**Senator McLUCAS:** You have had no—

**Senator Scullion:** None.

**Senator McLUCAS:** When do the cuts come into place?

**Ms Edwards:** You would be aware that the overarching reduction in funding is primarily a matter for the Attorney-General's Department.

**Senator McLUCAS:** Yes, I am.

**Ms Edwards:** Only a small number of legal services are within the Prime Minister's department. The funding was announced in the MYEFO savings measures in December and it will be 4.21 per cent over three years. We are working with those services now in relation to their renewed funding agreements for next year on how those reductions can be accommodated within the ordinary planning of those services. We are working closely with all of the services to ensure there will not be impacts on front-line services delivery.

**Senator McLUCAS:** So what is the answer to the question of when the cut will come in? Is it 1 July this year or now?

**Ms Edwards:** It is 1 July.

**Senator McLUCAS:** So, Minister, you would not have received advice about reduction in services because the cut has not yet occurred.

**Senator Scullion:** I have had a number of meetings with those people who are potentially affected. They not only have my assurances; they know that they are currently working with the department around those exact parameters—that front-line services will not be affected. They are assisting in ensuring that is not the case in terms of their future funding.

**Senator McLUCAS:** What was the purpose of law reform and policy officers? What did they do? What do they do?

**Ms Edwards:** As I mentioned, Prime Minister and Cabinet is only responsible for a small element of the legal services, so I would have to refer questions about anything to do with the general Aboriginal legal service to the Attorney-General's Department. We are responsible for only the family violence prevention legal services, which are under a different framework.

**Senator SIEWERT:** Minister, I was asking the Human Rights Commission about the impact of these cuts. It was very clear from Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda's response that it will definitely impact on lowering incarceration rates. He gave a very good example from Queensland. The Human Rights Commissioner was very clear that this will have an impact, that advocacy and policy is essential in addressing the appalling incarceration rates. Did you seek the Human Rights Commission's advice? Here we have somebody who is an expert in these areas, and he is saying: 'Yes, it will have an impact.'

**Senator Scullion:** I am aware of the justice commissioner's views on these matters, and all of those matters are taken into consideration to ensure there is no negative impact on incarceration. As I have indicated to Senator McLucas, as we are going through this process that has been outlined by Ms Edwards, that is the process of ensuring that does not happen. Through your questions, the commissioner has drawn a view that, because you cannot have an advocacy service, that is somehow going to lead to further incarceration. He is welcome to that view. We believe that if you have no impact on front-line services, so people are provided with the very best legal advice, we will not have an impact on incarceration.

Mr Gooda's views and mine may separate at some stage, but I have a very good working relationship with the commissioner. I spoke to him on a number of other matters literally a

couple of days ago. In the context of the answers to your questions, I think there is broad scope to ensure that there is no impact on front-line services. That is our intention. Whilst he can draw comparisons with the numbers of advocates and the law reform around the place, we have to make cuts across the board. Tragically, we have been left with a pretty broken economy—

**Senator SIEWERT:** Oh, please don't start on that.

**Senator Scullion:** Excuse me, Senator, if you can just allow me to finish. So we have to make cuts across the board. We have said that the bench line should be that this will not have an impact on front-line services. It will not have an impact on front-line services or incarceration rates. As Ms Edwards has indicated, we are going to ensure that that is the process, as we ensure that the finance for those legal organisations takes place.

**Senator SIEWERT:** Senator Scullion, you have just said it will not have an impact on incarceration rates. The idea is that we are trying to bring down incarceration rates. That is the point.

**Senator Scullion:** That is exactly what I said; do not verbal me, Senator.

**Senator SIEWERT:** No, you can go back and check the *Hansard* record. You just said it will not have an impact on incarceration rates. And that is the very point—we are trying to bring them down.

**Senator Scullion:** I was saying it in the context that it would not have a negative impact on incarceration rates, which is what you were suggesting. It will not have a negative impact on incarceration rates because it will not have an impact on front-line services.

**Senator SIEWERT:** We are trying to bring incarceration rates down. That is the point. And that is the point that Mr Gooda was making with the Queensland example.

**Senator Scullion:** Without being argumentative, you were suggesting that, by our activities, the cuts we were making to the legal aid services were going to effect an upward pressure on incarceration rates. I was making the point that we had gone to a great deal of care to ensure that that was not the case. Of course I do understand that it is in all of our interests to lower incarceration rates and to lower the number of victims, particularly Aboriginal and Islander victims, in this area.

**Senator PERIS:** Minister, last year you told the committee that 23 alcohol plans were going ahead in the Northern Territory. Can you provide an update on this? Have any of these been approved?

**Senator Scullion:** None of the alcohol management plans have come before me for approval, and my inquiries indicate that the reason for that is that they are not compliant; they do not meet the specifications that come before me. My department is working actively with a range of these communities to ensure that these plans can be compliant before they come towards me.

With regard to one of these management plans, I visited a community about a week or 10 days ago to talk to them about why this particular plan might not have been compliant, and they wanted to provide me with a range of other evidence and information around this. I am sure your next question will ask me when I expect to see those plans. As soon as the first ones are compliant, I am ready to have a look at those.

**Ms Carroll:** Perhaps I could add to that. The department has recently received—since the last estimates—I think two alcohol management plans, which we are currently considering.

**Senator McLUCAS:** Who did you receive them from?

**Ms Edwards:** The process of developing the plans is an assisted process. The 23 communities referred to have been working with officials from the Northern Territory government, closely with officers of Prime Minister and Cabinet, to develop the plans. So there is ongoing consultation and then there is a process to assess them against the minimum standards, which came into effect in February last year. Just recently a couple of those plans have got to the position of being assessed by more senior management to check whether they comply with the minimum standards, after which time they will be provided to the minister. So the two that have come to us recently are ready for that more high-level assessment.

**Senator PERIS:** So you can clarify that you do have the 23 plans but they do not adhere to what—

**Ms Edwards:** There are 23 locations in which the Northern Territory officials are assisting people to develop the plans. A number of those communities have the view that they had endorsed the plans previously but most of those endorsed plans—11 of 14—were done prior to the commencement of the minimum standards, so this was before the Stronger Futures legislation came into effect and the minimum standards came in in February last year. After the minimum standards came in, all of the ones that had been previously endorsed from the view of the community had to come back into discussion to then assess them against the minimum standards.

**Senator Scullion:** It was either Senator Peris or Senator McLucas—I cannot recall—who asked if we could provide on notice the names of the communities. We have asked the communities and across the board they have said that they wish their application to remain anonymous.

**Senator PERIS:** Okay. Have you had any discussions or representations from the liquor industry in relation to the development and implementation of these alcohol management plans?

**Senator Scullion:** No, I have not.

**Ms Edwards:** I am not aware of any.

**Senator PERIS:** Have you at any stage discussed the AMPs with Minister Nash or her staff?

**Senator Scullion:** No.

**Senator PERIS:** As you would be well aware, Minister, alcohol related violence is increasing in the Northern Territory. Can you outline the actions the government has taken to fast-track any of these alcohol management plans?

**Senator Scullion:** The alcohol management plans as a consequence of legislation introduced by the previous government—not that I disagree with that at all—as you have been made aware this morning are not compliant, so that has been some period of time. As I have indicated, there was one community I visited at their request to discuss some elements around alcohol management in their area. I am aware that they have a plan, but I have not had any further discussions outside of that.

**Ms Edwards:** The alcohol management planning aspects of the Stronger Futures legislation are only one element of the measures under the Stronger Futures package that is more broadly designed to combat alcohol related harm, ranging from the restrictions in place, other funding and a lot of the funding through our community safety measures, including the night patrols. I want to ensure that you are aware that there is a suite of measures that go to community safety, including alcohol related harm, in addition to the alcohol management planning scheme.

**Senator PERIS:** Will funding be committed to implement these plans and, if so, how much?

**Senator Scullion:** I think we would be getting ahead of ourselves if we do not know that the plans are approved at this stage, but if and when they are approved we will certainly make that available.

**Senator PERIS:** Thank you.

**Senator McLUCAS:** Just for the record, the evidence we have received today is quite different to what we received at last estimates. There may be very good reasons for that, but we will pursue that with questions on notice. Essentially, at last estimates, Minister, you indicated that they were quite imminent. Obviously something has happened in between, and we will pursue that on notice.

**Ms Edwards:** The process of negotiating alcohol management plans with the communities can be a very lengthy one. It is one driven by the timetable of the community.

**Senator McLUCAS:** We will pursue it on notice, Ms Edwards. We are very short of time. Thank you.

**Senator SIEWERT:** I would like to ask about the various national partnership agreements that are coming up for renewal. Could you give us a breakdown of where the negotiations are for each of them, please.

**Ms Carroll:** I am just looking at my list of the national partnership agreements. In terms of the details of them, officers would be expecting to come up and discuss them under the particular areas.

**Senator SIEWERT:** Are you not responsible for overseeing—

**Ms Carroll:** We can talk about them generally, but the specifics of each one—

**Senator SIEWERT:** Yes.

**Ms Carroll:** The national partnership agreement on the remote service delivery finishes at the end of this financial year. The government is in the process of considering the future direction for remote service delivery.

**Senator SIEWERT:** That should be covered here in this area, shouldn't it? We will just go through them each, first. Are they in the process of negotiating now?

**Ms Carroll:** The government is considering the remote service delivery at the moment.

**Senator SIEWERT:** Okay.

**Ms Carroll:** The other one was the national partnership on Indigenous early childhood development. That, too, finishes in June this year. Again, that is under consideration by government.

**Senator SIEWERT:** Are these all being discussed at COAG?

**Ms Carroll:** Agreement about what happens with that partnership agreement is a decision for COAG because it is a national partnership.

**Senator SIEWERT:** Does that mean there has not been a decision made yet on whether either of those are going to continue?

**Ms Carroll:** That is right. I think the other one that finishes this financial year is the national partnership on the Indigenous clearing house, which is a very small national partnership. Again, that is for consideration at the moment.

**Senator SIEWERT:** Have any of these been discussed with Aboriginal communities and stakeholders—the future of them and whether it is a good idea to continue them or whether people want them to continue?

**Ms Carroll:** There has not been a formal set of consultations but we regularly get feedback about the different national partnership agreements through the state and territory governments. As you know, this funding goes to the state and territory governments and is then implemented by them, in a lot of cases—not all cases. Certainly, we are talking to state and territory governments but also getting feedback from individuals.

**Senator SIEWERT:** How are you getting feedback from individuals?

**Ms Carroll:** Certainly our staff—the staff of Department of Prime Minister and Cabinet—on the ground would be hearing from service providers et cetera. As part of ongoing policy information and feedback, we get that on a regular basis.

**Senator SIEWERT:** Is it fair to say there has not been a formal process of consultation?

**Ms Carroll:** That is correct.

**Senator SIEWERT:** What sort of process of evaluation has been undertaken? For the remote services delivery up until now we have had very regular reports. That is in a different category. But with the others, what form of ongoing monitoring and evaluation have you done in terms of how successful the community thinks it has been?

**Mr James:** There is an evaluation that is nearing completion for the Remote Service Delivery National Partnership.

**Senator SIEWERT:** There have been regular reports around that?

**Mr James:** Yes, and of course there are the coordinator general's reports as well.

**Senator SIEWERT:** That is what I mean.

**Mr James:** The last element of that evaluation involved a survey of Indigenous community members in 10 communities, partly conducted by Indigenous community members themselves. So there was direct consultation with—

**Senator SIEWERT:** That is for remote services?

**Mr James:** Yes, remote service delivery. With regard to the clearing house, we had a small evaluation undertaken that mainly talked to policymakers and the like, but it also involved Aboriginal peak organisations. The clearing house is largely for policymakers and senior officials. So, yes, we had a clearing house evaluation completed, working closely with the states and territories.

**Senator SIEWERT:** What about early childhood development?

**Ms Carroll:** The evaluation is currently in train.

**Senator SIEWERT:** Does that include talking to communities and service deliveries?

**Ms Carroll:** I do not have the detail of what that involves, but we could provide that.

**Senator SIEWERT:** Could you perhaps take that on notice?

**Ms Carroll:** Yes.

**Senator SIEWERT:** I am conscious of time; I will put my other questions on notice.

**Senator PERIS:** Could you advise what the balance was of the Aboriginal Benefits Account, as of 30 June, for the last three years?

**Mr Stacey:** When you say 'balance,' if you are meaning how much is in the account, currently it is about \$450 million. It fluctuates. If you want the balance over the last three years, then I will have to take it on notice.

**Senator PERIS:** What is the estimated project balance at 30 June 2014 and 30 June 2015?

**Mr Stacey:** I think it would be better if I took that on notice because it is quite specific.

**Senator PERIS:** Minister, are you able to advise us of the current policy guidelines of the ABA? And, if so, have they been amended since the last election?

**Senator Scullion:** I am not aware of that. Mr Stacey may be able to provide some answers.

**Mr Stacey:** Yes, there are guidelines around grant funding out of the ABA and, no, they have not been amended since the election.

**Senator PERIS:** How many applications to the ABA have been processed and approved during the term of the previous government?

**Mr Stacey:** Again, it is a very specific question. I just do not have that information to hand.

**Senator Scullion:** That will have to be taken on notice.

**Senator PERIS:** Are you also able to advise if there have been grants that have been overturned in the past six months?

**Ms Carroll:** We might be able to answer some of the more recent questions, but obviously we will take the historic question on notice. In 2013-14, 47 ABA projects were announced by the previous government. Of these, 43 without funding agreements were put in place and reviewed by the minister and approved. Four projects that did not have funding agreements have not proceeded.

**Senator PERIS:** Can I have the names of those? Do you have them here? Are we allowed to have that information?

**Ms Carroll:** We would need to check with the applicants before we provided you with specific names. We can talk about numbers of projects and all of those sorts of things, but we would always confirm before we put an applicant's name on the public record.

**Senator PERIS:** It is probably well documented, but one of the ABA grants that was recently overturned was the MJDF, Machado Joseph Disease Foundation. Do you know the purpose of this grant?

**Ms Carroll:** Yes. We are aware of the MJD Foundation grant and the particular additional funds that were applied for by the MJD Foundation of \$10 million.

**Senator PERIS:** Minister Scullion recently stated that the funding was inconsistent with the ABA funding parameters. Can you table the legal advice to the effect that this funding was in breach of relevant legislation?

**Ms Carroll:** Just for a start, we would never table legal advice. I think it is going to the intent of the parameters of the whether ABA funds are spent and the focus of what is possible and preferred to spend the ABA funds on. So, clearly, the issue around the MJD Foundation is the notion of providing additional funds for the ongoing operation of the MJD Foundation when the funds should really be for the disease sufferers. We should be looking at how things like the National Disability Insurance Scheme over time will be able to pick up the needs of those disease sufferers.

**Senator PERIS:** It was the \$10 million that was overturned. My understanding was that the \$10 million was to be invested and only earnings spent, which was half a million. Is that your understanding, or no?

**Ms Carroll:** Yes.

**Senator PERIS:** I want to put on record that, without that money, the employment of two full-time MJD therapists will not be able to go ahead now. The jobs of two MJD Aboriginal community workers have been lost. It will affect physiotherapists who go to Ngukurr and Galiwinku, as well as a psychological counselling project which was to work on suicide prevention. Just recently two mild sufferers of MJD committed suicide. This is not just to do with Groote Eylandt sufferers; it affects people right across the Northern Territory.

Where to now? If this is not funded, what happens now? Have you spoken to anyone in the health portfolio. Are they going to pick up the slack for this and, if so, how soon?

**Senator Scullion:** Perhaps I could answer that question. In terms of how the ABA fund is run, one fundamental is that we do not pay for recurrent costs. There was only one other precedent in the whole time of the ABA, when the minister made the same decision on the foundation. This is just an extension of the first time that happened.

As an absolute principle, I think it should be acknowledged that the Aboriginal Benefits Account is Aboriginals' money. This is money that has been taken from royalties. I do not think that any Australian would say that, if they were in Sydney suffering from MJD, they should put their hands in their own pocket and pay for treatment. Paying for it should be front and centre the responsibility of the Commonwealth government or the other jurisdictions through the health system; it should not come out of Aboriginals' own money. I have had a longstanding view on this—and other people on the committee would know it—and my position remains exactly the same. It is the reason that those funds should not continue to be provided from the Aboriginal Benefits Account. This is not only in principle; it is also the fact that the amount of money that has gone to MJD is half the money spent on the entire budget allocated for Homelands, the building of houses, yet that is being held in trust. There are, I think, a whole range of very good reasons why this one precedent should not be supported.

But I very much understand the concerns of the communities about it between now and when the Commonwealth does start paying for it and taking on the responsibility, which it will do, first of all, through the rollout of the NDIS—and I have been in discussions with

Minister Fifield about accelerating the rollout, instead of just to Barkly, to other places, and no doubt in the future we will be able to report on how that is going. I have written to Senator Fifield about ensuring that MJD is actually registered as a disability so the whole range of services and therapies that should be available will be available—

*Senator McLucas interjecting—*

**Senator Scullion:** Sorry, Senator McLucas, you were intervening with—

**Senator McLUCAS:** Just some information about how the NDIS works, but that is all right.

**Senator Scullion:** But there is obviously going to be a period of time in between. But I can tell you today that we will be offering the MJD Foundation exactly the same amount, \$500,000 a year, between now and when the mainstream health services can demonstrate that we are looking after them to their benefit, because I know they are remote and I know that is challenging. So we have offered the MJD Foundation \$500,000 a year for over three years. Over that period of time, we want to ensure that this is looked after not by Aboriginals' own money but by the people who should be taking responsibility for it—in this case, the Commonwealth government. As I have said, those people afflicted by MJD will not be affected at all by this decision, and Aboriginal people will no longer be paying for something that all other Australians would expect the Commonwealth to pay for.

**Senator PERIS:** So you are saying the Commonwealth will provide half a million dollars every year for the next three years?

**Senator Scullion:** Indeed.

**Senator PERIS:** Between the pair of us, we know the problems all too well. You have been to Groote. You have been to East Arnhem Land and seen the impact on that entire community—what they have been through, obviously with Rio and now MJD. So I take that as good news for the community. Is it?

**Senator Scullion:** It is good news in the sense that we are not inappropriately using Aboriginal people's money for the fund. We are not using Aboriginal people's money to pay for something that everybody else would expect the Commonwealth to pay for. And we have given a safety net to insure my words that nobody should not be receiving those therapies as we move to the NDIS, which—and I assume that was the commentary from Senator McLucas—would meet more end-state access. But, as I said, we should move to making sure that the Commonwealth are providing all the levels of amenity that they require, and I am sure that this interim position will ensure that that is the case.

**Senator PERIS:** And this will happen almost immediately?

**Senator Scullion:** We are in negotiations at the moment. The department is having discussions with the foundation at the moment. But it will be provided, whether it is the foundation or someone else. It has to be provided. Those levels of amenity will be provided, as I have undertaken in the past.

**Senator PERIS:** That is all from me.

**Senator SIEWERT:** I have a question about Stronger Futures funding. It is about funding for NAAJA, the Northern Australian Aboriginal Justice Agency. Are they getting funding beyond June this year, at this stage?

**Ms Edwards:** NAAJA's funding would not be entirely or even predominantly from the Stronger Futures package. It is primarily funded, I would expect, from the Attorney-General's Department as part of their ordinary legal aid.

**Senator SIEWERT:** But I thought they were also getting funding under the Stronger Futures package.

**Ms Edwards:** Yes. I will pass over to my colleague to help you.

**Mr Harwood:** I believe NAAJA is also receiving supplementary funding for their legal assistance program—

**Senator SIEWERT:** That is what I thought, yes.

**Mr Harwood:** under Stronger Futures.

**Senator SIEWERT:** What is the state of that funding—how much do NAAJA have now, and till when do they have a funding guarantee?

**Mr Harwood:** The funding under Stronger Futures is guaranteed till the end of Stronger Futures, which I believe is 2022. But, as for exactly how much funding they get under that supplementary program, I might have to take that on notice.

**Senator SIEWERT:** If you could take that on notice. So, they have funding beyond June 2014?

**Ms Carroll:** Senator, I think the main issue will be the funding agreement cycles, and so what they might have is when their funding agreement finishes. Then it would be a renewed funding agreement.

**Senator SIEWERT:** So when does their funding agreement run till?

**Ms Edwards:** We would have to take that on notice.

**Senator SIEWERT:** Okay. Is it possible to get back to me today?

**Ms Edwards:** I will make efforts, Senator. We will report back, at least.

**Senator SIEWERT:** I am not trying to be rude—

**Ms Edwards:** No. It is a level of detail we had not expected today; we will provide a report on whether we can provide you that today.

**Senator SIEWERT:** That would be appreciated. Perhaps you could also tell me—if in fact that is the same situation for all of the community organisations that are funded under that process—if the funding agreement is the same for all of them.

**Ms Edwards:** So in relation to the supplementary assistance under Stronger Futures.

**Senator SIEWERT:** Yes.

**Ms Edwards:** We will get back to you today.

**Senator SIEWERT:** Thank you.

**CHAIR:** Minister and Ms Carroll, if you are in agreement and it is not too much of an imposition on officials, we are proposing to have some further questioning. I will go back to Senator McLucas, Senator Peris and Senator Siewert to see if they want to follow up and then have a five-minute morning tea break and then come back to do health.

**Ms Carroll:** The only thing I was going to check is whether there were any general corporate questions that you had today, because otherwise we will let those officials leave. So

if we are then just flowing into health et cetera, we just wanted to check when you were going to cover those questions.

**Senator McLUCAS:** I can advise that we intentionally did not have any questions around corporate, simply so that we could get to the substance of the programs.

**Senator SIEWERT:** I am the same. I have some that I will put on notice.

**Senator SESELJA:** I have a question on the National Congress of Australia's First Peoples. I wanted to just get some details on it. It is all a bit new to me. I understand the congress is a company limited by guarantee; correct me if I am wrong. I understand it was established as a company with a series of capital injections by the Commonwealth to provide enough funding so that the congress could effectively live off investments; again, someone can correct me if I am wrong. I just wanted to go to some basics in terms of the funding and cost structure and things such as that, and I do not mind if it is the minister or officials who answer. I understand it received \$29 million from the previous government; is that correct?

**Ms Carroll:** Yes.

**Mr Stacey:** Yes, it is.

**Senator SESELJA:** Is it also correct there was around \$15 million in the forward estimates?

**Ms Carroll:** Yes.

**Senator SESELJA:** How much does the congress have in its reserves?

**Mr Stacey:** They had \$8.9 million at the end of December 2013.

**Senator SESELJA:** I just want to go to some of the cost structures. The sitting fees for board members, is that around \$80,000?

**Mr Stacey:** I might check on that and I will try to come back to you later in this estimates.

**Senator SESELJA:** And how many times a year does the board meet?

**Mr Stacey:** Again, I would like to quickly check and get back to you.

**Senator SESELJA:** In 2012-13 how much was spent on board remuneration?

**Mr Stacey:** I am not certain. Again, I would have to take it on notice.

**Ms Carroll:** Senator, because this is a company limited by guarantee, and these are the normal workings of that organisation, we do not regularly have all of that information to hand, but we can see what we can get for you during the course of today.

**Senator SESELJA:** So it does not get reported to the department?

**Ms Carroll:** Some of that information would get reported, so we will see what we can find for you during the course of the day.

**Senator SESELJA:** That would be great. How many staff were employed at the end of last year?

**Ms Carroll:** I understand congress employed 35 staff as at 30 June 2013.

**Senator SESELJA:** Do we have an update on that year to date?

**Mr Stacey:** No.

**Ms Carroll:** We do not have an update on that staff number. The staffing number would be something that is normally reported to us annually.

**Senator SESELJA:** How many of those staff are employed on SES salaries?

**Ms Carroll:** I am not sure if we know that, but we could certainly—

**Mr Stacey:** At least one—the chief executive, I believe. But, beyond that, again I would have to check.

**Senator SESELJA:** So you will get back to me on that?

**Mr Stacey:** Yes.

**Senator SESELJA:** How many individual members does this congress have?

**Ms Carroll:** There are 7,500 individual members and 172 member organisations.

**Senator SESELJA:** Do we know what the cost of membership is?

**Mr Stacey:** It is free.

**Ms Doherty:** Yes, the membership is free.

**Senator SESELJA:** How many members voted in the last elections of the congress?

**Ms Doherty:** We understand approximately 800.

**Senator SESELJA:** What was the cost of conducting those elections?

**Ms Doherty:** I do not think that is available to us, but I can check and get back to you.

**Senator SESELJA:** No problem.

**Senator McKENZIE:** I want to follow up on the issues around the Aboriginals Benefit Account. My understanding was that there was a \$6 million grant in 2010 to the account to cover operational costs for many years to come. Is that correct?

**Ms Carroll:** For the MJD Foundation?

**Senator McKENZIE:** Yes.

**Ms Carroll:** Yes.

**Senator McKENZIE:** How many years was that \$6 million grant supposed to cover?

**Mr Stacey:** In 2010 a grant of \$6 million for the Aboriginals Benefit Account was approved by the former minister to be invested in perpetuity.

**Senator McKENZIE:** You mean to cover operational costs for—

**Mr Stacey:** Yes. I think that was the case.

**Senator McKENZIE:** At the time it was granted, how much years was it imagined it would cover operational costs for?

**Mr Stacey:** My understanding was, and I will stand corrected, that it was meant to be in perpetuity—that is, pretty much forever ongoing.

**Ms Carroll:** The concept being that the interest on that that is drawn down is what is being used for the ongoing costs.

**Senator McKENZIE:** So it was planned that that amount of money would be enough, being used in the way it was envisaged, to cover the operational costs?

**Ms Carroll:** That was what the grant was for at that point in time.

**Senator McKENZIE:** Then last year in 2013 the former minister granted \$10 million; is that correct?

**Ms Carroll:** That was what she approved.

**Senator McKENZIE:** Was it for the same purpose—to cover operational costs for many years to come?

**Ms Carroll:** I think in addition it was also to cover the costs of some therapy et cetera.

**Senator McKENZIE:** Is that a normal use of the Aboriginals Benefit Account grants?

**Ms Carroll:** I think that goes to the issues that the minister was raising earlier and whether the Aboriginals Benefit Account funding would be used for that purpose or whether there were other places that that funding, for the purposes of things like therapeutic needs, should come from.

**Senator McKENZIE:** Is it the case that these two grants for the foundation are the only ones like this, or have there been others?

**Ms Carroll:** The foundation has received other funding.

**Mr Stacey:** In fact, the MJD foundation received an initial grant of \$1.7 million. So this was the third grant. I am not sure if your question was really about whether or not there were other grants out of ABA for similar purposes. Was that the—

**Senator McKENZIE:** Yes, that is exactly what my question was, Mr Stacey.

**Mr Stacey:** I am not aware of any others.

**Senator McKENZIE:** Right, thank you. Ms Carroll, are you aware?

**Ms Carroll:** No.

**Senator McKENZIE:** The chairman of the foundation, Mr Westbury, is also a director of the Indigenous Land Corporation; is that correct?

**Mr Stacey:** Yes, I believe that is the case.

**Senator McKENZIE:** The CEO of the Indigenous Land Corporation, Mr Dillon, is a friend, former colleague and co-author of the book with the chairman of the foundation, is that correct?

**Ms Carroll:** I would not want to comment on that. We would need to check about author of a book et cetera.

**Senator McKENZIE:** If you could get back to me on that. Was Mr Dillon a senior adviser to the former minister who approved this unusual grant?

**Ms Carroll:** Mr Dillon did work in the then minister's office at some point.

**Senator McKENZIE:** As a senior adviser?

**Ms Carroll:** Yes.

**Senator McKENZIE:** At the time the grant was approved?

**Ms Carroll:** I don't know.

**Senator McKENZIE:** Could you check on that for me, please?

**Ms Carroll:** No—that is not the case.

**Senator McKENZIE:** According to the foundation's annual report, it has more than \$8 million in assets, including \$6 million in the bank, which we canvassed earlier. How much

interest has the foundation earned from the previous \$6 million grant, and what did it spend the interest on?

**Ms Carroll:** We would need to take that detail on notice.

**Senator McKENZIE:** And could you also go to the proportion of that that was spent on salaries?

**Ms Carroll:** I will find out what is available to us, or on the public record.

**Senator McKENZIE:** How much did the foundation propose to spend on salaries from the \$10 million grant in 2013?

**Ms Carroll:** We do not have with us the details of what was in the application, so we can take it on notice. But we would not normally disclose those specific details without going back to the organisation to check, just as we have mentioned before around some of the other things. So we will endeavour to get what is possible.

**Senator McKENZIE:** I do not know whether you want to comment, Minister, but given the unusual manner in which this financial arrangement has been set up, would you have anything additional to add about alternative ways we could assist the foundation to conduct the important work that it does?

**Senator MOORE:** I thought the minister explained that in the answer to Senator Peris.

**Senator McKENZIE:** That is why I am asking if there is anything he wanted to add.

**Senator Scullion:** No, I think I have comprehensively provided that answer to Senator Peris.

**CHAIR:** Senator Seselja?

**Senator SESELJA:** Just quickly on township leasing, Minister, could you give the committee an update on what kind of progress we have seen on township leasing in the last six months? I know there was a press release from yourself, I think back in October; but can you give an update on where that is up to?

**Mr Stacey:** Statements of commitments were provided to the committee at its last hearing, which were agreed to between the minister and traditional owners in Gunbalanya and Yirrkala. Beyond that, through the minister we have now made formal offers whereby the Commonwealth broadly outlines what it would be prepared to provide in exchange for the traditional owners agreeing to a township lease, including rental payments. We are expecting negotiations to commence very shortly in Gunbalanya, and we have had some very productive discussions this week with traditional owners at Gapuwiyak, another community in east Arnhem which may also be interested in a township lease. That followed on from some productive discussions at Yirrkala.

**Senator SESELJA:** I am interested in how it has gone over the last couple of years as well. Obviously we have seen some progress in the last few months; when did the department, or the government, become aware of interest in township leasing at Gunbalanya?

**Mr Stacey:** I believe that there was interest expressed from some traditional owners at Gumbalanya over two years ago or more.

**Senator SESELJA:** Yet the formal negotiation processes only started to take place around October last year?

**Mr Stacey:** That is correct.

**Senator SESELJA:** What was the delay over those couple of years in taking it to a more formal negotiation process?

**Mr Stacey:** I do not have all the background. My understanding is that, while some traditional owners may have been interested, others may not have been certain. In addition, the Northern Land Council, which was representing traditional owners, expressed concern overall about the township leasing model.

**Senator SESELJA:** So the Northern Land Council did not support it. Does the Northern Land Council support it now?

**Senator Scullion:** I attended Gumbalanya in October after having submissions from the community that it would be useful if I came out. Without reflecting on the previous government or any of their particular views, for all the reasons that have already been expressed by Mr Stacey, it had not progressed. I think we were able to progress the matter substantially, and it is now being advanced, as you would expect, through the community. I would certainly like to express my thanks to the Northern Land Council. It is a very difficult task. Traditional owners have a spectrum of views in the community, and effectively you have to have a unified view before you can move on these matters. If I can report, I think it is moving along very well, and there are continuing discussions. I have been to Gumbalanya a number of times and I have participated in those discussions. It seems to be on track. I know nothing happened for a long time, but there were a number of quite complex legal matters that the Northern Land Council was sorting out. I think it is pretty much on track and it seems to be very well supported by the communities.

**Senator SESELJA:** So, in your opinion, it was not to do with a lack of will from the government; it was more to do with the complexity of the negotiations and the legal arrangements?

**Senator Scullion:** I do not really want to reflect on that, Senator. I am not really sure about the history. All I know is that not much happened, but it is happening now.

**Senator PERIS:** Minister Scullion, in relation to the current negotiations with Gumbalanya, you have an MOU about going further? What do you have on the table at the moment?

**Mr Stacey:** Just to clarify, the statement of commitment was made by traditional owners and Gumbalanya and the minister to seek to negotiate a township lease by the end of June this year. We did provide copies of the statements of commitment in response to questions at the last estimates hearing.

**Senator Scullion:** The community said, 'Every time we do this we have a meeting and then it just drifts away.' We all agreed and said, 'What about we put a time frame around this so that we can all say that we have got until then to have all these discussions and come up with a decision? If the decision is no, we will go off and put our energies elsewhere.' The community indicated that it just goes on and on. They had been talking about this for a long time and nothing had actually happened. This was something from the community—let's have a statement of intent to negotiate this or not within a certain period of time so that we have some finality on it rather than it just going on into the future.

**Senator PERIS:** By June you either will go ahead with a 99-year lease agreement or you will not, depending on all the traditional owner groups and the outcome from the Northern Land Council?

**Senator Scullion:** We will be guided, as in all these cases, by what the community wants to do about this matter. As I said, the commitment was something that came from the community. We all needed to make a commitment of intent, and we did. When we come to the end of that time I would hope that they have come to a decision of one sort or another, but I will be guided by what the community wishes with regard to how we progress that in the future.

**Senator PERIS:** If the community agrees to any of these 99-year leases, where would money come from for the land? Is that Commonwealth money? Or is it ABA money?

**Mr Stacey:** Rental payments are derived from the Aboriginals Benefit Account, yes.

**Senator MOORE:** I just have a follow-up, as you requested, to some of the previous questioning. I am trying to remember: Minister, in the last part of your answer to Senator Peris about the MJD you said that you were going to commit to a figure of \$500,000 a year into the future. At the end of that, was it to the MJD foundation? Or to some other agency? Was the actual commitment to the foundation? Or to the issue?

**Senator Scullion:** I am sorry—could you clarify that?

**Senator MOORE:** When you gave the quite detailed response—and thank you—to Senator Peris about MJD, you said you were going to commit \$500,000.

**Senator Scullion:** We said we would offer that. We are in negotiations at the moment. So, we have offered that, but I know that that is the amount that is going to cover the therapy that is expected to be delivered. So in good faith we have said that that amount of money will be available. MJD may not necessarily be the organisation to deliver it—if they choose not to, for example. But we are committing to deliver it. They obviously have a network on the ground. If they have been in touch with the exact people then obviously we would seek to continue that. But if they chose not to accept that we would deliver it through some other mechanism.

**Senator MOORE:** Normally in this process we would have a discussion with the coordinator-general. The decision has been made for that position to cease. I am trying to find where that fits in to the money, because that position was funded into the future years, was it not?

**Ms Carroll:** In MYEFO there was a saving of the discontinuation of that position.

**Senator MOORE:** And the saving in terms of the original process for this year was through until the end of the financial year and then into the future. Is that right?

**Ms Carroll:** Yes.

**Senator MOORE:** I can find in the additional estimates that there was a saving in 2014-15, 2015-16 and 2016-17, but I just could not find anything under 2013-14 for the saving of January to June.

**Ms Carroll:** That money had already been appropriated, so that would just be part of the funds for this financial year.

**Senator MOORE:** It would just go back to—that awful term—consolidated revenue.

**Ms Carroll:** Or alternate use.

**Senator MOORE:** Within the program?

**Ms Carroll:** Yes.

**Senator MOORE:** Where do we find that? In the figures, how do we know that?

**Ms Carroll:** I think the problem is that because of the machinery-of-government changes the portfolio additional estimates statement has the things that have been settled by additional estimates to go forward. So, for the whole financial year it is a combination across different departments, so you have a transfer, and all those transfers have not actually been finalised. So, when we come to reporting back at the end of the financial year we should be able to gather a lot of those things together. But a number of the final financial transactions have not occurred yet.

**Senator MOORE:** So at the end-of-financial-year statements we should be able to find it all and then question accordingly?

**Ms Carroll:** Yes.

**Senator MOORE:** Thank you very much.

**Senator SIEWERT:** Going back to the alcohol management plans, I am aware that there is a House of Representatives inquiry into alcohol in Aboriginal communities. That is not going to prevent alcohol management plans being dealt with, is it?

**Ms Carroll:** No. We would be continuing with our current process, and obviously the House of Representatives process will continue, but we would not stop what we are doing.

**CHAIR:** We will take a five-minute break and then return on health issues.

[10:25]

**CHAIR:** I welcome Ms Samantha Palmer, First Assistant Secretary, Indigenous and Rural Health Division of the Department of Health and officers to join the officers of the Department of Prime Minister and Cabinet to this session on health issues. Ms Palmer, would you like to make an opening statement?

**Ms Palmer:** No, thank you, Chair.

**Senator SIEWERT:** I want to pursue both the partnership agreement and the health plan, the implementation of both and where they are up to.

**Ms Palmer:** The national partnership on Indigenous health outcomes?

**Senator SIEWERT:** Yes.

**Ms Palmer:** In December COAG made a decision to streamline national partnership agreements, which resulted in a decision not to continue work on the National Partnership Agreement on Closing the Gap in Indigenous Health.

**Senator SIEWERT:** That was made in December?

**Ms Palmer:** Yes. This was a NPA where there were no transfers from the Commonwealth to the states and territories.

**Senator SIEWERT:** I am a bit gobsmacked! What are you doing?

**Ms Palmer:** The Commonwealth activity continues in relation to its contribution to that activity, the Indigenous Chronic Disease Package and the work that we have been doing. The

states of course continue their activity because all of their funding under that NPA was their own funding. Since December we have actually been working much more closely with the states through the partnership forums that exist in each state. Those partnership forums involve the Commonwealth and state representatives and also representatives from the national Aboriginal Community Controlled Health Organisation affiliate in each state. So within the department we are putting much more effort into a consistent approach and the way we are working together to work with our state colleagues in relation to improving health outcomes for Aboriginal people.

**Senator SIEWERT:** What was the time line for the agreement?

**Ms Palmer:** The NPA expired in June last year and all NPAs were considered by COAG in the context of activity around streamlining NPAs. Questions were asked at last estimates about the NPA and we answered those questions, and those went up on the website a few weeks ago.

**Senator MOORE:** The parliamentary joint report on the review of NPA, which was concluded and, I understand, went to COAG—can we get a copy of that report?

**Ms Palmer:** That report has not finished going through the committees of COAG. When that report is available we will certainly—

**Senator MOORE:** And the time frame for that?

**Ms Palmer:** We paused it as a result of that COAG process and we are doing that as quickly as we can.

**Senator MOORE:** The review was going ahead and it was being done, why did you pause it?

**Ms Palmer:** We paused it at the time that the NPAs were being considered by COAG.

**Senator MOORE:** So the review that was working out how it worked was paused when they were considering why they would not continue?

**Ms Palmer:** The review is a joint document by the states and the Commonwealth and it has been working its way through committees. It is reasonable to say that it is in its final stages of going through committees.

**Senator MOORE:** And the decision to pause it was made by whom?

**Ms Palmer:** It was made by the department.

**Senator MOORE:** And that decision was reviewed by the then minister?

**Ms Palmer:** No.

**Senator MOORE:** I am trying to get my head around it. This review document has been widely discussed because the decision to end the NPA, without knowing exactly what was going to happen next, has been in discussion in the community and amongst people working in the profession. So the review was being conducted by whom and under whose authority?

**Ms Palmer:** It is a joint review activity between states and the Commonwealth. There was an analysis done by AIHW as part of that review process. But the document itself was a document of the Commonwealth and the states. A variety of drafts of that had been through Commonwealth and state departments as it had gone through its drafting process. But it is not a final document until it has gone through those final committee approvals.

**Senator MOORE:** When was the last draft circulated? I am trying to get a time line. As the review was going on, when was the decision made to pause the review?

**Ms Palmer:** Somewhere in late November or December. We did that when we became aware that there was an impending consideration of decisions about NPAs at that COAG meeting.

**Senator MOORE:** That decision was made by the department in about November or December prior to the COAG meeting.

**Ms Palmer:** Yes.

**Senator MOORE:** Was the decision told to the COAG meeting, that the review had been paused?

**Ms Palmer:** I do not think it was part of—it was a much bigger, broader item that was going to COAG about streamlining NPAs in general.

**Senator MOORE:** Yes, but you went to COAG and one of the NPAs was the particular one on health, Closing the Gap.

**Ms Palmer:** I am not sure the degree to which every NPA that was discussed within that COAG approach because—

**Senator MOORE:** How many of the NPAs was Health engaged in?

**Ms Palmer:** At that time?

**Senator MOORE:** Yes.

**Ms Palmer:** We have the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes and the Indigenous Early Childhood Development NPA.

**Senator MOORE:** So you are only involved in two.

**Ms Palmer:** Sorry, how many NPAs in total is Health involved in?

**Senator MOORE:** No, NPAs that were under review. Take that on notice.

**Ms Palmer:** I will have to pass that to PM&C, I think.

**Senator MOORE:** How many NPAs were Health involved in, how many NPAs were under review? Were there pre-existing review processes going on and was there a decision to pause all review activity around NPAs?

**Ms Palmer:** We will take that on notice.

**Senator SIEWERT:** In terms of the plan, then—

**Ms Palmer:** The National Aboriginal and Torres Strait Island Health Plan is currently under consideration of the government minister.

**Senator SIEWERT:** So the negotiations have finished.

**Ms Palmer:** The health plan when it was released by the former government in July was a Commonwealth-only document. It is different to the previous strategic framework which it replaced, which had previously gone through AHMAC. The national plan was not a document that had been negotiated with the states, because the previous government decided to release it as a Commonwealth-only document.

**Senator SIEWERT:** Where are the states up to in terms of their support of it or not?

**Ms Palmer:** Many of the states actually have their own health plans. When we were drafting the national Aboriginal and Torres Strait Islander health plan we worked very hard to ensure all the national plan was consistent with the material put forward in each of those states that had their own plan. We engaged the states in the consultation process as we were working towards putting to government what should be in that plan.

**Senator SIEWERT:** Are you saying the states at all happy with it because you have used the states' plans to develop it?

**Ms Palmer:** No, I cannot say the states are all happy with it. That is a matter for the states. But we tried very hard to make sure that what was put to government for the national plan was consistent with what states had had in their plans, where they had an existing plan. Not every state has one, but a number of states do. That was what we were attempting to do.

**Senator MOORE:** But was it, in terms of—

**Ms Palmer:** From our perspective, we believed it was.

**Senator MOORE:** Has that final plan been discussed with the states, then, the one that was launched in August or September?

**Ms Palmer:** In July, we had a stakeholder advisory group for the development of the plan. There were two state representatives on that group. Later in its development, one of the state representatives moved from WA to NT. That left us with one state representative. That state representative was making efforts to reflect states' views in that stakeholder advisory group on the plan.

**Senator SIEWERT:** The state commitment of funding that you were attempting to get previously, has that now been abandoned so that the states are no longer being required to say how much they are committing to a national health approach?

**Ms Palmer:** At this stage there is no administrative avenue for asking the states to be clear about what they are putting into Aboriginal health, although there are states that do make that clear when they make their budget announcements.

**Senator SIEWERT:** But not all states do.

**Ms Palmer:** No, that is correct.

**Senator SIEWERT:** Is it correct to say now therefore there is no real national approach, given that states are committing to certain amounts of funds to a national approach?

**Ms Palmer:** Under the welfare agreement Aboriginal and Torres Strait Islander health is a joint responsibility of the states and the Commonwealth. What we are trying to do through our activities with those state planning forums is to be much more proactive and coordinated about how we work with the states on that activity.

**Senator SIEWERT:** If there is no partnership agreement any further and some of the states are not making clear how much they are spending and making an upfront commitment, how does that increase that cooperation?

**Ms Palmer:** The use of NPAs within the Commonwealth is a matter for government.

**Senator SIEWERT:** That wasn't the question. We have abandoned that partnership approach, which is a much more upfront formal commitment, to a much more informal commitment where a number of states, from what you have just said, have not publicly

committed to either a partnership —there is no partnership agreement anymore—or to any form of public agreement to national formal cooperation.

**Ms Palmer:** Within each of those state planning forums there have been commitments and signed documents between the Commonwealth and the state and the Aboriginal health sector. They are called partnership agreements. They were founded or formed within the previous strategic framework and a number of those states have alerted the Commonwealth to the expiry of those agreements and some of them have written the government about how those new agreements might be entered into. I think I can safely say that our partnership agreement and how that works within the planning forums that we have is being considered by government. It is important for you to know that there was not any lever for us within that previous NPA to ensure the states were actually spending what they committed to spend.

**Senator SIEWERT:** That was a problem with the previous agreement, it is not a justification for not making it better.

**Ms Palmer:** It is a fact, but also the monitoring and management that was in the previous NPA continues, because within that NPA how we were measuring progress is actually part of the Aboriginal and Torres Strait Islander health performance framework and also part of the national key performance indicators, and both of those things still continue irrespective of not having an NPA.

**Senator SIEWERT:** What is the expiry date on those? Are those in perpetuity?

**Ms Palmer:** Those are currently in perpetuity.

**Senator MOORE:** What does in perpetuity mean here?

**Ms Palmer:** We do not have an end date.

**Senator MOORE:** But it could be changed at any time by policy.

**Ms Palmer:** Of course governments do that.

**Senator SIEWERT:** In terms of the state processes, it sounds from what you are saying that different states are at different levels. Is it possible for you to tell us—you need to take it on notice; I appreciate that—which of the states has a forum that is about the agreement that is about to expire and where the other states are up to and what processes are in place, and also where you know there has been a formal commitment from the states to an amount of money that is being spent.

**Ms Palmer:** We can do that.

**Senator MOORE:** I have got a couple of direct questions in terms of process. I am trying to get my head around the various levels here. You said that you are working with the states which have their own form of fora across each one. Do we have details of those fora and who is involved?

**Ms Palmer:** We can provide that. They have been running for some time.

**Senator MOORE:** They are not on the website. If we can get a copy of what is continue to operate now, which, if I understand, is the basis on which ongoing Commonwealth-state discussions are continuing in the health space and the time. I have got a couple of specific questions in terms of the NPA and the plan and the linkages. You have given us the advice that the department recommended that the review cease while it happened. We can follow that up as soon as that document is public if we can find out, because we understand that first

ministers around the states have a copy of a document of this nature. Can you tell us what Indigenous health programs are directly funded by the Commonwealth on an ongoing basis.

**Ms Palmer:** Broad Indigenous health programs on an ongoing basis.

**Senator MOORE:** Yes. You can take those on notice if you want to, but in terms of the specific questions about total government expenditure on Aboriginal and Torres Strait Islander health in 2013-14; Indigenous health programs which will be directly funded by the Commonwealth on an ongoing basis; which elements of Indigenous health programs and service delivery will no longer be funded by the Commonwealth government. The previous Labor government committed \$777 million to the new NPA in terms of closing the gap in Indigenous health. Is this money still committed?

As part of the discussions around NPA there was money on the table at \$777 million, which was part of all the announcements around the NPA moving together to close the gap. Is that \$777 million still committed and in the budget?

**Ms Palmer:** Sure, I will take that on notice.

**Senator MOORE:** Could we have the figures to confirm that?

**Senator SIEWERT:** Can you not tell us that one now?

**Ms Palmer:** Sorry, I thought you were running a whole list of things you wanted us to take on notice. I can give you detail about that right now, if you wish to have it.

**Senator MOORE:** The \$777 million?

**Senator SIEWERT:** I think that for that one it is important that we get it on the record now.

**Ms Palmer:** The funding that was committed by the Commonwealth in relation to the NPA comprises funding from different sources. There was \$777 million and it was \$992 million if you took into account MBS and PBS flow-on costs. They are part of that appropriation. That component continues. Most of the funding from the NPA was in the Aboriginal and Torres Strait Islander Chronic Disease Fund. There is \$245.503 million allocated in this full year. Expenditure to date has been \$119.604 million. We have further commitments of \$78.441 million at this time.

**Senator MOORE:** Which is a total of—

**Ms Palmer:** What that means is that at this time there is about \$47 million that is not contracted.

**Senator MOORE:** Under chronic disease?

**Ms Palmer:** In the Aboriginal and Torres Strait Islander Chronic Disease Fund, yes.

**Senator MOORE:** And that money is still there; it just has not been committed.

**Ms Palmer:** That is right, at the moment.

**Senator SIEWERT:** That is to be spent over the next—

**Ms Palmer:** Within this financial year.

**Senator SIEWERT:** But it is not committed.

**Ms Palmer:** That left-over is not committed at this time. We are still going through approval processes for some things.

**Senator MOORE:** In the agreement with the states, which was the core of the NPA process, the states were committed, under a chronic disease package, to \$8.22 million. Do you have that figure?

**Ms Palmer:** The states—

**Senator MOORE:** Under the NPA, the states were committed to fund their share of the chronic disease package. That was all public. It was a total of \$8.22 million.

**Ms Palmer:** The chronic disease package is Commonwealth only funding. The states put their own money into their own Indigenous activities.

**Senator MOORE:** Around chronic disease?

**Ms Palmer:** There was one state that wrote and indicated how much it was prepared to put into the NPA. That was Queensland. I have that number, but no other state had indicated at the time of the offer what they were prepared to put in. I did not bring it with me, but the Victorian government announced a long-term plan for Aboriginal health expenditure in last year's budget. I am just having a look here to see if I—

**Senator MOORE:** Put that on notice because you will be going through lots of papers. The core element that we are both seeking is the commitment into the future of the shared states-Commonwealth commitment to closing the gap and health. You did say that the previous NPA did not have clear accountability mechanisms that the state had to go through.

**Ms Palmer:** Yes.

**Senator MOORE:** You also said that people were looking together at how that kind of accountability could be built into a future plan.

**Ms Palmer:** In terms of a partnership, that is right.

**Senator MOORE:** Is having that transparency and shared commitment a priority?

**Ms Palmer:** It certainly is from the department's perspective, in terms of working together and maximising the investment that the states and the Commonwealth are putting into Indigenous health.

**Senator MOORE:** Minister, in terms of the process—we have been talking about the COAG process around closing the gap, the health commitment, national plans and what is going to happen after the NPA—what is your role in the clear issues about commitment of funding and commitment to cooperation?

**Senator Scullion:** I will central to making the decisions about how we progress those matters. There are only two choices in terms of the nature of the funding arrangements. It is either through an NPA or a bilateral arrangement. The only other matter that is germane to this is that there will be significant input from the health minister, as well, on those matters.

**Senator MOORE:** Is it you or the minister in the health area that goes through this process in Indigenous health discussions? Which minister attends or takes the ownership?

**Senator Scullion:** The Minister for Health would be primarily responsible in those areas.

**Senator MOORE:** Is this part of Minister Nash's—

**Senator Scullion:** Indeed—well, it would involve us both. To what extent, I would have to get back to you. I really do not know and cannot predict exactly what the level of representation will be, but I am happy to get back to you.

**Senator MOORE:** It seems to me that this COAG process is reaching a new level in terms of importance. We have heard all this evidence about what is going to happen next, in terms of what happens in the future, the role, and who is going to be there and the ownership, we would really like to know that.

Minister or the department, are there any other specific health expenditures in the system at the moment for MJD apart from the ongoing relationship through the previous arrangements with the ABA?

**Ms Edwards:** Senator, if I may, I have a list we have gathered together of the funding to the MJD Foundation; it may not be entirely exhaustive.

**Senator MOORE:** If we can get that that would be very useful, but I am also interested whether there is any other form of funding for MJD. The point being, and Senator Peris was raising that, that the MJD relationship with their clients is much wider than just service provision for therapeutic activities. Going back to the discussion we had earlier around the \$500,000, the \$500,000 is for therapeutic activities, as we pointed out, and the foundation is much wider than that.

**Ms Edwards:** Senator, we can provide details on all the funding to the foundation on notice, if you prefer.

**Senator MOORE:** Good.

**Ms Edwards:** In relation to other services for MJD, my Health colleagues may have something to add, but untangling exactly what was what may be difficult because obviously all sorts of disability services and health services, acute care and so on may well be made available to various sufferers at different times. So you are after specifically directed at MJD as opposed to the whole of the health area?

**Senator MOORE:** Yes.

**Ms Carroll:** Senator, perhaps I can just give a summary and then hand over to the Health colleagues. As I think we have already discussed this morning, there was the original grant of \$1.7 million.

**Senator MOORE:** Yes, and we had those answers.

**Ms Carroll:** In addition to that, we understand, and Health can talk to this, there was \$371,000 from the Department of Health to MJD. We understand that there has also been a grant from Groote Eylandt enterprises of about \$1.1 million, as well as a grant of the National Disability Insurance Scheme of \$185,000, again to help with the development of understanding the links with the National Disability Insurance Scheme. So they are a set of things that we are aware of.

**Senator MOORE:** And that is all involved in the data you are going to provide for us?

**Ms Edwards:** That is all in the list.

**Senator MOORE:** So it is all listed. Minister, did you meet with the MJD Foundation to discuss this issue before the decision was made not to—

**Senator Scullion:** No, I did not. As the person making the decision, I decided that that was not appropriate.

**Senator MOORE:** Have you met with them subsequently?

**Senator Scullion:** No, but I have on the public record an open invitation to meet with them and I expect to do so. In relation to your question, could I just say there are two different areas that the MJDF provide. One area, to a lesser degree thus far, is in clinical and therapeutic applications under which that was their clear intent with the funds that may have been allocated and those funds that we have dealt with this morning. There is also another area which involves general advocacy and dealing with issues and providing services that are beyond the therapeutic and clinical process.

**Senator MOORE:** Community and individual support.

**Senator Scullion:** Along with the original \$6 million, they have access to other philanthropic contributions, as a foundation should. It is probably best to talk to the foundation in order to confirm, but I would assume those other services would be met out of the \$6 million. As Senator Peris indicated, the funds we provided are identical to the interest that would have been drawn down off the additional \$10 million. The \$6 million is outside of that, and I would have assumed that those other services would be provided from that.

**Senator McKENZIE:** Chair, the coalition will put further questions on health on notice.

**Senator SIEWERT:** I can put some questions on notice as well, but I do particularly want to follow up renal services and dialysis. Thank you very much for the briefing expecting that we would be raising this. First off, I am wondering whether you have—and hoping you have—the report from EY that Western Desert Services have provided?

**Ms Palmer:** Yes, that is right.

**Senator SIEWERT:** You have seen it?

**Ms Palmer:** I have seen it, absolutely. I have quite regular engagement with Sarah Brown.

**Senator SIEWERT:** I figured that you probably had seen it. What I am keen to follow up, obviously, is first the \$10 million.

**Ms Palmer:** Yes.

**Senator SIEWERT:** I know that I have been pursuing this, and I will continue to pursue it. I also note that one of the first things said in the briefing paper is that dialysis is a state and territory government responsibility. I think we all agreed to differ a bit on that for the time being. However, what I want to know at the moment is what progress is being made in further negotiating the expenditure of that \$10 million, and I am seeking assurances, again, that it has not gone back into what I would call consolidated revenue and that it is, in fact, still there to be spent on infrastructure.

**Ms Palmer:** The funding is still there at present. We have not received any viable project proposals from any of the states for renal dialysis projects to use that funding in central Australia at the present time.

**Senator SIEWERT:** What do you define as 'viable' projects?

**Ms Palmer:** A project that is consistent with the Central Australia Renal Study and the recommendations associated with that.

**Senator SIEWERT:** What processes are you going through at the moment to try and progress the development of those projects?

**Ms Palmer:** As you know, we have spent quite a lot of effort over the course of the last year in working with the states, seeking proposals in relation to that. It was very clear from WA and from NT that they were not going to put forward any proposals where there was recurrent funding required from those states. We had not received anything further from them at that time. South Australia put forward a proposal, but it was not viable because it was not actually to extend service delivery. It was—

**Senator SIEWERT:** This is the one that we discussed last time?

**Ms Palmer:** Yes, sorry. It was in relation to the bus. Since we last met, of course, South Australia has completed and launched its renal bus, which also means that the bus that it was using, which was one that the Commonwealth funded from the NT, has now been able to be returned to the NT, and the NT can consider how it might use that bus and go into service with that bus. I understand informally that they are working with Wooden Whippet in relation to the potential operation of that bus that has now come back from South Australia, which is good. We actually do have something else which has just come along. If I can ask my colleagues from Acute Care, we actually have something quite new in this space.

**Ms Smith:** Part of my responsibilities is the Health and Hospitals Fund. That is the \$5 billion health infrastructure investment fund that has been around for a few years now. One of the projects in that fund which we are very close to finalising with Western Australia is bringing renal dialysis and support services closer to home. That is a \$45.77 million project and the core project outputs will be 17 renal dialysis chairs, consulting rooms for regional renal support teams and renal patient accommodation across a number of areas in Western Australia: the Kimberley, Pilbara, Gascoyne and Goldfields-Esperance areas. Phase 1 of this project should be executed very soon. If all goes well and the weather does what the weather should do—staying dry—then they expect to do the concept planning for phase 1 by around September this year and then commence construction a little bit this year, in October–November.

**Senator SIEWERT:** Who is that working with? The WA Country Health Service?

**Ms Smith:** We have a negotiation with the Western Australia government and it will go to country health. Phase 1 will involve hostels at Derby with 20 beds, a hostel at Kununurra with eight beds, a hostel at Fitzroy Crossing with 20 beds, four dialysis chairs at Fitzroy Crossing, seven chairs at Kalgoorlie and further accommodation at Geraldton, Kalgoorlie and South Hedland. That is in phase 1 of the project. As I say, we are hoping we will start that one this year, all going well. There is a second phase to the project. The concept planning will be finished this year, but construction will commence later. Those are for hostels at Broome for 20 beds, Carnarvon for five beds, Kalgoorlie for 19 beds, and two dialysis chairs at Esperance and four chairs at Roebourne. And there will be some further accommodation at Broome as well. So that is the full scope of that project for the total of about \$45 million.

**Senator SIEWERT:** And is that the finalisation of the money that was announced, I think, two budgets ago—or is this completely separate?

**Ms Smith:** No, this is part of the health and hospital fund, which was initially started in about 2009. This is a round 3 project. It has taken a while to have this project finalised. Western Australia needed to find the recurrent funding for this project. It is a large project; you could imagine that would have a significant impact on Western Australian resources.

They have worked their way through that. The other part they had to do was to finalise the locations. They have done that in consideration of their total approach to renal dialysis and renal care across Western Australia. That is why it has taken a little while to get to this point.

**Senator SIEWERT:** That is really good news for my home state. But I still want to know what is happening with the \$10 million in the central desert. I will take you back to the Ernst & Young study, which seems to indicate—and I am using the words 'seems to indicate' because I am aware a more full cost-benefit analysis needs to be done—that they can deliver in the community and meet the national efficient price. So I am wondering whether you are interested in, or are thinking of engaging in, looking at further work there to complement the work that EY has done in terms of doing the full cost-benefit analysis.

The second question is: no-one is denying that we need to invest that \$10 million. It seems to me that that is a given, yet we still have not managed to find a way through this. Are you looking at other ways that that money can be invested—particularly as this report is showing the benefits of in-community dialysis that is actually being delivered in those remote locations at the national efficient price?

**Ms Palmer:** It is fantastic to see that work done, and we were really pleased to see that report done for WDNWPT. Because service delivery of renal dialysis is a matter for the Northern Territory, we are pleased to say that the Northern Territory is engaged with WDNWPT. Of course, we fund WDNWPT. We give money to the Northern Territory to fund WDNWPT, and have done for some time, so we are clearly supportive of that model.

**Senator SIEWERT:** I understand that the Northern Territory government is looking at further investment because they are recognising the need; and I understand the frustrations from the Commonwealth perspective. But while that frustration is going on, the fact is that the situation is getting worse. So, what innovative ways are you looking at to drive the project so that I am not back here in May asking exactly the same questions?

**Ms Palmer:** I have spent quite some time talking to Dr John Boffa from the Central Australia Aboriginal Health Congress, and in the past six months or so congress has signed an MOU with the NTG. That MOU has seen congress now providing care plans and primary care support for the 240 patients who are getting renal dialysis services in Alice Springs, which is obviously really important to their improved health outcomes. That MOU allows congress staff to go into the dialysis unit—onto NTG property—to do that work, so it is fantastic to see that. But what has also happened there in the past few months, which I think has been a fantastic show of how the system can work together, is that the congress has transferred all of these patients on to the Indigenous PIP, and is now able to write Close the Gap scripts for them. This now means that all of the cost of the medicines that the NTG were paying for those patients, is now being paid for by the Commonwealth.

Dr Boffa estimates that that frees up about \$1.5 million annually, which the NTG can then invest in further service delivery. In terms of an innovative way of trying to improve patient care, take on more of that cost and support the NTG to expand service delivery, I think that has been a fantastic effort from the Central Australian Aboriginal Health Congress. And it is fantastic to see the Northern Territory government working in that strong partnership to deliver that activity.

In talking to Dr Boffa yesterday, he indicated that his data shows that demand for renal dialysis has plateaued in the Top End, and there has been some other research from Wendy Hoy, Professor of Medicine at the University of Queensland. She has done a study which was published in the *BMJ* which seems to show that the rates of the need for renal replacement therapy, or dialysis, is stabilising quite significantly. Her conclusion is that the investment in prevention, early intervention and chronic disease management strategies which has been occurring is now starting to pay dividends. It is very positive to see that come out only very recently, since we were last talking. If we are looking in that space, I can see that, in talking and engaging with Sarah Brown, there has been more extension of service delivery from Wooden Whippet. They are rolling out more services. They are working with WA Country Health Service to work on a recurrent operating model, hopefully with WA Health, for the expansion that they are doing into that state, and they are certainly getting a lot of philanthropic support for expanded service delivery there as well.

**Senator SIEWERT:** I have one last question, and I also want to follow up the issue about the PBS. In terms of the money that has been freed up in the NT, it seems to me that it is a classic time to say, 'You've got some money there. How about complementing the \$10 million.'

**Ms Palmer:** That is correct. That has been raised twice at the Aboriginal health planning forum that occurs in the NT. The NT was asked to commit to use the money that has been saved through the transfer of expenditure to the Commonwealth to progress that. The Kidney Action Network is very focused and working on this, as you would expect. There is a push, and we are trying to find what I think are innovative ways to support that.

**Senator SIEWERT:** That is great, and I look forward to some even more positive news in May. Do you remember two or three years ago the Community Affairs committee did an inquiry into PBS arrangements under section 100 of the National Health Act?

**Ms Palmer:** I have only been in this job for 18 months. I do not remember it.

**Senator MOORE:** Ms Palmer, it is essential reading!

**Ms Palmer:** I will absolutely read it when I get back to the office!

**Senator SIEWERT:** It is gripping! There has not been a formal government response to that report. Is there likely to be one? You may need to take that on notice.

**Ms Palmer:** Yes, I think we will have to take that on notice.

**Senator SIEWERT:** It is not big headline stuff, but it is important for health outcomes in Aboriginal communities, and we have not had a response. I am not having a go. I am just asking if you could look at whether one is imminent, because I do want to follow it up.

**Ms Palmer:** Certainly.

**Senator SIEWERT:** Thank you. I do have questions regarding petrol sniffing, most of which I can put on the agenda, but I would like to know how the supply is going in the Darwin tank. I am looking forward to some more positive news.

**Mr Shevlin:** I can advise that we have contracts in place and work is underway on the construction of the bulk storage facility in Darwin.

**Senator MOORE:** Is concrete being poured?

**Mr Shevlin:** At the moment, we have made two milestone payments and off-site construction is underway. A lot of the site preparation work has been commenced, but the pouring of concrete on the site and the relocation of the tank—because we are moving an existing tank and refurbishing it—is being progressed after the wet season to avoid any disruption. We are on target for that tank being available and operational in September.

**Senator SIEWERT:** Thank you.

**Mr Shevlin:** We have new contracts in place with BP to develop the longer term storage facility in Kalgoorlie. So that work is being progressed as well.

**Senator SIEWERT:** Thank you. I have got other questions there, but I will put them on notice.

**Senator Scullion:** Just for your information, on Wednesday I was in Palm Island and attended a community meeting there. Opal fuel is being made available on Palm Island—

**Senator SIEWERT:** I saw that.

**Senator Scullion:** and we have the same issues there that we have everywhere when we roll this out—concerns about it breaking lawnmowers and those sorts of things. But I have to say the community was very supportive of having an intervention like Opal fuel on the island. The community was very supportive of that. We have built on all that information we provided from Central Australia. I think it is now a lot easier for communities to have technical confidence in terms of using this fuel in cars and those sorts of things, so we will not have the same challenges in the rollout that we had in Central Australia.

**Senator SIEWERT:** I have some questions around the further rollout but I will put them on notice.

**CHAIR:** Thank you very much.

#### **Indigenous Land Corporation**

[11:06]

**CHAIR:** Welcome. Mr Dillon, would you like to make an opening statement?

**Mr Dillon:** No, thank you.

**Senator McLUCAS:** Mr Dillon, when the ILC last appeared before this committee, in November, there was some discussion about correspondence between the ILC and former ministers. My recollection is that the ILC took on notice the question of whether letters from former ministers Wong and Macklin warning the ILC against the purchase of Ayers Rock Resort could be tabled. We received an answer which gave a table listing letters, but I am very keen to see a copy of those letters. Do you have them with you and can you table them, please?

**Mr Dillon:** I have them available and I am prepared to table them.

**CHAIR:** As there is no objection to those documents being tabled, it is so ordered.

**Senator McLUCAS:** Thank you for that; I look forward to reading those. In the November hearing the committee also heard evidence that the ILC chair had expressed concerns about the due diligence process used by the previous board in purchasing the Ayers Rock Resort and had asked for a public inquiry by the Parliamentary Joint Committee of

Public Accounts and Audit. Can you advise who the ILC chair approached requesting a public inquiry?

**Mr Dillon:** There were a range of letters to the government seeking, amongst other things, a parliamentary inquiry. The corporation has written, since the change of government, quite a number of letters to the government. The letters that seek a parliamentary inquiry, from memory, are as follows. There was a letter to the Prime Minister dated 14 November 2013; a following letter to the Prime Minister dated 16 December 2013; and a letter on the same date, 16 December 2013—the same letter, essentially—to the minister, Senator Scullion. Then, on 5 January 2014, the chair of the corporation wrote to Minister Scullion, again seeking a parliamentary inquiry. On 8 January, three days later, she wrote to the Prime Minister; the parliamentary secretary, Mr Tudge; and the Finance minister, attaching her letter to Senator Scullion of three days earlier, again seeking a parliamentary inquiry. We have, in response, received from Senator Scullion two letters, on 16 December and 20 December, where he indicated that he was writing on behalf of the Prime Minister and the government did not propose to proceed with a parliamentary inquiry into the issues raised at that previous hearing. I should provide some context.

**Senator McLUCAS:** Please.

**Mr Dillon:** Things have moved on a bit since much of that correspondence was written, because you will recall the corporation was requested to undertake an end-to-end review of the events surrounding the acquisition, and that review was initiated. There are two components to the review. It is a little bit counterintuitive, but the first component is looking forward, and that is yet to be completed but a draft has been received. The second component looked back at the acquisition, and that was completed first. That was released in December 2013. It is available on the ILC's website. But that review raises, and confirms in many respects, many of the concerns raised in correspondence to ministers.

In response to Minister Scullion's letter indicating that the government did not propose to undertake a review, the chair wrote and made the point that there were a series of unanswered questions that still required consideration and answers. They go to fundamental issues about accountability for the use of government funds, appropriate behaviour of directors and officers of a Commonwealth statutory corporation, due process and transparency. So there are a whole host of issues there. This is a very complex series of events—and I apologise for its complexity; I am doing my best to synthesise it down to headlines.

**CHAIR:** Thank you, Mr Dillon. You would be conscious that we have a very, very tight time frame, so anything you can do in regard to conciseness would be much appreciated.

**Senator McLUCAS:** Mr Dillon, you said that Minister Scullion responded to you in December of last year. I take your point that things have moved on since then, but is it appropriate for you to table that answer to the correspondence from the ILC? I might seek Ms Carroll's guidance here too.

**Ms Carroll:** We do not have copy of that correspondence with us, Senator.

**Senator McLUCAS:** Mr Dillon, do you?

**Mr Dillon:** Yes, I have a copy of the correspondence. The department would have access to the letter, I think.

**Ms Carroll:** Yes. We have it but we do not have it with us.

**Senator McLUCAS:** But it would be in order to table that correspondence?

**Ms Carroll:** We will take that on notice.

**Senator McLUCAS:** All right. We will seek your advice about tabling it and then, if that is in order, you can advise the ILC to table that.

**Ms Carroll:** Yes.

**Mr Dillon:** Just for clarity, that letter is dated 5 January 2014—to assist my colleagues from the department.

**Senator McLUCAS:** Then I would take you, Mr Dillon, to the end-to-end review. My recollection is that that is the McGrathNichol report. Is that correct?

**Mr Dillon:** That is correct. That is component 2 of the McGrathNichol report.

**Senator McLUCAS:** Right. And I think you said that the forward-looking part of the work is still in draft—

**Mr Dillon:** That is right.

**Senator McLUCAS:** but the backward-looking report—that doesn't sound very good!—the rear-view report, was published. Can you take the committee through the findings of the review in relation to the purchase of the resort and particularly the board's due diligence process?

**Mr Dillon:** The previous board spent \$6 million on due diligence. There are hundreds, if not thousands, of pages on that due diligence into the acquisition. I cannot really summarise that but the McGrathNicol report went through all these documents in great detail. There are 25 headline findings of concern. I can table a document that lists those. I might just pick up the top six or seven.

To contextualise this, as I reported at the last estimates, the board purchased this asset for around \$300 million. The asset has been written down already by \$62 million. It is now worth \$250 million. We are doing a further valuation at the moment which may lead to a further write-down. It is clear the board paid too much for this asset—potentially between \$50 million and \$100 million too much. In addition, the board took out borrowings—debt finance—for the acquisition. The outstanding debt that the ILC is carrying in a consolidated fashion is close to \$200 million. The justification to the board by the director who drove the negotiations was that the asset would cover the debt repayments and the repayment of the principal in due course. The projections that went to support that have not been met since the acquisition took place. Now, to go to the findings—

**CHAIR:** Mr Dillon, it is important to be concise. I do not think it ought distract from your argument but if you could be concise in response to Senator McLucas's questions that would be much appreciated.

**Mr Dillon:** I am being precisely concise.

**CHAIR:** Excuse me, if you could be as concise as you can that would be much appreciated.

**Mr Dillon:** The first point to note from McGrathNicol was that the CBRE valuation that the board had available to it when it made the acquisition was 17 months old. McGrathNicol did some calculations. They indicated that had they had an up-to-date valuation the value of

the resort would have been in the order of \$250 million—not \$300 million. That goes to the point of paying too much. A further key finding was that the due diligence, which cost over \$6 million was on a success-fee basis. There was no appropriate selection processes around the selection of due diligence consultants. Grant Samuel received one per cent of the purchase price, which—

**Senator SESELJA:** So the higher the purchase price the more the person would receive?

**Mr Dillon:** Absolutely.

**Senator SESELJA:** That's extraordinary.

**Senator SIEWERT:** Is that usual? I am not an expert on due diligence but—

**Mr Dillon:** We understand there are precedents in the industry about this but—

**Senator McKENZIE:** Which industry?

**Mr Dillon:** The due diligence industry for real estate acquisitions—hotel acquisitions.

**Senator SESELJA:** It was effectively an incentive for the individual or company to value it at a higher rate because they would get more of a success fee.

**Mr Dillon:** Exactly. That is the concern that McGrathNicol raised.

**Senator SIEWERT:** It is bizarre.

**Mr Dillon:** We are not talking about a small amount of money. The purchase price was \$300 million so the fee was \$3 million. The cheque was written—

**Senator SESELJA:** Was that part of the \$6 million that you are talking about—the success fee of \$3 million?

**Mr Dillon:** The \$3 million was part of the \$6 million that was spent. Another headline finding from McGrathNicol was that capital expenditure projections used in the modelling were based on essential capital expenditure only, whereas the projections, going forward, projected optimistic occupancy rates going forward. To get those occupancy rates you require not just the minimal level of capital expenditure but you need to maintain the asset going forward. The Yulara resort is complex of five hotels. It is a small town. So it is a big financial exercise. McGrathNicol found that the occupancy projections appeared to be 'overly optimistic'. They were projected to grow, notwithstanding a long-term decline in visitation.

**CHAIR:** Excuse me, Mr Dillon, Senator McLucas. We do have questions from other senators in regard to the ILC on other issues, not particularly this one. We are also going to deal with Indigenous Business Australia and I am conscious of keeping on time. If at any point you think you might be able to direct the responses by way of questions, that would be helpful.

**Senator McLUCAS:** Thank you for your kindness, Chair. Mr Dillon, you said you also have the recommendations—I think you said there were 24?

**Mr Dillon:** Twenty-five.

**Senator McLUCAS:** Twenty-five recommendations from the report. To accommodate the chair's reasonable request, if you tabled those recommendations—and you did say that report is available somewhere.

**Mr Dillon:** On the ILC website. Here I have summarised the 25 key concerns—they are not recommendations. We have extracted them from the report.

**Senator McKENZIE:** Just to be clear, they are not recommendations.

**Mr Dillon:** They are key findings.

**Senator McKENZIE:** In the key finding around the decision, which seems to be not an advisable decision to have made—

**Senator SESELJA:** That is an understatement, Senator McKenzie.

**Senator McKENZIE:** Were there any outcomes related to Indigenous employment, around how the resort would work?

**Mr Dillon:** When the resort was acquired, it employed two Aboriginal persons. In the period since 2010, that number has gone to just under 200 Aboriginal employees and trainees. So it is an extraordinary success. The resort is managed exceptionally well. There is a lot of debate about whether the ILC has, in a sense, denigrated the resort. The ILC has not. We believe the resort is exceptionally well managed and the ILC itself, over and above the purchase price in the last 2½ years has invested over \$9 million in Indigenous employment at the resort. It is a huge success story. The minister himself has been on the front page of the *Australian* extolling the benefits. We are all on the same page here. The current ILC board has done a terrific job in driving Indigenous employment. The vision was with the previous board. No-one disputes that, but that is not the real issue here. The real issue is the ILC, a statutory corporation, purchased an asset for 300 million which was probably worth just over 200 million and borrowed way beyond its financial capacity to repay. The ILC will live with the consequences for the next 10 or 20 years.

**Senator SIEWERT:** And the consequences are?

**Mr Dillon:** The consequences are that the interest repayments are around 11 million a year and, were we to pay down the 200 million at 10 million a year that would take us 20 years. So there you go: \$20 million a year for the next 20 years, roughly.

**Senator SIEWERT:** That is overall?

**Mr Dillon:** Back of the envelope—out of a \$50 million budget from the land count, so basically 40 per cent of our funding. I should qualify this because, if we can trade out of this—

**Senator McKENZIE:** I have other questions.

**CHAIR:** Thank you.

**Senator McLUCAS:** This is actually the answer.

**Senator McKenzie:** Is this—

**CHAIR:** Excuse me, Senator McKenzie. There has been lots of information in Mr Dillon's presentation. Much of it is difficult for people to digest if there is no opportunity for other questions. Senator McLucas, can you ask Mr Dillon a question because other senators do have questions on other issues for the Indigenous Land Council?

**Senator McLUCAS:** I note you have made changes to the Audit and Risk Management Committee. There was some commentary about that as well. I also note that the minister, in his role as the shadow minister, was critical of changes to the audit management committee. I think you have given us a context as to why the audit management committee had to be reviewed. Can you confirm, in a short sentence, why the ILC changed their—

**Mr Dillon:** The audit risk committee should have had a key role in over sighting the transaction. The transaction was driven by Director Baffsky. Director Baffsky chaired the Audit and Risk Management Committee. The review notes that the audit and risk committee did not give adequate attention to the transaction. Director Baffsky had been on the audit and risk committee—I do not have the exact figure—for somewhere in excess of 10 years. The Audit Office guidelines say two terms, five years or thereabouts, and another member of the audit and risk committee, Director Jeffries, had been on the audit and risk committee for nine years. So the committee had been locked in place for too long, and the review found that that was a key corporate governance issue that the ILC should address. Of course, when the new board was appointed in October 2011, they immediately took action to renew the audit committee. That was when, suddenly, conflict emerged within the board.

**CHAIR:** I need your consent to table a document, Mr Dillon; it is the recommendations.

**Senator Scullion:** Just for clarity, Mr Chairman, the actual report and its recommendations were tabled on 18 December, so they are available on the public record.

**Senator SIEWERT:** Minister, I just missed where you said they were tabled.

**Senator Scullion:** They were tabled on the ILC website on 18 December.

**CHAIR:** Senator Siewert, do you have any questions of the ILC in regard to this specific issue?

**Senator SIEWERT:** Senator McLucas is asking questions that I might following up on. So if I need clarity I will throw something in.

**CHAIR:** Senator McLucas, I would like to go to Senator McKenzie at 11.30 and then come back to you.

**Senator SIEWERT:** Chair, can I clarify: will we get copies of the letters that Mr Dillon tabled?

**CHAIR:** Yes, they are being photocopied now.

**Senator McLUCAS:** I want to go to another inquiry. Last month there was a media report referring to another review of the purchase of the Ayers Rock Resort, which had been conducted by Aegis Consulting Group. My understanding—and I can be corrected—is that this report was commissioned by previous ILC board and Voyages board directors. Did the ILC pay for this report?

**Mr Dillon:** Senator, the answer is no.

**Senator McLUCAS:** I then assumed that this was paid for in their personal capacity—but you would not know the answer to that. Are you aware of that report?

**Mr Dillon:** I am only aware of it by virtue of the media reports.

**Senator McLUCAS:** Do you know why the report was commissioned? You might not be able to answer that question.

**Mr Dillon:** No, I do not know why the report was commissioned. There was no contact with the ILC regarding the report, seeking information—nothing.

**Ms Carroll:** Senator, perhaps the department has been provided with a copy of that report as has the Department of Finance, and we are currently considering the report.

**Senator McLUCAS:** It is not yours to publish though, is it?

**Ms Carroll:** No, Senator.

**Senator McLUCAS:** Do you know who commissioned it, Ms Carroll?

**Ms Carroll:** I will just have to check if I have got that specific information.

**Senator McLUCAS:** Could you also find out, if you can, who paid for this report and why it was commissioned.

**Ms Carroll:** I would not be able to tell you why it was commissioned. All I can tell you is that it was provided to the department.

**Ms Edwards:** Senator, I am informed that on the face of the report it is not clear exactly who commissioned it.

**Senator McLUCAS:** So the department has it at the moment. Has it been provided to the minister at this point?

**Ms Edwards:** It was provided to the department under a direct letter.

**Senator McLUCAS:** Have you provided it to the minister?

**Ms Carroll:** Not at this stage. We are talking to the Department of Finance about it.

**Senator McLUCAS:** Minister, have you seen the report?

**Senator Scullion:** No, I have not seen the report, but I am aware of its existence.

**Senator McLUCAS:** Simply through media commentary?

**Senator Scullion:** Yes, it first came to my attention through media commentary, but I am also aware of its existence through conversations with the department—'Where is it up to?' sort of thing, and they said it was with Finance.

**Senator McLUCAS:** Have you had other advice—

**Senator Scullion:** I have not had any other briefings or advice in regard to—

**Senator McLUCAS:** or conversations with other people about the report?

**Senator Scullion:** No, I have not.

**Senator McLUCAS:** Chair, my next question moves along a little bit.

**CHAIR:** It being 11.30, I would like to go to Senator McKenzie and then we will come back.

**Senator McLUCAS:** Okay. But I do have further questions.

**CHAIR:** Senator McKenzie, on the Indigenous land council.

**Senator McKENZIE:** My question relates to the Northern Territory land councils and the Aboriginals Benefit Account. Could you outline for me the increase in Commonwealth funding over the last five financial years, please?

**Ms Edwards:** Can we just clarify—we are in the section talking about the Indigenous Land Corporation. I am not clear on the question. Could you repeat it?

**Senator McKENZIE:** That question might be more appropriate for PM&C—is that right?

**Ms Edwards:** Yes.

**Senator McKENZIE:** My apologies. I have a question for ILC around the acquisition of the Koori Job Ready program. Can you confirm that the National Centre of Indigenous

Excellence Board approved, around June 2013, a \$50,000 per annum pay rise to its CEO, backdated for a year? What was the basis of that approval?

**Mr Dillon:** I cannot confirm that, but I am happy to take it on notice.

**Senator McKENZIE:** Okay. Was the ILC Board informed of the acquisition of the National Centre of Indigenous Excellence of Koori Job Ready from the CFMEU?

**Mr Dillon:** I do not think this was an acquisition from the CFMEU.

**Senator McKENZIE:** It was purchased from the CFMEU. It was an acquisition by NCIE of Koori Job Ready. That program was acquired from the CFMEU. I want to know what the board knew about the acquisition and I want to know when they knew it, and then I want to go to the approval processes.

**Mr Dillon:** I think we need to get some clarity about what it is that happened.

**Senator McKENZIE:** I would appreciate that.

**Mr Dillon:** This was not an acquisition of anything. The NCIE, which is a wholly owned subsidiary of the ILC, took over a program that was previously run by the New South Wales government. It is an employment program for Indigenous staff. It is very similar to the National Indigenous Training Academy that we run at Ayers Rock but it works with local people in New South Wales particularly. Koori Job Ready was a program that was created in 2006 by the New South Wales government. It was previously located at the Australian Technology Park in Sydney, in my understanding.

It has been funded with Commonwealth money from IEP and also with New South Wales government money. NCIE took this program over. The two programs are the Les Tobler centre for construction industry training and the Yaama Dhiyaan program for the hospitality industry. It provides an integrated solution for people seeking training and provides assistance in finding and maintaining employment. There was no acquisition; there was just a transfer of the program, if you like. It was previously auspiced by the New South Wales government. It then went to the NCIE with New South Wales government funding and ongoing Commonwealth funding.

**Senator McKENZIE:** When did that occur?

**Mr Dillon:** That occurred last year.

**Senator McKENZIE:** Month?

**Mr Dillon:** So—

**Senator McKENZIE:** What date did that change of auspicing arrangements—

**Mr Dillon:** It was 1 October 2013.

**Senator McKENZIE:** When was the board made aware of the change in auspicing arrangements?

**Mr Dillon:** Which board—the NCIE Board or the ILC Board?

**Senator McKENZIE:** ILC.

**Mr Dillon:** I would have to take that on notice. It was probably around that time.

**Senator McKENZIE:** Before or after the—

**Mr Dillon:** Before.

**Senator McKENZIE:** It was made aware before—

**Mr Dillon:** Yes; that is my understanding.

**Senator McKENZIE:** of the change in auspicings arrangements?

**Mr Dillon:** I would like to check it. My understanding is that it was before, but I will check that for you.

**Senator McKENZIE:** What were the approval processes of deciding to actually start auspicings this program?

**Mr Dillon:** They would have been undertaken by NCIE. They would have had discussions with the New South Wales government and done some assessment as to what was involved. And I was—

**Senator McKENZIE:** And then what would have happened?

**Mr Dillon:** I was not privy to those discussions.

**Senator McKENZIE:** So NCIE decides that they do not longer want to be auspicied by the New South Wales government?

**Mr Dillon:** No. Koori Job Ready, which was its employment program, was under the New South Wales government, and it came under NCIE.

**Senator McKENZIE:** Right. So the NCIE made the decision?

**Mr Dillon:** That is right.

**Senator McKENZIE:** That 'We want to go and auspice this program'?

**Mr Dillon:** Exactly.

**Senator McKENZIE:** And then went to the ILC for approval of that?

**Mr Dillon:** That is right.

**Senator McKENZIE:** Before the auspice arrangements changed. Okay. We were talking about the \$6 million done earlier: what due diligence was undertaken by NCIE prior to the acquisition?

**Mr Dillon:** I would have to take that on notice.

**Senator McKENZIE:** We had \$6 million from an acquisition that we heard a great deal about over the last half an hour, but we do not have any idea about the due diligence that was done by NCIE around the change of an auspicings arrangement that they clearly had discussions about. You will take it on notice?

**Mr Dillon:** Well, I was not privy to discussions, so do not wish to chance my arm and say things that I do not know anything about. So I guess I will have to take it on notice.

**Senator McKENZIE:** Was there any due diligence undertaken by the ILC, then?

**Mr Dillon:** No. The ILC has subsequently had a look at it in an informal way—the transfer of this responsibility—the reason being that because NCIE is a fully-owned subsidiary, we, in a sense, stand behind them. And—

**Senator McKENZIE:** Yes, you back them.

**Mr Dillon:** We back them, and so we want to get a handle on what the ongoing liabilities are here.

**Senator McKENZIE:** Would it not have been useful to know that before the decision was taken to auspice it—to have an understanding of liabilities? We have had a big debate over the last half hour about decisions around taking on liabilities. This is quite a recent decision to take on more liabilities, but we did not do any assessment as to what they might be.

**Mr Dillon:** When I talk about liabilities, I am really talking about—

**Senator McKENZIE:** Yes, I would like to know what you see them as.

**Mr Dillon:** I am really talking about recurrent funding—the wages, the whatever.

**Senator McKENZIE:** Do we have an understanding of what the magnitude of that might be?

**Mr Dillon:** One, we are not talking assets; we are talking an intangible program that is located in Redfern. But the funding here is in the hundreds of thousands, not the hundreds of millions. So to compare the two discussions, I think, is slightly—

**Senator McKENZIE:** It goes to the principle, surely? We are talking about recommendations around governance, and if you get the governance right it does not matter if you are talking pennies or pounds—good decision making is good decision making.

**Mr Dillon:** Absolutely, I could not agree with you more.

**Senator McKENZIE:** All right. I am aware that Rohan Tobler, the NCIE general manager, was formerly employed by Koori Job Ready. Is that correct?

**Mr Dillon:** It sounds correct to me, but I would have to check and take it on notice.

**Senator McKENZIE:** Correct, and also the CFMEU? Did he personally advocate for the Koori Job Network's acquisition? Could you outline the conversations that may have been had by Mr Tobler around this issue?

**Mr Dillon:** I do not have any knowledge of any conversations.

**Senator McKENZIE:** Okay. Does the NCIE and the ILC have any liabilities relating to the unfortunate death of the 23-year-old Indigenous man on 9 January 2014 at the Barangaroo construction site in Sydney?

**Mr Dillon:** My understanding is that the answer is 'no'.

**Senator McKENZIE:** Your understanding is that the answer is 'no'?

**Mr Dillon:** Because the person was not employed by NCIE or Koori Job Ready. He was a previous trainee of Koori Job Ready.

**Senator McKENZIE:** Right. He was then placed to work in Active Labour after his pre-employment training. Is that right?

According to the ABC's 7.30, Active Labour is a company that has been reported to associate with outlaw biking gangs such as the Comancheros. Is that true?

**Mr Dillon:** I do not know.

**Senator LUNDY:** Chair, she is impugning associations, and I think it is unreasonable.

**Senator McKENZIE:** No, I am actually reporting on the report of the ABC's 7.30.

**Senator LUNDY:** Yes, but the tone of your question is impugning something when it is just speculative.

**CHAIR:** Order! If I heard Senator McKenzie's question correctly, she was making reference to an ABC media report.

**Senator McKENZIE:** How does the acquisition of Koori Job Ready relate to the ILC's function, given that, as you said earlier, it is located in Redfern—it is not on Indigenous held land? And, if there is no relation to the ILC's land management function, was the purchase contrary to the ILC's statutory remit?

**Mr Dillon:** There was no purchase of an asset. We took over a program.

**Senator McKENZIE:** With recurrent funding liabilities.

**Mr Dillon:** That is right. The NCIE operates from a site in Redfern. It has a broad remit to work with the Redfern community and has broad support from the community. Koori Job Ready has a location in Redfern and NCIE—

**Senator McKENZIE:** Yes, you have said that. My question—let me make sure you are really clear on what it is—was whether it has no relation to the ILC's function, specifically the ILC's remit with land management function. If it does not, is the decision to auspice this body therefore contrary to the ILC's statutory remit?

**Mr Dillon:** I have not taken legal advice on this.

**Senator McKENZIE:** Could you?

**Mr Dillon:** I would just point out that I operate out of a leased office here in Deakin. It is not Aboriginal owned land but it is within our statutory functions for me to operate out of that office. So I think—

**Senator McKENZIE:** You are the CEO; you are not running an employment program.

**Mr Dillon:** It is the same in that it is ILC operations. There has to be a link to Aboriginal land, but only a broad link, not a direct link. I think, if we did seek legal advice, we would find that there was a broad link.

**Senator McKENZIE:** My final question goes to an earlier question I asked Ms Carroll. Seeing that you are at the table, you might be able to clarify whether or not you are a friend, former colleague and co-author of a book—

**Senator McLUCAS:** Chair, that is out of order.

**Senator McKENZIE:** with the chairman of the MJD Foundation, Mr Westbury.

**CHAIR:** I think that question might have been asked of Ms Carroll earlier.

**Senator McKENZIE:** And they took it on notice. Seeing he is here, I thought I would ask him.

**Senator McLUCAS:** You are continuing this line of impugning the reputation of various persons. We have seen that before—

**Senator McKENZIE:** If I co-authored a book with someone and was a former colleague and friend of theirs, I would be happy to state that that was the case.

**Senator McLUCAS:** Well, you are talking to the CEO of the ILC in his capacity as the CEO of the ILC—

**Senator McKENZIE:** In your capacity—

**Senator McLUCAS:** You might want to ask everyone else if they have a friend as well!

**CHAIR:** Excuse me, Senators. Mr Dillon, in earlier evidence, the Department of the Prime Minister and Cabinet said that they would take that question on notice. Would you like to answer the question or take it on notice?

**Mr Dillon:** I have not taken it on notice. It is not appropriate for me to in my role as ILC CEO. If the committee gives me permission to—

**Senator McKENZIE:** Did you co-author a book?

**Mr Dillon:** answer in my personal capacity—

**CHAIR:** Mr Dillon, would you like to answer Senator McKenzie's question—yes or no?

**Mr Dillon:** Only if I can speak in my personal capacity.

**CHAIR:** I will take that as a no. Thank you very much, Senator McKenzie. Before—

*Senator Siewert interjecting—*

**CHAIR:** Excuse me! Before we go back to Senator McLucas, I want to get advice from Ms Carroll. The question that I heard Senator McKenzie asking with regard to the Northern Territory land council goes to the issue of the Aboriginals Benefit Account. Where is that best placed in today's program, or have we passed over it?

**Ms Carroll:** I think we have passed over it. Most of those questions happened in the first session.

**CHAIR:** My apologies, Senator McKenzie.

**Ms Carroll:** We will take that on notice.

**Senator LUNDY:** Chair, before we proceed, my colleagues are still concerned that Mr Dillon did not refuse to answer the question; he asked if he could speak in a personal capacity. Can I suggest that the committee have a brief private meeting at lunchtime to discuss this?

**CHAIR:** I am happy with that.

**Senator LUNDY:** Obviously there are concerns about the line of questioning and the way it was responded to.

**CHAIR:** We will have a private meeting. Senator McLucas.

**Senator McLUCAS:** I now want to go to the Ernst & Young review of the ILC and the IBA and some questions to the department. The minister announced a review of the ILC and the IBA in December last year and then announced that the review would be conducted by Ernst & Young. Was Ernst & Young selected through an open tender process?

**Ms Edwards:** Ernst & Young was selected from an existing panel of providers through the former department DEEWR, which came into PM&C. So we had access to that panel. That panel was put together through an open selection process.

**Senator McLUCAS:** How much will the review cost?

**Ms Edwards:** \$300,000.

**Senator McLUCAS:** Who did the department and/or the minister consult on the terms of reference for that review?

**Ms Carroll:** The department consulted with the minister to finalise the terms of the review.

**Senator McLUCAS:** Were there any changes to the terms of reference during the course of the review?

**Ms Edwards:** No.

**Senator McLUCAS:** Minister?

**Senator Scullion:** Not that I am aware of.

**Senator McLUCAS:** The review was announced in December—and they started work when?

**Ms Carroll:** They started work in early December, as soon as the contractual arrangements were put in place.

**Senator McLUCAS:** When did submissions close?

**Ms Edwards:** 24 January.

**Senator McLUCAS:** It is always important to do reviews but it is always difficult over Christmas. What was the need for the haste with this review?

**Ms Carroll:** We did not want the review to drag on. While it started in December, certainly the consultants met with a wide range of people and also had the process for people to put in presentations to the review. We acknowledge that that happened over December and January, but there was a process by which people could put in public submissions.

**Senator McLUCAS:** Are you sure there was not a change to the terms of reference?

**Ms Edwards:** Yes.

**Senator McLUCAS:** Were there requests for extensions to the deadline for making submissions to the review, given that it was over the Christmas break?

**Ms Edwards:** I received a couple of informal calls for extensions—the ones that I am aware of were primarily from representatives of state governments. The answer given was, 'There isn't an opportunity for extending the deadline, but send us your material anyway.'

**Senator McLUCAS:** Was the material sent to the department and then passed on to Ernst and Young?

**Ms Edwards:** The public submission process material came to an email address that was set up, departmentally auspiced, and then provided to Ernst & Young.

**Senator McLUCAS:** How many people made submissions?

**Ms Edwards:** 26.

**Senator McLUCAS:** To break them into categories, how many were states and territories?

**Ms Edwards:** Very few. We can take that on notice. We think it was perhaps a couple.

**Senator McLUCAS:** That is a bit of a concern. Did those states and territories that expressed a desire to receive an extension actually send anything in?

**Ms Edwards:** One has.

**Senator McLUCAS:** Of the remaining 24 submissions to the review, how can they be categorised? I do not want to know the names of the submitters, but what sorts of organisations or individuals were they?

**Mr Matthews:** Broadly, they were from a wide range—native title representative bodies, private individuals and interested parties. They varied quite a bit. I would not say there was a general theme.

**Senator McLUCAS:** Will all those submissions be made public?

**Ms Edwards:** That is a matter for government.

**Senator McLUCAS:** I asked that question in another committee the other day and the answer I was given was that, because we did not tell the people when we asked for submissions that they were going to be made public, we cannot make them public. I am a little bit concerned about this theme that is appearing. I have not heard these sorts of answers previously.

**Ms Carroll:** What has happened in the past, certainly when I have been involved in processes like this, is that sometimes it is very explicit up-front that people's submissions will be made public and they often go on a website in a particular amount of time. When that has not been made public, what would normally happen is that, once the government has made a decision about what it wants to do with the review document, we would contact any of the people that made a submission and ask if they were happy for their submission to be released as part of that. That would be part of a general process.

**Senator McLUCAS:** Minister, do you want those submissions to be public?

**Ms Carroll:** In this instance some of the people who put in submissions expressly asked that their submissions not be made public. That is one of the reasons we did not make them public.

**Senator McLUCAS:** Absolutely, if someone says they want to tell you something but not be public, you do not publish that. Minister, in general do you want the submissions to be public?

**Senator Scullion:** I do not think we deal with this in a different way than the government would normally consider the reports. We would obviously have to consider whether people want them to be made public, or not. Invariably, the convention of government is to respect the wishes of people who want them published and those who do not. I imagine this would be no different.

**Senator McLUCAS:** You usually start from a position of publishing first unless someone says do not publish. That has historically been the view.

**Senator Scullion:** I think that is what my answer was. I just said the convention in the past was that you have to respect the wishes of those who do not want their submission published. But I do not have any intimate knowledge of that.

**Senator McLUCAS:** Has the report been received yet?

**Ms Carroll:** Yes.

**Senator McLUCAS:** When was that?

**Ms Carroll:** 17 February.

**Senator McLUCAS:** Where is it now?

**Ms Carroll:** The department has received it. We have had a look at the report and we have recently finished a brief to the minister. I do not think it has actually landed on his desk yet, but it is on its way.

**Senator McLUCAS:** And then you will make a decision, Minister, about when to publish?

**Ms Carroll:** That would be the normal process.

**Senator McLUCAS:** But that decision has not yet been made?

**Senator Scullion:** No.

**Senator McLUCAS:** Has any further work in the area of the review of the ILC and the IBA been commissioned from anyone else?

**Ms Carroll:** No. We have not gone out to commission any work outside of that.

**Senator McLUCAS:** Was the ILC consulted on the terms of reference before the review was announced?

**Mr Dillon:** Yes.

**Senator McLUCAS:** The terms of reference ask reviewers to consider 'how to structure arrangements to ensure appropriate powers of ministerial direction of government control'. How does that fit with the fundamental way the ILC was established historically? Frankly, I do not really understand that. My understanding is that the ILC is an independent entity. Frankly, there should be no ministerial intervention or government control. I want you to go to what your act says.

**Mr Dillon:** I think that is correct. The ILC was established in 1995 following the passage of the Native Title Act. The Native Title Act said there will be a Land Fund. In 1995, legislation was introduced to establish the ILC and the Land Fund, now known as the Land Account. In essence—and this is a major concern of the ILC board—this reflected the compact, the settlement, the grand bargain that was put in place following the passage of native title. In return for the resolution of native title claims across the country—the certainty given to non-Indigenous Australians—Aboriginal people got access to a claims process under the Native Title Act. But many Aboriginal and Torres Strait Islander people have lost access to their traditional lands. The government at the time took the view that there should be an extra mechanism that in a sense provided partial compensation for the lands that had been dispossessed. There was a grand compact—the so-called social justice package.

You will find that the Land Account funds the ILC. The ILC was established with a primarily Indigenous board. The idea was that Aboriginal and Torres Strait Islander people would allocate the proceeds of the Land Account in land related ways. Land management and land acquisition were the two primary functions of the ILC. The concern shared deeply by the ILC board is that this is being placed at risk by any suggestion of an amalgamation or greater ministerial control over the operations of either the ILC or the IBA—but particularly the ILC. The ILC is unique among Commonwealth statutory corporations. It has greater independence than most, if not all, for that very reason—that it was deliberately put in place as a compensatory mechanism.

**Senator Scullion:** Thank you, Mr Dillon. I would like to clarify something for the record. I would not want to have any confusion over the last iteration from the witness. The terms of

reference specifically set aside any consideration of the Land Account so that those concerns did not arise. The review was not to consider any aspects of the Land Account because that was absolutely sacrosanct, as the evidence indicated. But they were in the terms of reference specifically to avoid the sorts of concerns just brought up by the witness.

**Senator McLUCAS:** I want to understand in both a legal and a practical sense what would be the effect on the Land Account—accommodating Minister's Scullion comments just then—

**Senator McKENZIE:** It was not part of the review.

**Senator McLUCAS:** I note that—and I note what the minister said.

**Senator McKENZIE:** Just clarifying.

**Senator McLUCAS:** What would be the effect on the Land Account of an amalgamation with the IBA in a legal sense and also in a practical sense?

**Senator Scullion:** This is normally a question that would be seen to be speculation, an opinion. There has been a comprehensive report to deal with all these matters. Whilst the witness has already given evidence, and certainly the ILC has given evidence, I do not think it is appropriate that we reiterate here what we are going to read in the report.

**CHAIR:** The minister's comments are quite insightful. If we could avoid speculation, that would be much appreciated.

**Senator McLUCAS:** It is not speculation. There has been commentary about the potential to amalgamate the ILC and the IBA.

**CHAIR:** I can only make a judgement on my interpretation of what I think I have heard. If we could steer clear of speculation, it would be much appreciated.

**Senator McLUCAS:** I have asked in a legal sense and in a practical sense, not a speculative sense.

**CHAIR:** But it is a hypothetical question, isn't it?

**Senator McLUCAS:** If the ILC and the IBA were to be amalgamated, what can we predict would be the complexity—

**CHAIR:** The speculation arises around the word 'were'.

**Senator McLUCAS:** No, this goes to due diligence. A government needs to think about what road they are walking down if they are going to contemplate amalgamating the ILC and the IBA. From my non-legal understanding, I am asking whether people have put their mind to the practical and legal implications in terms of the management of the Land Account—and I think that is a reasonable question.

**CHAIR:** Have you been asked to put your mind to the management of the Land Account?

**Senator McLUCAS:** If there was an amalgamation—

**Senator Scullion:** As I indicated earlier, certainly in terms of the context of questions about this review, the review specifically excised any questions of that nature because we wanted to embargo and quarantine the Land Account, and the mechanisms of the Land Account, from any changes that were possible. For that particular reason, we excised that. I certainly would not like the questions specifically about particular governance changes and

amendments to how we went about business to be predicated on an opinion from the ILC or others.

**Senator McLUCAS:** Minister, if the ILC and the IBA were to be amalgamated, that would be quite legitimate. You know that there are many things that are delivered with funds from both the ILC and the IBA. The IBA will do the business end and the ILC will be doing some purchase work. I want to know how you construct an entity where the Land Fund is separate. I think that is a question we need to contemplate before we potentially go down the road of amalgamating these two entities.

**Senator Scullion:** That is not the question you were asking.

**Ms Carroll:** The terms of reference were trying to take into account the fact that the ILC and the IBA are different in their current powers et cetera and there is a range of options available. This was asking the review for some advice. It might be that the advice, and the decision of any government if there were to be a change, could be to leave things as they are or to make a change. So there is a range. The point of having it in the terms of reference was to seek some advice from Ernst & Young about the possibilities going forward, thinking about that and the consultation process that they went through. They spent an amount of time with the ILC and the IBA separately to think about, in any recommendations they brought forward, the implications and what would happen. There was a clear intent to surface that issue and understand the options going forward. As we have already indicated, we have only recently received the report and it is under consideration.

**Senator McLUCAS:** I will leave it at that, but I will look forward to receiving that report in the short term. I have some questions for the IBA but I will defer to others.

**Proceedings suspended from 12:03 to 12:10**

**CHAIR:** I would just like to note that the committee has had a private meeting and note that the witness did not refuse to respond to the question. The committee is keen to finalise this matter and will be in contact with the witness shortly.

**Ms Carroll:** Right at the beginning, Mr Dillon asked about tabling some letters for the minister. We have shown those letters to the minister. We are happy that they are tabled for the committee.

**CHAIR:** I call representatives of Indigenous Business Australia.

**Indigenous Business Australia**

[12:11]

**CHAIR:** I welcome Mr Chris Fry, chief executive of Indigenous Business Australia, and officers. Mr Fry, would you like to make an opening statement?

**Mr Fry:** No, thank you.

**Senator McLUCAS:** Has Indigenous Business Australia made a submission to the Ernst & Young review of IBA and ILC?

**Mr Fry:** The IBA made a submission to the Ernst & Young review.

**Senator McLUCAS:** Is that then published?

**Mr Fry:** It is currently on our website. It is a public document.

**Senator McLUCAS:** Does it canvass any concerns about potential amalgamation of ILC and IBA? Just for the record, if you could give us the flavour of your submission.

**Mr Fry:** The board has put forward a view. It is, in my estimation, a considered view. We, as management, have written the review. I think it is a representation that accurately reflects the board's views and that has been signed off by the board. If I was to speak to it as I understand it, there might be five points that the board wish to get across about that review. Do you wish me to go through those?

**Senator McLUCAS:** Yes.

**Mr Fry:** In no particular priority order, the key points from the review submission by the board that I have identified: (1) the IBA board's view is that IBA continues to deliver strong results, (2) the IBA and ILC are mature organisations and have different purposes, (3) a merger would dilute the commercial focus that IBA has as its core, (4) there are only minimal savings associated with any merger and (5) the minister has already strong control over IBA through a general order power.

**Senator McLUCAS:** Is that called a general direction or a general order?

**Mr Fry:** General direction. You are correct. Thank you for that.

**Senator McLUCAS:** Tell me how that is exercised, because I think it is different from the ILC.

**Mr Fry:** If I could refer that to our general counsel.

**Ms Gowans:** It is a power of general direction. The minister can give a direction and that direction would be tabled before both houses of parliament. So it operates a bit like a disallowable instrument.

**Senator McLUCAS:** Is it often used?

**Ms Gowans:** It is never been used in the case of Indigenous Business Australia.

**Senator McLUCAS:** I have not read the act, but it is there for the minister to provide direction on a specific event or a specific issue. Give me the flavour of it.

**Ms Gowans:** It is not a specific power of direction, so, for example, it would not be saying, 'Do not invest in this particular investment.' It is a general power. For example, in our case it might be, 'Do not invest in the tourism industry,' which would be a general direction. A specific direction would be, 'Do not buy that business.' It has not been used in IBA's case and it is complementary to other powers of oversight that parliament has at the moment—like those under the CAC Act, general policy orders and so forth—to ensure that IBA delivers consistently with Commonwealth objectives.

**Senator McLUCAS:** Going to the department: is there any work currently being undertaken about IBA in terms of its structure and arrangements from the department's perspective?

**Ms Carroll:** Senator, as I indicated before, we are just looking at the review and looking at a response to the review.

**Senator McLUCAS:** To the department again: could IBA explain its home loan program and how it is going? I have heard some great stories.

**Mr Fry:** The IBA home loan program is established to provide home loans to Indigenous people that are otherwise unlikely to get finance from the wider banking sector. It is only available for Indigenous clients. We have a goal over our program that our clients will get into home ownership through the home repayment process, so that in time they will transfer to the full banking system. Our program has been running for many years and we have collectively done approximately 16,000 home loans over that time.

**Senator McLUCAS:** With the tenure changes that have been occurring in the last few years, has interest in the home loan program increased?

**Mr Fry:** With regard to what we call emerging markets, which is home loans on Indigenous lands, for many years these have been worked on to overcome the land tenure issues. Last year we approved three loans in what we call emerging markets—two were in the Northern Territory, one was in Queensland in Hopevale. So far this year, so for the past six months to date, we have approved 10 loans, we are currently assessing two and we have undertaken 28 visits to emerging markets across Queensland and the Northern Territory.

**Senator McLUCAS:** Fantastic. I know the one in Hopevale; it is a good news story. To the department: have there been any conversations in the department about the future of the IBA home loan program?

**Ms Carroll:** Not specifically about the future of the home loan program. Obviously we are regularly looking at programs across the suite of programs within Prime Minister and Cabinet. In regard to IBA specifically, we are obviously focusing on looking at the review at this point in time.

**Senator McLUCAS:** So no consideration of changes to the way the IBA home loan program will operate?

**Ms Carroll:** Not at the moment, Senator, but that is really a decision for government as we go forward.

**Senator Scullion:** If I could just assist, I think we have heard as a committee evidence over time that one of the impediments was the nature of land tenure. We have certainly had a focus on accelerating the changes to land tenure where we can. Certainly in Gunbalanya—as I said, I was in Palm Island the other day, where, while they did not access HOIL, the fact that a DOGIT was able to go from a DOGIT to a 99-year lease in Queensland shows that there is another form of land tenure, which in the past has been an impediment, which has changed. It is very much a priority for this government to ensure that we accelerate the land tenure process, because that was identified as the biggest impediment to access funds like the HOIL provides.

**Senator McLUCAS:** Just for the record, that was also the focus of the previous government.

**Senator SESELJA:** Your annual report for 2012-13 shows that the IBA had, I think, \$127 million in cash and term deposits worth \$150million. Is that correct?

**Mr Fry:** I will ask our chief financial officer to come forward and be quite specific on that, Senator.

**Senator SESELJA:** Great.

**Mr Kumar:** The financial statements do state that we have \$127 million in cash and cash equivalents on a consolidated basis; that is, IBA and subsidiaries included.

**Senator SESELJA:** And term deposits worth \$150 million; is that right?

**Mr Kumar:** Yes.

**Senator SESELJA:** Are you able to explain—that seems a lot in terms of holdings—what is the purpose of having so much in cash holdings at the moment?

**Mr Kumar:** One of the constituents of the cash and the cash equivalents and deposits is that in 2008 we sold a significant asset—the Foxleigh coal mine—and the proceeds of that are under the investments program, and are targeted to be reinvested into various businesses and assets, which is what the investments program does. So that accounts for a substantial part of these funds.

**Senator SESELJA:** At the moment you are holding a lot of it in cash. Is the plan then to convert it into other assets which will then yield revenue for the IBA to be able to deliver for Indigenous people? Is that broadly the plan?

**Mr Fry:** I can reply to that. At any one time our investments program may have somewhere between six and 12 investments where we are currently undertaking a form of due diligence. We have an audit and risk committee and a finance and investment committee that potential investments go through. As a consequence we need to maintain a prudent cash balance, so that if those investments are proved through the due diligence process we can actually execute them. Within the existing policy, those investments can be in the order of \$5 million to \$25 million.

**Mr Viswanathan:** We are certainly very active in trying to be as proactive as possible in investing as much of the surplus as is prudent. So in addition to the pipeline that Mr Fry mentioned, through our acquisitions team we are also constantly in dialogue with Aboriginal and Torres Strait Islander organisations and private sector partners about investment opportunities.

**Senator SESELJA:** Question on notice number 185—the response from previous estimates: you said, I think, that \$40,712 was spent on taxis between 7 September 2013 and 9 December 2013. That is a pretty high figure in a couple of months; is there a reason why so much was spent on taxis in a couple of months?

**Mr Fry:** Within the broader context: we have ongoing monthly oversight on our travel expenses, including taxis. Within the last two financial years taxis have been one of the operating overheads. We have also been able to drive down our overheads as a percentage of total costs from 28 per cent to 21.9 per cent currently, as at the end of the last financial year. I can assure you that cost control, particularly in overheads, is an area that we focus on at the executive on a monthly basis, and throughout the programs.

We do have a range of clients right across the country and as a consequence our footprint is very broad. We make decisions on whether it is best to use taxis as opposed to hiring a car on the day when, for example, visiting our Cairns office.

**Senator SESELJA:** Is that an indicative number or a high number for a period of a couple of months? How does that compare to the rest of the year, or recent years?

**Mr Fry:** We may need to take that on notice and look at how it compares with the previous 12 months. It is at a level of detail that I just do not have at my fingertips at the moment.

**Senator SESELJA:** You say you are making decisions—what is the decision in the Cairns office? Is that a decision between taxis and a hire car?

**Mr Fry:** For example, I recently went to Cooktown and then went off to Hopevale. That was a visit last month. In that circumstance we did the analysis and it was financially more beneficial—more prudent—to hire a car for the day as opposed to taking a taxi. We have a team of 235 people across the nation in 17 offices, and as a consequence our people are out there and we are making the call on which is the best way to do it.

**Senator SESELJA:** How many of those 235 would be regularly using taxis? Is it a small proportion or is it most staff?

**Mr Fry:** Broadly speaking, about 50 per cent of our total workforce is working out in the regions but we have people from our national office travelling out and vice versa—our regional staff coming in for special events. So I am not trying to avoid the question; I just do not have the level of detail at my fingertips to be able to answer you specifically.

**Senator SESELJA:** Perhaps you could take that on notice.

**Mr Fry:** We will take it on notice.

**Senator SESELJA:** Thank you. I understand the IBA funded a major upgrade at the Tjapukai Aboriginal Cultural Park in Cairns. How much is the cost of the upgrade?

**Mr Fry:** I might defer to our chief operating officer, who has oversight of this particular aspect.

**Mr Bator:** The IBA board undertook a redevelopment of Tjapukai and it made a decision that it would put roughly \$12 million into that redevelopment, and that redevelopment is based on bringing that resort or park, which has been in existence since 1995, into a more current state so that it can continue to attract larger numbers of tourists. At the moment we have spent in our early works program, which is an external program, about \$1.1 million and we have spent a further \$3 million in the total project thus far. The project has been awarded to a company up there in Cairns which has a large Indigenous force, and out of that they have also put out a tender which was awarded to a local Aboriginal company for air conditioning and other services to that. The redevelopment is really around trying to ensure as much Indigenous employment as possible.

**Senator SESELJA:** What is the value of Tjapukai?

**Mr Bator:** The current valuation of Tjapukai is based on the land value and the alternative use, which is around \$1.4 million. That valuation, I would have to say, is based on an alternative use and is primarily based on land because there are not too many other comparators that we can use, so at the moment that is the most effective measure that we can use.

**Senator SESELJA:** Are you able to provide a summary of the overall financial situation of the cultural park?

**Mr Bator:** In terms of its current trading?

**Senator SESELJA:** Yes.

**Mr Bator:** Its current trading would suggest that we have had an increase in the number of visitors to that. Our budget for this year was for around 80,000 park entries for the full year and we are well on our way to achieving that. The clientele we are having are largely from Chinese background and therefore the spend is lower than we would have anticipated, but certainly from the point of view of members and visitors to the park we are ahead of budget.

**Senator SESELJA:** So the IBA is effectively running the park? Is that right?

**Mr Bator:** No.

**Mr Viswanathan:** I might answer that.

**Senator SESELJA:** You just referred to it as 'we', so I was not quite sure.

**Mr Viswanathan:** IBA is the ultimate beneficial owner of the park but we have in place a subsidiary that is responsible for overseeing the day-to-day management of the park, which has its own board. Reporting to that subsidiary there is a management structure within the business which includes all the standard management functions one would associate with that type of business.

**Senator SESELJA:** I have been made aware that some of the local Indigenous people have some concerns at the direction it is going. I will just put some of those to you and you can respond or others can respond. I understand that some of the local Indigenous community are complaining that they are not being consulted and that the original concept for the cultural park of showcasing local Indigenous culture has been abandoned. Are you able to respond to that?

**Mr Fry:** Senator, I will respond to that if I may, but I may call on some of my colleagues who are closer to it. As outlined by my colleague, we have an independent company that is running the day-to-day management. We have oversight through boards that we have established to make sure that proper strategic directions and the management of the company is carried out. As part of that, there is a cultural committee combining of management, some external people, and also the deputy chair of one of the local Indigenous organisations, Djabugay. Their role is to work together under a formal agreement that has been in place for many years to develop cultural content and how that is delivered. IBA continues to work within that framework in the local community. My understanding is that the committee, which included the local Djabugay representative, who is deputy chair, signed off and accepted the local content, approximately six or seven months ago. There is ongoing monthly engagement, as I understand it, between the senior management of Tjapukai and the Djabugay people to make sure that continues. The chair of IBA and I met with the Djabugay approximately three weeks ago. We have another meeting with them on 19 March. We acknowledge continued dialogue is a positive thing and some finetuning from time to time is required.

**Senator SESELJA:** Have you had any of these concerns put to you?

**Mr Fry:** We have received a letter from Djabugay outlining that they would like further discussions and that they have some concerns. Those discussions were held at the last meeting with the chair and me. We have continued to make progress, and we have made some commitments that we would return and continue to work through it.

**Senator SESELJA:** What are some of the concerns that have been raised?

**Mr Fry:** Broadly speaking, Senator, it is in regard to two aspects. The first aspect is that, when local traditional dance is put forward, Djabugay are keen it is acknowledged at the start of the performance that this is Djabugay cultural importance and that the people who are not of Djabugay and Tjapukai who are performing the dance acknowledge that it is a Djabugay-Tjapukai dance and they are not from that particular group. We accept that and believe that cultural integrity is very important.

The second aspect is the introduction of a wider showcase of Indigenous culture through other exhibitions and dance, which may include Torres Strait, because there is a significant Torres Strait community up there. Again, this process of how that has been introduced has gone through the cultural committee and has been signed off by those members.

**Senator SESELJA:** There are some other concerns that I am aware of, and I am interested to know whether you are aware of them. Cultural insensitivity, I suppose, is touched on in your answer and is one of the concerns about management toward local employees. There is also bullying, threatening tactics, and sexual and verbal harassment. I do not know the strength of any of these allegations, but I am aware that they exist. I am interested in whether anything like that has been put to you and whether you have any response.

**Mr Fry:** Can I defer that to the Chief Operating Officer

**Senator SESELJA:** Sure.

**Mr Bator:** We have received no formal complaints. I think one of the important things—

**Senator SESELJA:** Just before you continue: a formal complaint is one thing, but have any of these issues been raised in any way?

**Mr Bator:** I just want to go through the process there. The Tjapukai have a staff handbook. They also have an agency agreement, which has very specific responsibilities, roles and conduct around the notification of any misconduct or any grievance. Those are well understood, and that is part of the induction process. We have a highly skilled HR manager there, and she is available and is part of the process to ensure that people can bring grievances forward. We are also aware that part of the agency agreement there was to bring salaries and conditions up to award conditions. The other part of it was that, in return for an increase in salary and conditions, there were going to be some productivity improvements. Part of that productivity agenda was that people would be multiskilled. Of course that change process does create stress for some people. We are aware that there have been some concerns about that work change process and the matters that come from that.

In terms of any particular grievances, we are aware that there are some allegations. As our general manager for investments has pointed out, Tjapukai is a separately run enterprise and has its own board. That board receives reports every month on any formal grievances, injuries or other matter that are coming to it and it has told me that it has not received any formal complaints.

**Senator SESELJA:** So there are no formal complaints, but you are aware of some of those broader issues being raised with management. Is that a fair assessment? Even though they have not lodged a formal complaint, these concerns have been communicated to management in some way.

**Mr Bator:** Yes, and management are working through them to ensure that people understand the formal processes that are available to them. Of course before we get to

anything like that we try to make sure that we all understand the roles and responsibilities. As I said, we have an experienced HR manager and experienced CEO there, and they constantly look for those things and work to improve management styles and the understanding of the work changes that are necessary to achieve the productivity improvements that we want from Tjapukai.

**Senator SESELJA:** Do you believe there is anything in those allegations or do you think they are just grievances of disaffected staff?

**Mr Bator:** I think it is really important not to speculate on whether they are real or not; they are only allegations. We have formal processes—

**Senator SESELJA:** So what is the process now? Is there any process now, or is there no formal process because there is no formal complain?

**Mr Bator:** Unless there is a formal complaint, there is just an allegation.

**Senator SESELJA:** Given that you are aware of concerns, are you doing anything proactive to try and get to the bottom of it to see if there are any cultural or management issues that are of concern?

**Mr Bator:** As Mr Fry has pointed out regarding the issues you referred to about authenticity and respect for the dance, the IBA chair and CEO have been up there. They are going to visit there again—Mr Fry can talk about that—but they are certainly alive to those issues that have been formally written about to us.

**Mr Fry:** Senator, if I could provide some further context? I think you might be referring to one issue and, if that is the case, I have spoken to the family myself, but not to the staff member because, at this stage, the staff member has not made a complaint as we understand it. I have encouraged that family member that we take complaints of any nature very seriously and would therefore like to engage in the formal process so that we can investigate it. I understand that in the last number of days a letter has gone from the management running the operation of Tjapukai to the individual staff member expressly putting that in writing and has been delivered to her home.

**Senator SESELJA:** Who has the letter gone to?

**Mr Fry:** To the staff member.

**Senator SESELJA:** Setting out the process?

**Mr Fry:** No, encouraging the staff member that, if there are any concerns, we start to—

**Senator SESELJA:** Go through a formal process.

**Mr Fry:** Yes, and engage in a discussion of what they may be so that we can start investigating if there is anything there and try and work it through.

**Senator McLUCAS:** Can I interpose at this point?

**CHAIR:** I would prefer to let Senator Seselja continue—

**Senator McLUCAS:** It is about Senator Seselja's questions.

**CHAIR:** and then invite you to come back at the end of his questioning on this particular section.

**Senator McLUCAS:** Can I urge care, please?

**Senator SESELJA:** Certainly. This is on a different issue: what is Indigenous Business Australia's involvement with the Lhere Artepe Aboriginal Corporation?

**Mr Fry:** Just for clarity, is this in relation to Lhere Artepe out of Alice Springs?

**Senator SESELJA:** I believe so. I am told it is pronounced 'lara tippa'; it is spelt quite differently.

**Mr Fry:** That is okay, I was just asking for clarity to make sure I am responding appropriately.

**Senator McLUCAS:** A bit like Seselja really.

**Senator SESELJA:** Seselja is quite phonetic.

**Senator McLUCAS:** Not when Senator Fifield says it!

**Mr Fry:** There are several structures and different companies within the group, so, if you allow me, I will respond in the general more than in the specific for this particular answer.

**Senator SESELJA:** Sure.

**Mr Fry:** We have a relationship through a business loan with one of the entities of Lhere Artepe.

**Senator SESELJA:** So the extent of the relationship is a business loan with an entity of Lhere Artepe?

**Mr Fry:** That is my understanding.

**Senator SESELJA:** What is the size of that loan and the nature of that arrangement?

**Mr Fry:** Within the ATSI legislation, I am not at liberty to divulge information of that nature, but it is relation to, if I speak more broadly, helping fund three supermarkets in Alice Springs.

**Senator SESELJA:** So it is for three supermarkets. Are you aware that the former CEO of Lhere Artepe Aboriginal Corporation entered into an agreement to purchase what I think was an almost insolvent civil engineering company?

**Mr Fry:** I have seen some material around that. I have not investigated that particular aspect, but I am aware that there has been some commentary around that from some members of the local community. I would not like to make comment beyond that because I have not seen the forensic evidence to make a call on it.

**Senator SESELJA:** Is there a reason that has not been investigated?

**Mr Bator:** We do not investigate clients. We have a loan out with them for supermarkets. Other activities that other people who might be involved with them are those other people's activities.

**Mr Fry:** I suppose what I am trying to say is that it may have been investigated by third parties not related to the loan.

**Senator SESELJA:** So is there no further obligation when you issue these loans if there are concerns about the financial situation of the entity that you are loaning the money to?

**Mr Fry:** No. I would say that we do due diligence in each and every instance on the financial standing of the applicant of the loan. The due diligence includes getting context and background so that we understand how the position arose and what the challenges and issues

are for that particular business. That goes into the matrix of issues that we look at to decide whether we approve or decline a loan.

**Senator SESELJA:** Are the loans for the supermarkets the bulk of the money that is needed or are they only one part? I understand that there was also a Commonwealth grant for these supermarkets. Is that correct?

**Mr Fry:** I would need to take that on notice. Unfortunately, I do not approve the overall loans myself and get to that level of detail, but we can come back to you after we have had an investigation if it is of material interest.

**Senator SESELJA:** Are there liquor stores associated with the supermarkets in question?

**Mr Fry:** Yes, there are liquor outlets, as I understand it, associated with the supermarkets. I think they are IGA supermarkets. In relation to your further inquiry, my understanding is that the issue you raised has been mentioned with a previous CEO of Lhere Artepe. My understanding is that that occurred well before our involvement with the business loan to the supermarkets.

**Senator SESELJA:** Are you aware of Lhere Artepe's current financial situation?

**Mr Fry:** In a broad sense I would say that I have some oversight, but I would need to take the specifics on notice. I cannot recall, for example, the trading figures and where they are sitting at.

**Senator SESELJA:** In a broad sense are you able to, without giving all the detail of the trading figures, say whether it is in good financial health or not?

**Mr Fry:** My understanding is that it continues to trade profitably.

**Mr Viswanathan:** If I could just add that, as with any prudent investor, in both our investments area and our enterprises area, which deals with business loans, there are detailed processes in place for ongoing management and review of those investments or loans. So in addition to the due diligence that happens upfront, there is a lot of work that goes on regularly thereafter which includes ongoing visibility and monitoring of those investee companies or borrowers.

**Senator SESELJA:** Is there any concern or danger here that there is going to be a loss to the IBA? Are you satisfied that this is a loan that will be able to be repaid, or do you have concerns around that?

**Mr Fry:** Again, I am not across the individual loan in detail, but my understanding is that the company we are lending to continues to trade profitably and continues to meet our interest payment.

**Senator SESELJA:** There is one other aspect, and I am not sure if you will be able to answer it, but we will see, because there are few elements to it. I understand that the former CEO negotiated a loan of \$3.5 million with a finance company and then attempted to reduce the loan by selling blocks from the company's Mount Johns residential real estate development. Are you aware of those transactions?

**Mr Fry:** Again, this occurred before we got involved with the supermarkets. I am aware that there is another entity with Lhere Artepe which is involved in a subdivision. I believe that subdivision blocks continue to be sold. I would not like to make comment as to the initial scope of where that subdivision was, the number of blocks and so forth, but I understand that

the subdivision has been completed and blocks continue to be sold. In fact, I had a look at one of the blocks the last time I was in Alice Springs to understand the wider group interests. They seem to be well marketed and in a good location. It is a new subdivision of significant homes.

**Senator SESELJA:** Maybe you could check some of the detail you are not able to comment on now and take on notice whether or not you have any further detail on that.

**Mr Fry:** Certainly.

**CHAIR:** Just before we suspend for lunch, I seek senators' agreement that correspondence between the Indigenous Land Council and the minister be tabled. That is agreed. We will suspend now until 1.30 pm, when we will move onto education and employment.

**Proceedings suspended from 12:47 to 13:31**

**CHAIR:** I welcome back officers of the Department of Prime Minister and Cabinet for the session on education and employment. Senator Peris.

**Senator PERIS:** Thank you, Chair. This question is for the minister. Just recently the Prime Minister outlined a new Closing the Gap target in relation to school attendance. Truancy officers aside, are you concerned that the cuts to teachers in remote schools are going to be counterproductive to achieving your target?

**Senator Scullion:** I am assuming this is in regard to the Northern Territory.

**Senator PERIS:** Yes.

**Senator Scullion:** The matter for teachers are entirely a matter for the Northern Territory government. I note that there has been a threat of industrial action, I think on next Tuesday. There has been some media about the effects of kids turning up at school. All I can say is to reiterate that I have had a personal assurance from every Premier and the Northern Territory Chief Minister that, when the children turn up at school, there will be the level of amenity that is expected by mainstream, whatever that number is—I think there is a particular number of children per teacher. I have said that when these kids turn up at school it is the responsibility of the jurisdiction to ensure that they have a first-class education.

**Senator PERIS:** You say you have spoken to Mr Giles, but you have not written to any of the state and territory ministers responsible, asking them to increase teaching positions?

**Senator Scullion:** No, I have not had any indications from those jurisdictions that there is necessarily a demand for increased teacher numbers. We have heard about the nature of the behaviour. I have read media articles about that but I have not had any submission from a state or territory about teacher numbers. I think this has been an assertion by the union recently. I do not think it has been about the numbers; it has been about the behaviour of the new attendees.

**Senator PERIS:** I have been to a number of communities where they are concerned that they have a number of students now coming to school because of the truancy officers. If schools are going to be writing to you saying they cannot handle the intake of kids because we have had cuts to teacher numbers, is that something you would take very seriously in terms of approaching the Northern Territory government to look at these issues?

**Senator Scullion:** The education is entirely a matter for the Northern Territory government or the other jurisdictions. If a school has a challenge with the number of students

against their number of teachers then that is a matter for the Northern Territory government. But, certainly, if the Northern Territory government gets in touch with me about these matters I will deal with those areas as they come to bear.

**Senator PERIS:** Okay, thank you. Are you concerned that state and territory governments may use the provision of truancy officers as an excuse to cut their own funded positions—and, if so, have you sought their formal agreement that this will not occur?

**Senator Scullion:** I would have to check on the formality of the agreement. I have had conversations with each of the jurisdictions under which this program is being rolled out and I have assurances—verbal assurances, which I take as a given—that this process with the truancy officers will be in addition to. I have to say I have been pretty satisfied as I have moved around the country. In Queensland there are truancy officers who are working alongside Commonwealth school attendance officers and there are some arrangements about how they interact, so there is no visibility about them moving out of the space. As I said, I have certainly had discussions and have received assurances that our truancy system will not simply see the existing truancy system walk away. Our truancy system is to work alongside the existing truancy provisions. Certainly, I know that is the case in Western Australia, the Northern Territory and Queensland—there have been no indications that truancy provisions by the state and Territory jurisdictions have moved away. But I have not had any specific indication that that is the case.

**Senator PERIS:** Will the Commonwealth give priority to teachers or teaching assistants who have been sacked by the state or territory governments for truancy officer positions?

**Senator Scullion:** The truancy officers have been recruited or have been identified and are still going through the last of the checks. There are provisions of course that they have to be Aboriginal people and they have to be from the community. If teachers meet those requirements then no doubt they will be considered. But I suspect we have fully recruited and, even if they are not working at the moment, there is a natural person waiting for an approval—for example, for a working with kids certificate or whatever the approval process is—before they are engaged. So we do not have a particular number of jobs available; we have identified the full number—428, I think, but I could be corrected on that. The indications are that the full number have been recruited or are in the pipeline and are just awaiting approval—and they are all natural persons.

**Senator PERIS:** Do you identify people or is there a process under which they can apply to be a truancy officer?

**Ms Carroll:** Senator, perhaps we can explain a little bit about what happens on the ground with the school attendance officers.

**Senator PERIS:** Yes, thank you. That was to be one of my questions: can you describe the roles and responsibilities of a truancy officer.

**Ms Carroll:** In each of the communities there are school attendance supervisors as well as school attendance officers. The idea is that the school attendance supervisors, obviously, supervise the work of the school attendance officers. We have a contract with an organisation in that local community who do that recruitment of the school attendance supervisors and the school attendance officers. They work through the processes, making sure the people have working-with-children checks, have done whatever training might be needed et cetera, and

also meeting the framework that the department has put around that such as that they are local Aboriginal or Torres Strait Islander people et cetera.

**Senator PERIS:** Am I able to obtain the selection criteria? You have stated that truancy officers will be local—which is great because outsiders, as we well know, do not have the confidence and engagement with communities. However, I know—and you would probably agree, Minister—that there are also many local people who lack the authority to do stuff, and that is evident in a lot of situations in remote communities. So can you table the selection criteria in relation to the sustainability of truancy officers?

**Ms Hosking:** Senator, the agreements that address what we are trying to achieve in each community are largely contained in the funding agreement with the provider who is doing the employment. The actual process will be tailored to each community. They work very closely. There is not a single set, as I understand it, of selection criteria that would be applied in all circumstances; it is tailored very much as a community discussion—looking particularly for people in the supervisor role who have local cultural authority and can definitely provide the leadership and direction to the school attendance officers, many of whom will be people who, for example, were RJCP participants and did not have a lot of history of formal employment but still have the potential and cultural authority to perform that role.

**Ms Carroll:** If I can just add: the way the model is designed—and this goes a little bit to your previous question to the minister about, for example, staff who may already be on the ground employed by the Northern Territory government et cetera—is such that, in each community, exactly what the school attendance officers do is slightly different and depends on what other people in that community already do. So, if there is already a breakfast program that operates through the Northern Territory government, the school attendance officers may not operate the breakfast program—because it already exists—but they may do something else. So that is the tailoring at the local level. But there are a broad range of activities that we could provide you that go to the breadth of activities that school attendance officers undertake. They range from walking around the community, to driving the bus, to breakfast programs and to different kinds of things. But we could give you the broad list, if that would be helpful.

**Senator PERIS:** Yes. So will you also be investing in transportation as well—for example, if a community needs a troopie or a bus? I know that recently in Alice Springs there was a town camp that had their bus service taken off them.

**Ms Hosking:** Yes, depending on the need of the community that is definitely the case—we have money to fill in whatever gaps in support are required in the communities. In some communities that has been a bus; already in some communities a bus has been leased or other arrangements put in place to provide transport and back-up. In other communities it may be uniforms, it may be school lunches and breakfasts that are the gap. The role of the school attendance supervisor working with the officers is really to identify what those gaps are, and there have been resources and support allocated as part of the strategy to fill the gaps.

Not every community needs a new bus—many already have a bus—so in those cases that would not be a requirement, but in other cases a school bus has been exactly what has been identified and we are working with the communities on that.

**Senator SIEWERT:** Can I just ask on that note: how much money is available for that?

**Ms Hosking:** Basically, the total cost of the strategy, as you know, is \$28.4 million over two years. We are working on the basis of incidental funding based on an average of around \$180 of assistance per child. That is to cover a range of things, whether it be uniforms, breakfast, lunches et cetera. On top of that we have approximately \$72,000 per community for needs such as buses and office accommodation.

**Senator SIEWERT:** So there is the money that is paying the officers, there is \$180 per child and then there is \$72,000 per community.

**Ms Hosking:** Yes.

**Senator SIEWERT:** Thank you.

**Senator PERIS:** Minister Scullion, following on from what you said before: because the truancy officers will be dealing with children, I assume that they would be compliant with the Northern Territory legislation and they would require an Ochre card?

**Senator Scullion:** That is correct.

**Senator SIEWERT:** Is that the same in WA?

**Senator Scullion:** It is called something different.

**Ms Carroll:** Senator, in every state they have to comply with the working-with-children checks—whatever is required in each state or territory. The minister talked earlier about having people in the pipeline. One of the things about the people in the pipeline is that some of those are going through that process of getting working-with-children checks et cetera. In some states or territories people can actually start work—they can get an exemption period while the formal processes are going. That does not exist in every state and territory but we are complying with whatever is required.

**Senator PERIS:** So they will have an Ochre Card before they start?

**Ms Carroll:** Yes.

**Senator PERIS:** Okay. Can you describe the roles and responsibilities of a truancy officer when confronted with a child or family who is not compliant with a direction to attend schools.

**Senator Scullion:** I will just say that these are school attendance officers, and that is what they like to be called. They have requested that. So that we are not mistaking, for example 'truancy officers' with the state and territory organisations. This particular program refers to 'school attendance officers'.

**Senator PERIS:** Okay.

**Ms Hosking:** And, Senator, if I might add, following from what the minister said: the school attendance supervisors and officers are very much focusing on providing support in the community and providing support to getting to school, as distinct from the state truancy officers, who would actually be dealing with compliance around the state based truancy legislation.

**Senator PERIS:** So they would have set powers that they work under? Is it like before school, during school and then after school?

**Ms Hosking:** It would depend on the needs of each community, but that is right. In many of the communities there is a big focus on the first couple of hours of each morning in terms

of getting kids to school. The school attendance officers are generally employed on a part-time basis, with an average of around 15 hours a week—some more, some less. It would be agreed as to when is the appropriate time in the day where the support in the community is needed to ensure school attendance.

**Senator PERIS:** Can you provide details of how many school attendance officers have been employed to date and where they are?

**Ms Hosking:** They are in each of the 40 communities. I will get you the most up-to-date numbers—they obviously go up every day.

**Ms Carroll:** I will get you the numbers. One of the things is that we are confirming the numbers every day. As I indicated before, there is the pipeline that the minister mentioned—so, as the working-with-children checks come in, more officers get added in a formal sense. But we can get you the numbers.

**Senator Scullion:** One of the processes we are alert to is that we are losing a few. I have to say I am quite happy to lose them to the department of education. We lost three in Palm Island, who are now fully employed by the department of education. I guess our vision of this is as a bit of an incubator, when people are engaged. People can say, 'This is fantastic: we have looked to engage people and these people are engaging very well.' So other organisations see an opportunity to employ them. So we have backfilled those positions.

**Senator McLUCAS:** Just in terms of the numbers—

**Ms Hosking:** The numbers have gone up slightly since the minister announced the numbers the other day. There are now 326 supervisors and officers directly engaged in activities and another 105 in the pipeline. The pipeline is always a bit bigger than the total number because we need to have more people in that because of movement and people who may not pass all the checks and so forth. But those are the current numbers.

**Senator McLUCAS:** Can I just get on notice the locations, the organisations that have been contracted to manage the program at each location, the number of school attendance supervisors at each location, the number of school attendance officers at each location and the activities that you were describing that may be different at different locations. Thank you.

**Senator PERIS:** I am not too sure whether you answered this question before. How are these positions advertised?

**Mr Fordham:** The process around selection is essentially that most of them are coming off the participant list, so they are RJCP participants coming into full-time or part-time work. They have gone through the recruitment processes that they have chosen themselves. We have encouraged in most cases that they work closely with the schools and with community panels and, if there have them, school councils and education consultative groups be involved. Again, that varies from community to community as to how they want to run that process, but we have made sure it is as transparent as possible.

**Senator PERIS:** What sort of training do they have prior to engagement?

**Mr Fordham:** There is a training package that has been put together for them. The basic induction package is really just around the basic OH&S and a student attendance officer package that we put together depending on what job they want to do in that community and how they are going to roll it out. If they are running a breakfast club, that is a very different

sort of training package to the person who is driving the bus and so on. So it does vary a bit as to what they are doing but the basics are OH&S, child safety training; we are doing some courses at the moment in the APY Lands, for example, around behavioural issues—in partnership with the education department in South Australia. Again, that varies from state to state. The education departments have been pretty cooperative around this stuff and they are having a say in that training as well.

**Ms Hosking:** And we do provide information for providers both on what is compulsory in terms of the required induction training and on optional induction training—for example, a drivers licence if you are driving a bus. And there are some optional additions depending on the nature of the role, which can lead to accredited certified training.

**Senator PERIS:** Okay. So the job service provider for RJCP are the people. Is that what you said?

**Ms Carroll:** In most but not all communities. When we give the list of the schools and who is the provider we can give you the providers and we can identify on that list which are the RJCP providers of that community, if you like.

**Senator PERIS:** If you could. Recently I attended a couple of communities where there were five teachers aides who had their jobs cut because of the cuts to teachers right across the Northern Territory. The principal basically said that there were two officers, one being a senior Aboriginal man who had been at the school for 25-plus years. His hours went from 8.30 to 3.30 down to 8.30 to 11.30. So the school had to use their additional resources to top his wage up because they cannot afford to lose a person like this. This school does not have a truancy problem—their attendance is up around 90 per cent. Could he then go to the RJCP provider and apply for one of these positions so that the school does not lose its resources?

**Ms Carroll:** If it is a community that has the Remote School Attendance Strategy he certainly could go to the provider. As I think the minister mentioned, we are hoping that people will move through and get other jobs in the community; but it will be dependant on what that flow looks like as to how quickly a person could be picked up in a role.

**Senator Scullion:** Could I just say more generally on recruitment: we have relied very much, as you would be aware, on the community to make much of that selection because they have indicated to us that they are best placed to know those people who would have that degree in Gunbalanya—they know everything. So we were guided very much by who the community thought were the best people with the spread of knowledge to make sure that they knew that particular part of town or they were involved in that faction. So we were relied very much on the community to provide advice about the selection as well.

**Senator PERIS:** Yes. I do not have any more questions on school attendance.

**Senator SIEWERT:** I do. Sorry, I was a couple of minutes late so, if you answered this before, I will go and read the *Hansard*. There have been reports that, in relation to the additional number of children who are going to some of the schools, they are not used to attending school and they are a number of years behind their age cohort. What is being done in terms of the provision of additional resources? Do you have (a) reports about where that is occurring and (b) whether there is the physical provision of infrastructure but also support for those children.

**Ms Carroll:** I think some of this was covered before you came in. Essentially, because the number of teachers and all of those things are state and territory responsibilities, if we hear things on the ground—and people are out there every day—we have discussions and would immediately take things up with the state or territory government if we hear about issues that might be occurring. Whether they are behavioural issues, teacher issues or whatever, we pass that through to the state or territory government very quickly. There have been good relationships developed through this process because, obviously, even though the supervising school attendance officers are technically working outside the school, they are working with the principal of that school and we are feeding that information through as much as possible.

**Senator SIEWERT:** How many reports have you had about those issues? I am not talking now about desks and space and those sorts of things

I am talking about the impacts it is having on the school community and the provision of additional support for those children that need catch-up.

**Mr Fordham:** Other than what you have probably read in the media, there have been a couple of instances of people on the ground that have been giving us those reports. We do have pretty close relationships with the education department, so we are trying to keep across the issues as much as possible. They range from anecdotal—I think quite good—instances where some of our people have been bailed up in local car parks by people saying, 'There are all these extra kids going to the local school, and what are you doing about it?' to some issues that have been raised by teachers and so on. So we are trying to work closely with the departments to deal with it.

**Senator SIEWERT:** So how many—

**Mr Fordham:** In terms of your numbers you are talking two or three, so it is not many at all.

**Senator SIEWERT:** Rather than relying on reports, are you actively engaging with the schools to find out in a more systematic way how that is going?

**Mr Fordham:** Yes, we are, absolutely. That is at least weekly at an officer-to-officer level, but to be honest with you it is probably almost daily that we would be in touch.

**Senator SIEWERT:** I understand you already have the attendance figures, but could you provide the committee with information about what surveys have been undertaken to identify how many children are there below their age group—for example, kids that should have been in grade 3 having to be in grade 1. Do you have an accurate understanding of all the children that are attending and what grade they are entering?

**Ms Carroll:** One of the really clear things we have been doing is a clear separation, so issues like the ones you are raising are things for the principal and for the state or territory government. I understand the issue that we have encouraged these children to come to school through the school attendance supervisors and school attendance officers, but we have been working, and we obviously hear about things but at the end of the day we do not get those. The states would not give us that regular reporting, and that is between the principal and the teachers or the principal and the state government. So the state governments are still responsible for what is going on inside the school and how they manage the education levels.

**Senator SIEWERT:** In theory the states are still clearly responsible for attendance, so is just getting bums on seats all you are trying to do? That is not what education is.

**Senator Scullion:** I have iterated publicly a number of times, and I am happy to do so again, that our motivation is not just to get kids to school; it is to get them education. I appreciate your comment on that.

**Senator SIEWERT:** Why not follow through?

**Senator Scullion:** I do not accept that we are not. First of all, in terms of the funding, the states are paid on a formula that fundamentally involves the enrolment, so we are certainly not up at that enrolment level. I think they would all acknowledge that there is a sufficient capacity within that to deal with the number of kids they are actually being paid to educate.

The second part of your question is an important area: how are we connecting with the education system to go and work things out? We are not a department of education, but we think it is absolutely essential that we receive concise advice on the matter, so we have engaged Chris Sarra, a very respected person in Indigenous education, to act as a go-between.

**Senator SIEWERT:** I know him.

**Senator Scullion:** He will be talking to and mentoring the principals through these issues and being able to become a communicator between the principals of these particular schools and us. If you like, he will be able to translate the needs and those particular matters. If I think that the states really are not doing the right thing, from my perspective it is important that I will be talking directly to that jurisdiction about those particular challenges. So that is what we have done thus far. It has not been going particularly long, but that is what we have put in place to ensure that we can have that feedback and respond to it.

**Senator SIEWERT:** But don't we need an understanding of the size of the issue? It may be that there are only a few kids who are behind, but I suspect not. So don't you need an understanding of the size of that cohort of children that are significantly behind their year group?

**Ms Carroll:** I think that the key is that we are in regular contact with the education department. As Mr Fordham said, we hear anecdotally from the parents as well as teachers, principals et cetera. But it has only been going a few weeks and we are in regular contact with the state or territory education departments as well. We certainly want to understand those issues that you described—how many children are turning up, do they have the sorts of education levels to go into the right class and all of those things. We certainly want to understand what those issues are.

Separate to this particular strategy is the broader COAG strategy which was announced out of COAG last year. State and territory governments have all agreed to look at school attendance and school attainment and to work with the Commonwealth in helping to understand what works and what does not work. So as well as the Chris Sarra process there is also a broader COAG process about understanding that. But for these particular 40 schools, we certainly will be interested in understanding the issues and looking at what we can do about them over time. It is one of those things that are new, and so we are seeing the issues as they come up and then working with them.

**Senator Scullion:** I just make the point that we inherited something across government that we know the NAPLAN tests are telling us: that so many of these children are well behind anyway. The new cohort of people coming to school might be slightly further behind, but I

think we could reasonably say that there are an awful lot of children existing in the system now who have been very challenged.

I know people have their different interpretations of the NAPLAN tests. Certainly, I give them sufficient credibility to say that the results are appalling. This may be because of the episodic nature of attendance. Some may attend some of the time, but we know that it is about getting them to attend regularly enough to actually get an education. That is the important factor. So we are not only capturing people who have not been there, but we are ensuring that those people who are attending occasionally start to get into the culture of attending regularly enough to get an education, and for that to be normal. No excuses, no choices: every day you have to go to school.

I do not think that this is the only demographic of kids who are behind. I think the entire demographic in most of these schools that have such low attendance rates were that way beforehand. But certainly, we will be working with the schools and taking their advice, and ensuring that the jurisdictions that are responsible make sure that they are held to account.

**Senator SIEWERT:** Thank you for that. I have one more question around it. As you know, I take a particularly keen interest in the hearing of the younger cohorts of Aboriginal children going to school. Is there any feedback about, or process to look at, that new cohort of kids going into school and identifying whether they have any hearing problems? I would like them all to be identified overall. But, as you know, there is some evidence that children with hearing problems are not attending school, or having trouble in school, so they are a particular cohort. On top of everything that you just said, is there anything in place to address that particular issue?

**Senator Scullion:** I will get pulled up if I am incorrect, but I suspect not. But it is a great suggestion. We will try to sort through that and I will report back to the committee out of session to see what more we can do about that in terms of hearing tests and making sure that they get access to the audiologists and the sort of support systems that are available. Thank you for that suggestion.

**Senator PERIS:** I have one more question. I have just seen a press release that came through with regard to the teachers in the Northern Territory, who are striking on Tuesday. The headline says, 'Territory teachers to strike as student number pressure builds in remote areas schools':

Northern Territory teachers say they are being put under pressure by new truancy officers bringing more students in to remote schools.

I agree that getting kids to school is fantastic, as is addressing the issues of these young kids who are so far behind. But you have to agree that unless the schools have adequate resources and teaching we are not going to address the issue. Would you now put pressure on the Northern Territory to look at what is happening currently?

**Senator Scullion:** First of all, it is a matter for the union; if they seek to withdraw teachers from the education of children on Tuesday, that is a matter for them. I have to say that I have visited, as you have, a number of schools. The issue that has been put to me is there has been some difficulty with individual children and the nature of the demographic, and we have talked about some of those things today. But an issue that has not been put to me is that the numbers are somehow too large for teachers to cope with. There was one example where

there were two kids beyond what they considered was the limit for kids in the classroom, and we did something there because it was on the day. Apart from that, we have had no feedback from that at all.

In that particular media release, the union spokesman said that not all teachers have the capacity to deal with this sort of matter. He did not have confidence in the teachers having the capacity to do what I and everybody else would think is a normal thing to do. I do not think that is a particularly good reflection on teachers, but it is certainly not what I have heard from teachers. I have not met a teacher yet who does not think that this is a good program. They have reflected and provided advice about some of the support they needed, particularly with behaviour, but thus far that is not the case. I was actually at a school the other day where, out of 130 children, 15 were attending—it had the full complement of teachers, of course. I think it is indeed a matter for the unions if they think the teachers are being over-taxed, but that is not something I have heard from the teachers. I would have to say, considering the difficulties of the children, I have been so impressed by the quality of the teachers and their determination to ensure that these kids get an education.

**Senator McLUCAS:** I want to move to the School Enrolment and Attendance Measure. At last estimates it was indicated that SEAM was going to be rolled out in 23 communities across Australia. Can you update the committee briefly about the progress to achieve that?

**Ms Hosking:** There is a five-stage rollout being progressed in the Northern Territory. We had the initial schools, which I think were 10 communities, rolled out in term 1 of 2013; then we had an additional five schools in term 3 of 2013; then Gunbalanya's rollout was brought forward to the beginning of this year, so it has rolled out in term 1 of 2014. The next lot of schools will be rolled out in term 3 and the final lot will be rolled out in term 1 of 2015.

**Senator McLUCAS:** So how many are going to be rolled out in term 3?

**Ms Hosking:** Five schools.

**Senator McLUCAS:** And term 1 next year?

**Ms Hosking:** Two schools: Maningrida and Tiwi Islands—two communities. I should say communities rather than schools because sometimes there is more than one school involved.

**Senator McLUCAS:** And that adds up to 23?

**Ms Hosking:** Yes, 23 communities.

**Senator McLUCAS:** And the model for the rollout of SEAM in Cape York Peninsula?

**Ms Hosking:** There is no rollout of SEAM in the Cape York—

**Senator McLUCAS:** It is not SEAM there; it is done through Cape York Welfare Reform.

**Ms Carroll:** That is right.

**Senator McLUCAS:** And that is basically given to Cape York Welfare Reform as part of their model.

**Ms Carroll:** So in Cape York we still have the Family Responsibilities Commission, and one of the things they particularly focus on is school attendance. There were some discussions with Cape York early on about if they also wanted SEAM. Those discussions are ongoing. In

the cape, the Family Responsibilities Commission had asked for an increase in the level of income management to 90 per cent and that has been granted.

**Senator McLUCAS:** Sorry, the level of—

**Ms Carroll:** Income management. Normally a lower level is income managed.

**Senator McLUCAS:** I understand.

**Ms Edwards:** If children are not attending school, that is one of the triggers which would refer that family to the Family Responsibilities Commission. Then the Family Responsibilities Commission will conference with the family, perhaps refer them to various services, and has a capacity to recommend income management of that family. So not exactly like a SEAM model, but a different model.

**Senator McLUCAS:** How many families are on income management through school non-attendance in the five communities that are being run by the FRC?

**Ms Edwards:** We would have to take those figures on notice. That part of the measure is run out of DSS, but we could take it on notice and respond quite quickly.

**Ms Carroll:** That question should probably be given to DSS.

**Ms Edwards:** We could pass it to DSS.

**Senator McLUCAS:** Thank you. FRC is funded until when?

**Ms Edwards:** The Commonwealth has announced funding until the end of 2015?

**Senator McLUCAS:** Calendar year?

**Ms Edwards:** Calendar year.

**Senator McLUCAS:** And the state?

**Ms Edwards:** The Queensland government has so far committed to the end of this calendar year and we are in continuing discussions with them.

**Senator McLUCAS:** Trying to encourage them to increase to the end of 2015.

**Ms Edwards:** About all sorts of things

**Senator SIEWERT:** The Commonwealth funding for that next that the Queensland government has not committed to, does it still proceed if the Queensland government does not commit to it?

**Ms Edwards:** It is currently included in the forward estimates.

**Senator SIEWERT:** What happens if the Queensland government—I know there has been this to and fro about when they commit the resources—

**Ms Edwards:** We might be in a hypothetical landscape, but we are committed to continuing through 2014 working productively with the Queensland government and we will certainly shape our initiative so that it can continue.

**Senator SIEWERT:** My point is that Commonwealth funding will continue regardless and is not dependent on the Queensland funding.

**Ms Edwards:** Exactly how it is rolled out is a matter for government, but it is in the forward estimates.

**Senator McLUCAS:** Can I move now to early childhood education. The funding for the 38 children and family centres is delivered through the National Partnership Agreement on

Indigenous Early Childhood Education. Is that correct? What is proposed for that? Can I have an understanding of the funding model for the children and family centres? Is it capital and recurrent? How do they run?

**Ms Carroll:** The national partnership was about the capital funds for the children and family centres. The funds, as you know, through the national partnership are given to the states and then they work out what the final decision is about how those funds are spent, and they provide the Commonwealth with some information through the implementation plan. So it will vary across each of the sites. For example, in some of the sites where the physical construction has not happened yet there are some services being provided.

**Senator McLUCAS:** And are you saying the services are funded by the state?

**Ms Edwards:** That is primarily the funding model.

**Ms Carroll:** Or they access other money through other programs.

**Ms Edwards:** Commonwealth funding is for the establishment of the centre over the initial period and some of that money is not directly just for bricks and mortar but to help establishment, but the funding of the various services is primarily a matter for the state.

**Senator McLUCAS:** Ms Carroll, you say they are not all built yet but are they on track to be built? There will be no change to the funding allocation?

**Ms Carroll:** No, we have had assurances from all jurisdictions that the outstanding ones will be completed by 30 June.

**Senator McLUCAS:** Now I would like to move to the 311 budget based funding services.

**Ms Carroll:** They have not come to the Department of Prime Minister and Cabinet. They stayed with the Department of Education

**Senator McLUCAS:** All of them, all 311?

**Ms Carroll:** Yes. They fund the services, which have stayed with—

**Senator McLUCAS:** We could not get clarity on that.

**Ms Carroll:** That is my understanding.

**Ms Edwards:** We have been in discussion about some of them potentially being managed when they are Indigenous specific.

**Ms Carroll:** Some of the playgroups have come over but it depended on whether they were a childcare centre or a playgroup.

**Senator McLUCAS:** Thank you. That is what we were trying to get to. Some of them are accredited childcare centres and available to access CCB et cetera.

**Ms Carroll:** Some of the budget based funding services were childcare centres that are not CCB accredited but they are still effectively a childcare centre. They have a long history of being in existence.

**Senator McLUCAS:** Bamaga might be one of them?

**Ms Carroll:** I could not tell you exactly the names but some of the playgroups, not the childcare centres, did come to Prime Minister and Cabinet.

**Ms Edwards:** There are nine Indigenous-focused creches, as we call them, which are now funded under the Stronger Futures package, and 23 Indigenous playgroups which PM&C is looking after.

**Senator McLUCAS:** If you subtract that figure from the 311, that is the number left in Education?

**Ms Carroll:** Yes.

**Senator McLUCAS:** With the funding model for the ones that are remaining in education, has there been an assurance that the funding will continue to ensure they will be operational?

**Ms Carroll:** You would have to ask the Department of Education those questions, sorry.

**Senator McLUCAS:** Why didn't they come across to PM&C?

**Ms Carroll:** At the point of the change of government, there was already a review process in place for the budget based funded services, so there was an agreement that that would finish and then there would be a reconsideration of whether they stayed with the Department of Education or came over. Because a process had already started before the change of government, the intent was to complete that and, once that was completed, to make another assessment about what would come over. As I understand it, part of that process was to try to get some of those services to be childcare benefit services, in which case they would stay with the pool in education. But that will be considered by government over time.

**Senator Scullion:** Senator, if you have any questions that you would normally have put here but you now find that you have made a mistake in doing so—I understand the MOG has changed some of those things around—and you want to put those questions on notice, I will ensure that the education department gets them and is able to answer your questions.

**Senator McLUCAS:** It is more the structure of the program; but thank you for that offer, Minister. Maybe if I could get a list—not of the names of them but the types of services that they are and where they are—that might start me off for next time.

**Ms Carroll:** We can probably give you a list of the services that are funded and where they sit—whether they sit with us or sit with the Department of Education—and that way that will clear it up for future questions.

**Senator McLUCAS:** And also a list of the child and family centres.

**CHAIR:** I think Senator Siewert has a question in the same area.

**Senator SIEWERT:** I think I may be asking in the wrong area, but I would like to know about the Wyndham Early Learning Activity Centre, which I think was built under the program. Their programs are about to run out of funding soon. My question is about the ongoing viability of these centres. I appreciate what you said about state funding, but here you have a group of people who are working really hard with families and they are going to run out of funding again. Are you looking at how to keep these centres viable once they are built and start operating? At the moment they are getting drip-bits of funding.

**Ms Edwards:** Just to confirm: my list of the 38 centres does not include one at Wyndham, so we would have to go and have a look at how that one fits in and who looks at it.

**Senator SIEWERT:** It definitely got Commonwealth funding, and it has a number of programs. I asked about it last year. It got funding for another 12 months and that is about to

run out. Obviously, I want to see them keep going, but my question is a bigger picture one about how we keep these centres going, because we all acknowledge they are important.

**Ms Carroll:** Perhaps when we give the split-up of the different centres and the different services, we can also take on notice that broader question against the different categories.

**Senator SIEWERT:** If you could, that would be really appreciated.

**CHAIR:** If I could just get some direction at this point. This section of education and employment is due to finish at 2.30 pm. Am I correct to assume there are no employment issues?

**Senator McLUCAS:** Not in this section, Chair.

**Senator McKENZIE:** I have one question.

**CHAIR:** Still in education?

**Senator McKENZIE:** Yes.

**CHAIR:** Senator Siewert?

**Senator SIEWERT:** I have employment questions, but I will put them on notice.

**CHAIR:** We will stay with education, then. And before we finish at 2.30 pm, Senator McLucas, I might ask Senator McKenzie for her question.

**Senator McLUCAS:** Well, if we finish education, why don't we have Senator McKenzie's questions and then Senator Peris has employment questions.

**Senator McKENZIE:** I would like to say congratulations to the minister: after decades of a lot of money and a lot of talk, in four months we have some real action in closing the gap. All of us around this table want to see a halving of the gap in numeracy and literacy, which is actually very difficult to do if you are not at school. This is the first step, admittedly, in actually taking some real and tangible action on Closing the Gap, which is what everyone around this table actually wants to do.

**Senator Scullion:** Just as a brief response, I have to say—whilst thank you for your congratulations to me—that all the credit goes to the communities. This is a community-based initiative. It is the people from the communities who have not only made the selection but strongly supported this. This is, I think, evidence of when you have a strongly community supported process. Whilst I am sure that it will have its bumps in the path, it is a much better genesis than we have had in the past.

**Senator McKENZIE:** I just want to go to the schools themselves. I understand that most remote schools have 31 per cent of their students meeting the national minimum standard for reading. Are all of the schools in the RSAS program in that category of being considered remote, where the need exists?

**Ms Hosking:** Yes. For the 40 communities, I think they are all in the remote category, including the New South Wales schools. Mike Fordham will answer that in two seconds. They were particularly selected on their attendance rates. So using the attendance rates reported on the MySchool website on a yearly basis by all schools, we looked particularly at those that consistently over a five-year period had been achieving an attendance rate of less than 70 per cent. Most of the communities are in that category. There are a small number that

are between 70 and 80 per cent. That is particularly so in the New South Wales case, where they actually had better attendance overall but still had some areas of need.

**Senator McKENZIE:** So it is quite targeted. I am just wondering, I had heard that there was particularly good examples of how the program was working at the Doomadgee and Borroloola schools.

**Ms Hosking:** That is exactly right. Mr Fordham can give you some more information; they have had some great success at those schools.

**Senator McKENZIE:** It is the end of a long estimates week. I would love a good news story.

**Mr Fordham:** My colleague, Matthew James, is the data guru who may provide the latest data figures. I think that most of the success, as the minister has pointed out, in Borroloola and Doomadgee has just been around the amount of community involvement in the scheme.

**Senator McKENZIE:** So they were very engaged in it.

**Mr Fordham:** They are very engaged and they signed up really quite quickly to get going. Despite, in some cases, those communities having various sort of issues like flooding, deaths and so on. They have come to terms with a lot of issues in some of those communities and seem to be quite behind the strategy.

**Mr James:** This was in the press release put out yesterday: the attendance rate in Borroloola is 17.4 percentage points higher so far this year than in term one last year.

**Senator McKENZIE:** Fantastic.

**Senator Scullion:** Possibly Senator McLucas will pull me up on my pronunciation, but one of the schools in Palm Island—Bwgcolman—actually operated in the week prior to when I got there at 98 per cent. It is not a small school, so I think that it is just an incredible achievement for that school and that community, because certainly the trends are in front of what the mainstream would expect.

**Senator McKENZIE:** Fantastic. Thank you so much.

**Senator PERIS:** This is for the minister. One of the Closing the Gap targets that is lagging is employment. How many Indigenous people will lose their jobs as a result of the Gove refinery closure?

**Senator Scullion:** I can only reflect on this. I may be corrected by conversations that I have had with Rio Tinto about that matter. I have been assured—due to the arrangements that Rio have in place, whether it is resettlement or whatever—that there are none who will lose their jobs who have not already been looked after. But perhaps we can have some more details from somebody else who has just come to the table?

**Mr Eccles:** The information that we have is that employees of the Gove refinery who will become redundant will receive redundancy packages. They are looking to redeploy them, as far as possible, in other aspects of their mining enterprise—so in other parts of the mine. We understand that the job losses are being phased in throughout 2014, so it is not all at once. We have got some of our staff on the ground, doing some work around the Indigenous employment people. The department is taking a close interest in this, obviously. At this stage, they are looking to redeploy all the people who are going to lose jobs.

**Senator PERIS:** When you say redeploy, they will be the people who actually work in Rio Tinto in the refinery area?

**Mr Eccles:** That is the intention. Where possible, Rio's intention—as they have explained it to us—is that wherever possible they will be relocated to other parts of their broader enterprise.

**Senator PERIS:** My understanding is that a lot of those employees are not Aboriginal people. Have you been to Gove?

**Mr Eccles:** No, I have not.

**Senator PERIS:** It is probably the fourth or fifth biggest town in the whole of the Northern Territory. It has a population which is rapidly declining from 4,500. I think close to 1,000 have already left the town. What I am getting at is that this town is actually a service hub. It is a regional town to more than 17,000 people in that region. There are almost 10,000 Aboriginal people throughout the whole of the East Arnhem Land region who actually need Gove for education and health. It has got facilities there. Rio Tinto has been part of their life for almost 35 or 40 years now. Minister, have you been to Gove recently, since the election?

**Senator Scullion:** I have.

**Senator PERIS:** Have you had discussions with many of the people with regards to what is happening in Gove?

**Senator Scullion:** We have had ongoing discussions not only with Rio but also with the Aboriginal people and their representatives and with the business sector in Nhulunbuy.

**Senator PERIS:** Has there been any discussion of an urgent structural adjustment package? I am open to anyone here.

**Senator Scullion:** No, nobody has put such a suggestion to me.

**Senator PERIS:** My understanding is that by July—I have heard that the Prime Minister is in Darwin at the moment and only an hour away from Nhulunbuy—they will require 400 families to keep the town afloat. Has that been mentioned to you at all by anyone?

**Senator Scullion:** I am sorry, could you just ask that last question again? I am sorry, I missed it.

**Senator PERIS:** I was saying that I am aware that the Prime Minister is currently in Darwin. Is he going to go to Gove? Has that been discussed?

**Senator Scullion:** I am not aware.

**Senator PERIS:** I have been told that by June or July this year, when there is talk of him going to Gove, almost 500 families would have left Gove. Has there been any talk of replacing what Rio Tinto brought to East Arnhem Land with something else, like through the means of Defence or relocating a Northern Australia policy unit in Gove? Just something that is happening that could occur straight away?

**Ms Carroll:** I am not trying to be difficult, but things like structural adjustment packages and those sorts of things would be directed to the Department of Industry, who has the lead on structural adjustment across Australia.

**Senator PERIS:** I did ask that question on Monday. I did not have much luck with many people. I guess from an Indigenous perspective, where this falls under, you are going to have

10,000 East Arnhem Land people who have for 40 years relied on this town as a service town. What is the relief? What are they going to have? That is the question.

**Senator Scullion:** I do not think it is reasonable to characterise this as a complete loss of services. Certainly, as you would be aware, the Department of Education is not closing the schools in Nhulunbuy. The hospital is not closing in Nhulunbuy. The post office is not closing in Nhulunbuy now. I share with you the great remorse and tragedy that a mining company has decided to leave Nhulunbuy, but I think it is not reasonable to characterise it in the way that all the services are departing and the 10,000 people who are reliant on those services will not have any anymore. It is just simply not an accurate characterisation.

**Senator PERIS:** What you are saying is that you guarantee, in some way, that those services like the health and the education are not going to be impacted?

**Senator Scullion:** I am not saying anything of the sort. What I have actually said is that there have already been assurances that the school is not closing down, there is no indication that the hospital is going to close and there is no indication—as far as I know—that any of the services of the Commonwealth makes available are closing. There will still be sufficient people in that region to need those services.

I know your questions are directed particularly around the Indigenous issues. My discussions with Rio have been very focused on those particular employees, not only those ones in the mine—which I acknowledge are very small, only a handful. They are talking about the 100 or so whose jobs are going to be directly affected. I know they have put a lot of effort into ensuring that not only have they been paid the proper redundancies and all of those sorts of things but they have also been given particular opportunities to stay in the Rio family. That is not only around Australia but also in the ongoing mining operations. That is what I have been told by Rio and I can only just repeat that in good faith.

**Senator PERIS:** With the closure of the Gove refinery, Indigenous employment is forecast to decline. You have mentioned the RJCP is prominent around the Northern Territory. In the meantime, what steps are you taking in the meantime? I know you met with Glenn Aitchison, who was the chair of the Gove Community Advisory Committee and also the CEO of the Yolngu Business Enterprises. They rely heavily on Rio. Is this all being looked at to actually counteract the big gap that is going to be left with Rio leaving?

**Mr Eccles:** What is the question, again?

**Senator PERIS:** What are you doing? Come June or July, 500 families are going to go.

**Mr Eccles:** We have got nine staff in Nhulunbuy and we have got another 10 around the region who offer the sort of support that we are talking about. They are working with the individuals who are affected. They are obviously working with Rio to try and make sure that the transition to other work takes place. We do know that there are discussions with the Northern Territory government that are being led out of another department, the Department of Industry. We could get an update from them and come back to you. We do know that the Northern Territory government is also taking a very close interest in it.

It is absolutely a matter of priority for our on-the-ground staff to work with those people who are affected. They are just starting to come into the system, if you like. The intention was that it would be sometime this month that the people who are being made redundant start to

leave their employment. I know that our staff there are taking a particularly close working role with those guys.

**Senator PERIS:** Just recently, the Minister for Infrastructure and Regional Development, Warren Truss, and Minister Warren Entsch announced a Cape York region package to the community. It is something in the excess of \$210 million. That was for the Cape York region, where there is a significant amount of Aboriginal communities in that area. East Arnhem Land has, again, almost the same amount of Indigenous people. That is around the Northern Australia development. Is anything going to be offered of that sort to developing the north?

**Senator Scullion:** I am not sure if you have actually put those questions to the right area. As I said, that is certainly not the area of expertise in terms of infrastructure. It was not an Indigenous initiative; it was an infrastructure initiative that I vaguely understand. I am happy, as I have said with Senator McLucas, if this is the wrong place I will—if you can put a question on notice—make sure that they get put through to the officers responsible. But they are certainly not in this room.

**Senator PERIS:** Going back, if I can draw a line to the Indigenous side of things and the development of Northern Australia. I was asking whether there is anything that you have heard of that could be coming towards to the northern part of Australia to help with economic development and jobs?

**Mr Eccles:** There is certainly the Northern Australian white paper that the government has announced is under development. I believe that is being led out of another part of our department, but not the Indigenous affairs side. We are talking to them. It is on the government's radar and they certainly intend to do something around Northern Australia's economic development, but I do not have the details at the moment.

**Senator PERIS:** The Aboriginal art organisations, including ANKAAA, which is the Association of Northern, Kimberley and Arnhem Aboriginal Artists, do not have their funding guaranteed beyond June this year. This severely impacts the capacity to plan and progress their businesses. What analysis have you undertaken in relation to the impact this will have on Indigenous employment?

**Mr Eccles:** The indigenous arts program is with the Ministry for the Arts, which is in the Attorney-General's portfolio.

**Senator Scullion:** Again, being Friday, if you give the question on notice, we will make sure it gets to the Attorney for an answer.

[14:35]

**CHAIR:** We will now move to Indigenous housing and sport.

**Senator SIEWERT:** You will probably have to take this on notice, but I am interested to flip around the debate on the focus of the National Partnership Agreement on Remote Indigenous Housing. Do we have an idea of how many houses in remote communities have not been refurbished—in other words, the size of the job still to go?

**Senator Scullion:** It might be required to be on taken notice.

**Senator SIEWERT:** Are you aware if anybody has done that work?

**Senator Scullion:** I am sure it is available.

**Ms Carroll:** We will take that on notice.

**Senator SIEWERT:** Thank you. Has the work been done and, if so, how many by community in the NT? Let us start there. Is that okay?

**Ms Carroll:** Yes, Senator.

**Senator SIEWERT:** I am interested to pursue the issue around tenancy agreements, as identified before in the NT. Has this issue been resolved? Do we have a time line for when it will be resolved?

**Mr Stacey:** Are you asking whether or not we have found a way as part of NPARIH to introduce tenancy agreements across all remote jurisdictions?

**Senator SIEWERT:** In terms of making them comply with the Residential Tenancies Act?

**Mr Stacey:** I can say that those reforms, particularly around property and tenancy management, and particularly around getting tenancy agreements in place, have been progressing well across jurisdictions. In the order of 90 per cent of tenancy agreements are in place for new or refurbished houses. So 90 per cent of the housing stock, new or refurbished houses under NPARIH, now have tenancy agreements in place.

**Senator SIEWERT:** And how many of those are in the NT?

**Ms Campbell:** As at 31 December, 97.2 per cent of the houses in the NT have a tenancy agreement in place.

**Senator SIEWERT:** Okay, but do they comply with the act?

**Ms Campbell:** Yes.

**Senator SIEWERT:** That is just under three per cent. Is it intended that they in fact will be concluded? Are those three per cent intended to be finalised so that they meet the requirements as well?

**Ms Campbell:** The Northern Territory government would be required to continue to put in place the tenancy agreements.

**Senator SIEWERT:** In terms of ongoing tenancy advice for Aboriginal clients in the Northern Territory, I am aware that there was a recommendation that in fact better support needs to be put in place for tenants. Has there been any work done in progressing that?

**Ms Campbell:** The Northern Territory government report to us through their joint steering committee on their progress with property and tenancy management reforms. They have made substantial improvements with the tenancy management system. They report to us that their rental receipts have increased by 40 per cent since April 2012 and they are continuing to work to improve their systems and the education that is rolled out to tenants as they take up their tenancy agreement.

**Senator SIEWERT:** Thank you. I am also looking at it from the other perspective—that is, provision of support to tenants from their rights perspective. I am wondering whether there has been any progress in support from that perspective.

**Mr Stacey:** This is something we have pursued with all jurisdictions to make sure that it is part of the reforms we are pursuing to the national partnership agreement, that we are setting up for tenants the same sorts of support, the same sorts of opportunity to complain as any other public housing tenant would have. In the case of the Northern Territory, I have had a

number of discussions with senior officials in the NT government over the past couple of months and consistently ensured that they have put in place the system that is in place for anybody else who is in a public house in the Northern Territory.

**Senator SIEWERT:** I might put on notice: how assured are you with their assurances and what, in concrete, do you have which shows that they are meeting those requirements beyond their assurances to the Commonwealth?

**Mr Stacey:** We will take that on notice.

**Senator Scullion:** I will make another assurance. My views have not changed since I sat next to you on the other side. It is not only whether they have tenancy arrangements in place; the agreements and arrangements are treated as we would any other house. Across the vast majority of the jurisdictions in the area, particularly the very remote areas, it is a very light touch. I will continue to have very focused discussions with the various jurisdictions on their responsibilities in regard to tenancy management.

**CHAIR:** For the interests of senators, I confirm that coalition senators have no questions in housing and sport.

**Senator McLUCAS:** I want to start at the beginning with the Aboriginal Housing section. In the machinery of government changes, what parts of housing—I use the broader definition of housing—came across to PM&C from the old FaHCSIA?

**Mr Stacey:** In effect, what is referred to as that National Partnership Agreement on Remote Indigenous Housing has come across into Prime Minister and Cabinet. Mainstream housing and in particular other various COAG arrangements for mainstream housing are in the Department of Social Services.

**Senator McLUCAS:** And who is responsible for what? The National Affordable Housing Agreement—

**Ms Carroll:** That stayed with the Department of Social Services.

**Senator McLUCAS:** I know. How much of the work out of the NAHA actually happens in Indigenous communities? Is there any element of that which—you make the point, Mr Stacey, it is a mainstream program— was identified as being Indigenous specific?

**Ms Carroll:** The only Indigenous specific thing, as Mr Stacey said, was NPARIH, and then just as we do in health and in some of the other areas, we work back closely with the Department of Social Services to ensure that, in the mainstream areas through the National Affordable Housing Agreement et cetera, there is a broad understanding and attention paid to Indigenous issues as they are thinking about housing more generally and there is a range of mechanisms which I think we spoke about at the last estimates hearing. Certainly at a departmental level we meet with officers from the Department of Social Services. Also there is a secretaries group, which the secretary of Prime Minister and Cabinet chairs, and the Secretary to Social Services is on that group.

**Senator McLUCAS:** Thank you. What I am trying to get to is: was there ever any part of NAHA that was to be allocated specifically to Indigenous people, I dare say in communities that are mainstream communities?

**Mr Stacey:** Perhaps, Senator, I will say how I have understood all this. So, NAHA is an overarching agreement?

**Senator McLUCAS:** The old CSTHA, or whatever it was called—

**Mr Stacey:** In part—but in any event, I will leave that part to one side, sorry! I have a National Affordable Housing Agreement, an overarching agreement, reached by COAG in 2008. Underneath that there were a number of national partnership agreements designed to give effect to what was in NAHA. One of those was the National Partnership Agreement on Remote Indigenous Housing.

**Senator McLUCAS:** Thank you. You have answered my question, because that was what I have not able to track. So it does sit under NAHA?

**Ms Campbell:** Yes.

**Senator McLUCAS:** Do the reporting arrangements through NAHA capture any reporting systems that will happen in the remote Indigenous housing NPA?

**Ms Campbell:** The reporting arrangements for the national partnerships are defined in the national partnership itself. So each of the reporting arrangements are defined in the agreements.

**Senator McLUCAS:** And they are quarantined from the overall NAHA reporting?

**Ms Campbell:** Yes.

**Senator McLUCAS:** Okay. That is good.

**Ms Campbell:** And one example is that we get way more reporting through NPARIH than we do in the NAHA.

**Senator McLUCAS:** Yes. That is a good thing. So going to that reporting: can we get an update for the current status of the overall agreement about the number of dwellings, the number of refurbishments and the locations of all those that have all been agreed? What is the status report on progress? Is there a document that you produce on a reasonably regular basis that can inform the committee on progress?

**Ms Campbell:** I can give you an update on the progress to 31 December.

**Senator McLUCAS:** Okay.

**Ms Campbell:** The capital works targets for NPARIH for new houses for the 10 years was 4,200 across the jurisdictions, and refurbishments were 4,876. Delivered as at 31 December 2013: for new houses, 2,303, and refurbishments, 6,314.

**Senator McLUCAS:** So you have overdone the refurbishments?

**Ms Campbell:** Yes

**Mr Stacey:** Yes, Senator. In fact, it is 130% of the target

**Senator McLUCAS:** Well done; that is good. Now for the new houses to be completed, the 4,200 by 2018: do you have a way of tracking completions, and are you on track?

**Ms Campbell:** Yes. All jurisdictions report that they are on track, and they report to us regularly.

**Senator McLUCAS:** Is there a list of where these new houses are going to go? Is that a public document?

**Ms Campbell:** It is not a public document. Some of it is through a competitive bid process.

**Senator McLUCAS:** Okay

**Ms Campbell:** Some of it is that each of the jurisdictions identify and put through an implementation plan and then there is a separate competitive bid process. So it is a combination of all of that.

**Senator McLUCAS:** Within the state? So the competition is within the state for locations?

**Mr Stacey:** No, it is a competitive bid. Part of the NPARIH provides for a competitive bids process bi-annually, every two years, for each jurisdiction to make bids around capital works that they propose to carry out over the next two years. We go through a process of assessing those for every jurisdiction and ultimately come to an agreement about how much funding we want to give against those bids for each jurisdiction. We also have as part of it that if a jurisdiction has not met its target in the previous two years then that could potentially impact on the funding.

**Senator McLUCAS:** Queensland did not meet their target most recently, I understand. I am not following you though, Mr Stacey, about the competitive nature of the—

**Mr Stacey:** I was trying to say that it is not within each jurisdiction; it is not within each state. It is meant to be a process across each state, allowing us on a national basis to make a decision around which jurisdiction should get the funding to the amount they want to do capital works.

**Senator McLUCAS:** What is the competition about?

**Ms Campbell:** Maybe the competitive name is slightly misleading, but it can be competitive when there is extra money due to one of the jurisdictions being penalised for not meeting their targets.

**Senator McLUCAS:** So the excess money is competitive?

**Ms Campbell:** Yes. In the competitive bid we set the next two years work program and they provide us with a summary of their scope of works. They make a case for community need and put out which communities they plan to go to; they provide information about their method of procurement and delivery; they talk about where they are up to and the status of tenure for each community that they are planning to go to; they cover employment opportunities. A very important element of the competitive bid is around value for money and the cost of the work they are proposing to do. They also talk about community engagement. Through that process we set key milestones and time frames for the next two-year period.

**Senator McLUCAS:** And a side issue—Torres Strait. Is that part of the NPARIH or is that through TSRA?

**Ms Campbell:** Torres Strait is in the scope for the Queensland program of work.

**Senator McLUCAS:** So that does work through that. Can I now go to the Indigenous employment target. I want to get a real understanding of how the reporting works and how you scrutinise the reports you receive from the states and territories about the level of Indigenous employment that is delivered through the NPARIH.

**Ms Campbell:** As part of their reporting, each of the jurisdictions has a target of 20 per cent employment within the capital works element of the program. So along with their report of progress for capital works, they report their progress against that target of employment.

**Senator McLUCAS:** How do you receive that report? Is it basically 'achieved/not achieved'? How do you verify the report that you have received?

**Ms Campbell:** They would give us a percentage of employment of the workforce. That does vary by jurisdiction. Some will report on the total number of hours and as a percentage of Indigenous employment within the total hours; others may look at the workforce. It is not reported consistently by each jurisdiction.

**Senator McLUCAS:** So some people will drill down to say, 'This piece of work was done in 92 hours by an Indigenous person and that adds up to that part of the proportion of the 20 per cent or more,' but others will say, 'Of the people employed on this project, 22 per cent of them were employed'.

**Ms Campbell:** It does vary.

**Senator McLUCAS:** Is there a desire to make that consistent across the program?

**Ms Carroll:** There certainly is a desire. Some of it goes to, as you have indicated, the way the state or territory collects the data and information and also how they collect it from the people they have contracted, how they can bring that together. It is certainly our desire to try get as much accuracy as we can in that.

**Senator McLUCAS:** On notice, can you give me a list of the states and territories and some commentary about the way they report? I am not asking you to do a massive amount of work, but just the methodology they use. As well as that—this may not be able to be done—which states and territories are meeting the 20 per cent target. Do you have that now?

**Ms Campbell:** We can confirm that they are all meeting and exceeding that 20 per cent target.

**Senator McLUCAS:** But then we go to the next question: how do we know that the report is valid? What sort of checking system does the department employ to verify the report?

**Mr Stacey:** A key way we have is by setting up in each jurisdiction a joint governance structure known as a joint steering committee. That is the way we make sure that we are together—the Commonwealth and the relevant state government—monitoring implementation plans and achieving the different milestones, including those relating to the target on Indigenous employment. It is right that to a significant extent we do rely on data being provided by state and territory governments. I do not think, so far, we have come across a situation where we do not think that the data we have been given is accurate. We also of course have our own people on the ground—

**Senator McLUCAS:** Sorry, Mr Stacey, can you say that again?

**Mr Stacey:** I do not think so far we have come across a situation where we think that a jurisdiction has given us information that is not accurate—not as far as I know.

**Senator Scullion:** Senator McLucas, just trying to be helpful without verballing you: are you asking whether, because there is a possibility of companies providing their 20 per cent in different ways, how do we rationalise those different ways of providing information into the one thing?

**Senator McLUCAS:** Yes.

**Senator Scullion:** I do not think we have had a comprehensive answer, but I can take that on notice. I am not sure if we can find any examples, and we will perhaps see how that

steering committee deals with that. If we can, if there is any further information, we will provide that to you on notice.

**Senator McLUCAS:** I suppose the concern I have is the different methodologies that are being used. That is an historical issue and just the way it is.

**Senator Scullion:** I accept that. We will have a look at how that is rationalised, if it is, and see if we can get some information too.

**Senator McLUCAS:** Mr Stacey, is there any data collected in whatever form—probably not—that talks about the number of apprenticeships that have been achieved through this housing program? I daresay it was not requested as part of the original reporting methodology, but if you did then it would be great to know.

**Mr Stacey:** I think we will have to take that one on notice.

**Senator McLUCAS:** Thank you. The other program I would like to know about is the Indigenous Housing and Infrastructure Program. Where does that sit?

**Mr Stacey:** We can take questions on that.

**Senator McLUCAS:** So is that in the housing part of what came over from FaHCSIA? Where did you come from?

**Mr Stacey:** Yes, it is.

**Senator McLUCAS:** And what is the purpose of the Indigenous Housing and Infrastructure Program?

**Mr Sowry:** Senator, the purpose is to provide funding and support for infrastructure and housing related infrastructure to remote communities. There are a number of different activities that are under that appropriation: Indigenous housing, municipal and essential services, the National Jobs Creation Program and the NT jobs program. A longstanding one is the Army Aboriginal Community Assistance Program.

**Senator McLUCAS:** So this is overarching, and these all sit under—

**Mr Sowry:** Yes, it is a very similar sort of construct.

**Senator McLUCAS:** All right. Going to the allocation announced yesterday or the day before, of the \$6 million to complete the seawalls in the Torres Strait: what sub-line did that come out under?

**Mr Sowry:** That came out of its own sub-line. There is an element that we have for what we internally call high-need support programs or activities, and that \$6 million of funding came out of that area—and it is over two years: this financial year and next financial year.

**Senator McLUCAS:** So that is the money that Minister Macklin announced?

**Senator Scullion:** Yes.

**Senator McLUCAS:** As part of the commitment from FaHCSIA to the sea walls?

**Senator Scullion:** That is right.

**Senator McLUCAS:** That is fantastic. And it is over two years—how much is in this year?

**Mr Sowry:** \$2.5 million this year.

**Senator McLUCAS:** When I say that I mean this current year.

**Mr Sowry:** Correct, yes.

**Senator McLUCAS:** And then the rest will be in next financial year?

**Mr Sowry:** Yes, in next financial year.

**Senator McLUCAS:** And that money goes to TSIRC or TSRA?

**Mr Sowry:** Our funding goes to TSRA.

**Senator McLUCAS:** And you have signed a contract with TSRA for the delivery?

**Mr Sowry:** We are negotiating. In fact, we had our first involvement in the project consultative group yesterday afternoon, and that topic came up. That is the next stage. We need to negotiate the funding agreement with them, and our commitment is that we will have that complete by the end of March.

**Senator McLUCAS:** Thank you. I will put some on notice, back to the schools: can I also get that list of where and who and what? Not by location, but can I get an understanding of the number of people who are in the blue card—that is what we call it in Queensland; I think Senator Peris calls it an ochre card—and who are in the exempt period? So, people who have applied for their card but who, properly, are going through that process to get that card, but have been employed?

**Ms Carroll:** For the people who are employed, we do not employ them until they actually have the card.

**Senator McLUCAS:** Did I misunderstand you?

**Ms Carroll:** No, but as part of the total number we have three rough groups: we have the people who are actually employed and who already have their card; we have a group that are engaged, so they actually might be doing the activity with someone else and they are in that period, so we can give you the definition of—

**Senator Scullion:** With the RJCP provider; not with kids.

**Ms Carroll:** So we can give you the number of those. Then there is the other group, those who are in the pipeline.

**Senator McLUCAS:** So they are engaged, but not employed.

**Ms Carroll:** That is right.

**Senator Scullion:** Because they do not have their working-with-kids check. So they are engaged by the RJCP provider, often doing the occupational health and safety and the prevocational work. Invariably it is a very short period of time. When they say 'imminent' there has been an awful lot of work done to get the working-with-kids material done over Christmas. The jurisdictions have done very well, but there is a short period of time under which they are engaged by the provider. So that is why there is another category, because we will not allow them to work with kids unless they have the working-with-kids card.

**Senator McLUCAS:** Thank you. If you could give me those three figures?

**Ms Carroll:** We will give you the definition for the three groups.

**Senator MOORE:** I am very apologetic to any officers who have been sitting here waiting to share with us their knowledge of the sport area, so could I put my apologies to anyone who would be in that? Rather than waste their time for five minutes, I will just put the questions on notice.

**CHAIR:** Again, thanks to those officials who were coming to address sports concerns.

**Ms Carroll:** I can provide an answer to a question on notice which was about the supplementary legal assistance. There are six organisations that receive the supplementary legal assistance. The funding is in the forward estimates under the Stronger Futures program through to 2022. As we described, the funding agreement finishes on 30 June 2014, and we will soon be in discussions with those organisations about the future. But many of these receive funding from Attorney-General's as well, so we are also working out how best to do that funding agreement to minimise red tape for those organisations.

**Senator SIEWERT:** Thank you very much.

**Ms Carroll:** The other one that I had a quick answer on was that there were some questions from Senator Seselja on congress, about sitting fees et cetera. I understand there are no sitting fees and that the co-chairs and directors are on salaries of some form, part- or full-time. The board meets monthly. In 2012-2013 a bit over a million dollars was spent on board remuneration. I just wanted to clarify that congress reported in a media release that they had 35 staff as at February 2014.

**CHAIR:** There being no other business we will adjourn the additional estimates cross-portfolio hearing for the Finance and Public Administration Legislation Committee. Thank you all very much, and our special thanks to the committee staff.

**Committee adjourned at 15:05**



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FINANCE AND PUBLIC ADMINISTRATION  
LEGISLATION COMMITTEE

**Estimates**

FRIDAY, 22 NOVEMBER 2013

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

**Friday, 22 November 2013**

**Members in attendance:** Senators Bernardi, Boyce, Gallacher, Lundy, McLucas, Moore, O'Neill, Peris, Pratt, Siewert, Smith, Tillem.



**CROSS-PORTFOLIO INDIGENOUS MATTERS****In Attendance**

Senator Scullion, Minister for Indigenous Affairs

**Department of Health****Outcome 8**

Ms Samantha Palmer, First Assistant Secretary, Indigenous Health Service Delivery Division

Ms Alison Killen, Assistant Secretary, Program Management and Evaluation Branch

Dr Masha Somi, Assistant Secretary, Support Branch

Mr Greg Lemmon, Acting Assistant Secretary, Operational Policy Branch

Mr Nathan Smyth, First Assistant Secretary, Population Health Division

Dr Bernie Towler, Principal Medical Adviser

Ms Colleen Krestensen, Assistant Secretary, Drug Strategy Branch

Ms Sue Campion, First Assistant Secretary, Mental Health and Drug Treatment Division

Ms Fiona Nicholls, Assistant Secretary, Mental Health Services Branch

Mr Lou Andreatta, Assistant Secretary, Health Workforce Training and Distribution Branch

Ms Kate McCauley, Assistant Secretary, Health Workforce Policy Branch

Mr Graeme Rossiter, Director, Health Workforce Policy Branch

Ms Janet Anderson, First Assistant Secretary, Acute Care Division

Mr Charles Maskell-Knight, Principal Advisor, Dental Branch

Ms Ann Smith, Assistant Secretary, Hospital Performance and Governance Branch

**Department of the Prime Minister and Cabinet****Outcome 1****Overview**

Ms Elizabeth Kelly, Head of Domestic Policy

**Program 1.1: Prime Minister and Cabinet****Indigenous Affairs Group**

Ms Liza Carroll, Head of Indigenous Affairs

Mr Richard Eccles, Deputy Secretary, Indigenous Affairs

Ms Ngaire Hosking, First Assistant Secretary, Education, Health and Communities Division

Mr Brian Stacey, First Assistant Secretary, Land, Housing and Recognition Division

Ms Kate Gumley, First Assistant Secretary, Employment and Economic Development Division

Ms Caroline Edwards, First Assistant Secretary, Policy and Strategy Division

Ms Marsha Milliken, First Assistant Secretary, Delivery and Network Division

Ms Michelle Crosby, First Assistant Secretary, MoG Taskforce  
Mr Ben Neal, Assistant Secretary, MoG Taskforce  
Mr Mark Laduzko, Assistant Secretary, School Attendance and Community Engagement  
Mr Stephen Goodwin, Assistant Secretary, Education and Youth  
Mr Matthew James, Assistant Secretary, Evidence and Evaluation Branch  
Mr Andrew Davitt, Assistant Secretary, Land Branch  
Ms Belinda Campbell, Assistant Secretary, Remote Housing Branch  
Mr Pat Sowry, Assistant Secretary, Remote Infrastructure Branch  
Ms Mandy Doherty, Assistant Secretary, Engagement and Recognition Branch  
Ms Lisa Croft, Assistant Secretary, coordination and Commonwealth/State Branch  
Ms Bronwyn Field, Acting Assistant Secretary, Remote Services and Local Solutions Branch  
Ms Maria Jolly, Assistant Secretary, Health Policy and Early Childhood  
Mr John Shevlin, Assistant Secretary, Health Programmes  
Mr Neil Harwood, Assistant Secretary, Justice and Community Safety  
Ms Brenda Love, Assistant Secretary, Economic Development and Strategic Partnerships Branch  
Mr James McDonald, Assistant Secretary, RJCP Policy Branch  
Ms Ingrid Kemp, Assistant Secretary, RJCP Delivery Branch  
Ms Lynne Stevenson, Assistant Secretary, Indigenous Employment Programmes Branch  
Mr James Atkins, Acting Assistant Secretary, Indigenous Employment Programmes Branch  
Mr Gavin Matthews, Assistant Secretary, Network Design (RSD)  
Ms Kim Vella, Assistant Secretary, Leadership and Capability  
Mr Paul Salmond, Assistant Secretary, Environment Programmes  
Ms Michelle Kinnane, Assistant Secretary, Review of Finances  
Ms Kari Ahmer, Assistant Secretary, Programme Office and Communications  
Ms Marian Moss, Assistant Secretary, Indigenous Affairs Legal

**Agencies****Office of the Registrar of Indigenous Corporations**

Mr Anthony Beven, Registrar

**Office of the Coordinator General for Remote Indigenous Services**

Mr Brian Gleeson, Coordinator General

**Indigenous Business Australia**

Mr Chris Fry, Chief Executive Officer

Mr Leo Bator, Chief Operating Officer

Mr Satish Kumar, Chief Financial Officer

**Indigenous Land Corporation**

Mr Mike Dillon, Chief Executive Officer

**Torres Strait Regional Authority**

Mr Joseph Elu, TSRA Chairperson

Mr Wayne See Kee, Chief Executive Officer

Mr Chris de Mamiel, Chief Financial Officer

**Office of Township Leasing**

Mr Greg Roche, Executive Director of Township Leasing

**Committee met at [09:00]**

**CHAIR (Senator Bernardi):** I declare open this meeting of the Senate Finance and Public Administration Legislation Committee. Today the committee will continue examination of the supplementary budget estimates for the Prime Minister and Cabinet portfolio. Following amendments to the administrative arrangements order, Indigenous matters are now within the Prime Minister and Cabinet portfolio. The committee has before it a program listing the issues and agencies relating to Indigenous matters of which senators have given notice. They have been grouped on the program into the themes and issues and relate to the Prime Minister and Cabinet portfolio and the Health portfolio. The committee has fixed Friday, 17 January 2014 as the date by which answers to questions on notice are to be returned.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to

disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders, pp 124-125)

I welcome the Minister for Indigenous Affairs, Senator the Hon. Nigel Scullion, and officers of the Department of the Prime Minister and Cabinet. Minister, do you wish to make an opening statement?

**Senator Scullion:** No, but I think Ms Carroll may.

**CHAIR:** Ms Carroll, do you wish to make an opening statement?

**Ms Carroll:** Yes, thank you. As this is the first time that Indigenous affairs is appearing before the finance and public administration committee, we thought it might be helpful to make a short opening statement. As the committee would be fully aware, following the 2013 federal election responsibility for most of Indigenous policy and programs was transferred to the Department of the Prime Minister and Cabinet. Large mainstream programs which service Aboriginal and Torres Strait Islander people remain with the line agencies. There is a policy

program split that I understand has been handed out and is available, and we have copies here if you do not have it. We are happy later on to take some questions about that.

I thought it might be useful, though, to quickly mention Indigenous health and native title in the context of machinery-of-government changes. Responsibility for Indigenous primary health care has largely remained with the Department of Health. A number of programs and functions have been transferred to the Department of the Prime Minister and Cabinet, and these include Indigenous drug and alcohol treatment services, combating petrol sniffing, the Link-Up program and the Indigenous Sport and Active Recreation Program.

**Senator SIEWERT:** That has gone to you?

**Ms Carroll:** That has come to us; that is right. Broader questions about Indigenous primary health care would be directed to the Department of Health, but I note that today they are scheduled to appear here around some of the health issues. Native title policy and responsibility for the Native Title Act 1993 has stayed with the Attorney-General's Department, whilst responsibility for some of the programs—like night patrols, interpreter services in the Northern Territory and other aspects of Indigenous law and justice—has transferred into Prime Minister and Cabinet. The Attorney-General has retained responsibility for native title, and therefore questions about that would need to be directed to the Attorney-General's Department. If there are any further questions, we can answer specific questions about what has moved into Prime Minister and Cabinet and what has stayed within the line agencies. There should be a document that looks something like that that you might have access to. That is probably a starting point for us to answer any questions.

**CHAIR:** Thank you, Ms Carroll. Before I go to formal questioning, does anyone have a question of clarification of Ms Carroll about where particular agencies lie within this?

**Senator SIEWERT:** I do have a few. That means that all the staff that are operating those programs have gone to you—is that correct?

**Ms Carroll:** They are in the process of coming to us, yes.

**Senator SIEWERT:** Okay. I used anti-petrol-sniffing programs as an example in Health estimates the other day. You have responsibility for the policy on it, but the actual on-the-ground stuff is being done by the department—is that right?

**Ms Carroll:** The petrol sniffing has come to us. In some cases, we are still working with different departments about who is administering the funding agreement on the ground because—

**Senator SIEWERT:** Yes, that is what I was getting a bit confused about, because I thought we had resolved it in the Health estimates, but now I am a bit confused again.

**Ms Carroll:** Because it has happened in the middle of the financial year, we are still in the process of finalising the machinery-of-government changes and, with that finalising, what will happen about all of those funding agreements and who manages them. In the main, the staff that are managing the funding agreements have come over to Prime Minister and Cabinet.

**Senator SIEWERT:** But issues around renal health and dialysis stay with—

**Ms Carroll:** Department of Health.

**Senator SIEWERT:** The department. Okay.

**CHAIR:** Any other questions of clarification? Senator McLucas, hello.

**Senator McLUCAS:** Sorry, Senator Bernardi; I loomed above you and frightened you! I apologise.

**CHAIR:** You are not that scary, Senator McLucas!

**Senator SIEWERT:** Oh, my god—you didn't see her during the week!

**Senator McLUCAS:** I wonder if we could get a document that describes the actual number of staff who have moved from various places—staff exiting from other departments and going to Prime Minister and Cabinet—and their functions as well, what they do.

**Ms Carroll:** Yes. Ms Kelly might be able to give you some overarching numbers, but that breakdown we could certainly look at getting for you—

**Senator McLUCAS:** Because of our time constraints, I wonder if Ms Kelly would provide it to the committee as a document.

**Ms Kelly:** Certainly. The transfer of staff has not actually occurred as yet. It does not occur until 5 December. So, whilst we know the number is approximately 1,800, that sort of information will not be available in final form until 5 December.

**Senator McLUCAS:** If we could have it then, that would be great. Thank you.

**CHAIR:** Senator Gallacher, did you indicate you had a question?

**Senator GALLACHER:** Yes. In respect of the Communities for Children Indigenous Parenting Services, I am aware of considerable investments in the Anangu Pitjantjatjara Yankunytjatjara lands, and I would just like to get a sense of how that looks nationally, because, basically, my exposure is in that area, where I think there are three early childhood wellbeing centres either under construction or to be constructed. How is that looking nationally?

**Ms Carroll:** That specific question might come up when we talk about education more broadly, and we would have the right officers here to talk about the family and children's services.

**Senator GALLACHER:** Well, I just saw the Communities for Children Indigenous Parenting Services—

**Ms Carroll:** I can give you a broad answer, but the specifics of what it looks like in the APY and NPY lands we could come to a little bit later. In the broad, the main Communities for Children program has stayed with the Department of Social Services. What has come across to the Department of the Prime Minister and Cabinet is where there are Indigenous-specific services, particularly those ones tied up with, for example, Stronger Futures in the Northern Territory or some of those. So there has been a more intricate split, and when we give the—

**Senator GALLACHER:** I will pause you there. So where would I ask these questions about how national the program is that I have seen in the Northern Territory?

**Ms Carroll:** The Department of Social Services.

**Senator GALLACHER:** The Department of Social Services. Okay.

**CHAIR:** Senator Smith.

**Senator SMITH:** Where would I ask questions about the ABA, the Aboriginals Benefit Account?

**Ms Carroll:** That would come up today. It is not specifically on the program, but we could perhaps talk about it when we talk about the agencies—it is not an agency but an account—if that would be useful.

**Senator SMITH:** Great. Thanks very much.

**CHAIR:** Senator Siewert.

**Senator SIEWERT:** There were a couple of other things I wanted to check. Issues around mental health—have they come to you or have they stayed with the department?

**Ms Carroll:** Most of the mental health has stayed with the Department of Social Services.

**Senator SIEWERT:** Including the committee that Pat Dudgeon chairs? Sorry, I never can remember the name of it.

**Ms Carroll:** I will have to check. We might need to take that on notice and find out during the day.

**Senator SIEWERT:** That would be great. Also find out whether they are continuing, because there are some committees and advisory processes that the government has got rid of and there are others that they have not got rid of. If you could find that out that would be appreciated.

**Ms Carroll:** Yes.

**Senator SIEWERT:** Is constitutional recognition sitting with the Attorney-General, who I know is taking a great interest in it, or is it officially with you?

**Mr Eccles:** The Attorney-General is taking lead within the government for constitutional recognition. However, at an official level and ministerial level this portfolio is working very closely with the A-G.

**Senator SIEWERT:** But it does officially sit there.

**Mr Eccles:** The lead is the Attorney-General, yes.

**Senator SMITH:** You might well be able to answer questions about where things are up to and on process.

**Mr Eccles:** Yes. We may need to take some on notice and confer on technical matters with the Attorney-General's Department. We will see how we go, if that is okay.

**Senator McLUCAS:** Minister, have you received a charter letter?

**Senator Scullion:** I have.

**Senator McLUCAS:** To do this quickly, is it possible for you to share that letter with the committee?

**Senator Scullion:** I will have to check.

**Senator McLUCAS:** I am trying to get to the detailed separation of responsibilities between the Prime Minister, yourself, and parliamentary secretaries.

**Senator Scullion:** I understand that. In a little while I will be able to check the status of that—whether it is a protected document or not. The intent of your question is to find out about the spread of responsibilities—is that right?

**Senator McLUCAS:** Yes. That is right.

**Senator Scullion:** I will check on that and provided that on notice later in the day.

**Senator McLUCAS:** For a lot of departments, when there are a number of ministers or members of the executive in that department, it is very clear on the website. Others are not so clear. In this department, it is not so clear for us.

**Senator Scullion:** As I said I will take that on notice and provide it to you a little later on. It will not take too long.

**Senator McLUCAS:** For example, who is responsible for Indigenous health?

**Senator Scullion:** That is broken up into two areas. Indigenous health still remains with Indigenous health when you are referring to Aboriginal controlled community health organisations. The delivery of those processes remains with Health. Health policy remains with me.

**Senator McLUCAS:** You understand why I am asking these questions, now.

**Senator Scullion:** Yes, I do.

**Senator McLUCAS:** We want to know what member of the executive is the person who has carriage of that. Who is responsible for Indigenous housing?

**Senator Scullion:** I am responsible for Indigenous housing.

**Senator McLUCAS:** Closing the gap?

**Senator Scullion:** I am responsible for that.

**Senator McLUCAS:** Can you tell me what areas of responsibility the Prime Minister has?

**Senator Scullion:** Rather than asking me what I am responsible for it is probably easier for me to describe what I am not responsible for. There are a number of areas within the native title section that will continue to be maintained by the Attorney-General—native title, the Native Title Act. I am responsible for the prescribed body corporate and the native title representative bodies. As I have indicated, the health centres and health delivery remains with Minister Dutton and the Department of Health. I currently maintain policy over health. There are some specific programs in regard to education, and direct education, that remain with the Department of Education. That is the answer in a general sense but, for clarity, in terms of the roles and responsibilities, we are happy to take that on notice. At some stage today I will be able to provide you with a document that ensures that the exact areas are completely covered.

**Senator McLUCAS:** Thank you. I am particularly interested in the health area. We asked this question of the Secretary of the Department of Health on Wednesday. We are very interested to know what the split is.

**Senator MOORE:** Will all that information be somewhere clearly available on the public record, on the website or something like that? It is not at the moment. Some of the departments have a process of putting up the ministers and their photographs, which is fine, but underneath that they have exactly what they are responsible for. Is it in part of the departmental plan to do something like that in the public space?

**Ms Carroll:** We are in the process of updating the Prime Minister and Cabinet website and, as Ms Kelly said, I guess we are in the middle of finalising machinery of government. I think the best place to start is the transfer of programs, but we would anticipate over the

coming months that we would, in addition to the transfer of programs, be able to have a clear list of what programs and policy are within the Department of the Prime Minister and Cabinet and who is the responsible minister or parliamentary secretary.

**Senator SIEWERT:** I understand that the joint parliamentary committee considering constitutional recognition will be recommenced. Is that correct?

**Mr Eccles:** Yes, the government's commitment to a bipartisan process is clear.

**Senator SIEWERT:** When is it likely that that committee will be recommenced?

**Mr Eccles:** It is fair to say there are discussions going on with the ministerial team that are taking responsibility for constitutional recognition. The Attorney is taking the lead on convening the new committee. I would need to refer to the department to get an update but I might be able to do that during the day.

**Senator SIEWERT:** I would appreciate it if you could, and if you could tell me whether it is going to happen before we rise at the end of the year.

**Mr Eccles:** Sure.

**Senator SMITH:** Has any independent or external legal advice been sought on any of the five recommendations of the expert panel?

**Mr Eccles:** Not that I am aware of but I will again check with the Department of the Attorney-General.

**Senator McLUCAS:** In other estimates we have asked questions about discretionary grants that may be associated with the department. Given that we have movement of programs and personnel from other areas, have those discretionary grants moved to Prime Minister and Cabinet already?

**Ms Carroll:** Yes, they have.

**Senator McLUCAS:** What are the running discretionary grants being managed by the portfolio?

**Ms Carroll:** I am not sure that I have with me the list of programs that have discretionary grants, but, as I am sure you have been hearing throughout the week, there are processes around the discretionary grants that involve going through a process both with the Minister for Finance and the new Minister for Indigenous Affairs. I think there are about 770 proposals. They might not necessarily be the whole program; they might be specific grants. As I am sure you are aware, within a program some of it might be ongoing funding and some of it might be new funding. There are about 770 that are in the process of going through both the Minister for Finance and our minister for final approval.

**Senator McLUCAS:** Can we have a list of those.

**Ms Carroll:** I will have to take that on notice and look at how we might do it. What we have done through the Senate order are the ones that have already been agreed and signed, so what has been tabled through the Senate order are the grants that are already signed. Then there is the decision making process for the others, and that is obviously part of the government deliberations.

**Senator McLUCAS:** We had the discussion yesterday in DSS about some departments treating the Senate order in different ways.

**Ms Carroll:** Yes.

**Senator McLUCAS:** So you are very clear that those in the Senate order No. 14 tabled document are grants where contracts have been signed and moneys have been transferred?

**Ms Carroll:** They are where contracts have been signed, where the funding has been approved.

**Senator McLUCAS:** That is where I am trying to get to. So those on that list are where the contracts have been signed and moneys have been transferred—that is what I am trying to ascertain.

**Ms Carroll:** They were either already signed or have been through all the processes and approved through the new processes. So they are obviously going out to organisations but they have not necessarily all been signed.

**Senator McLUCAS:** So they are all approved?

**Ms Carroll:** Yes.

**Senator McLUCAS:** The Senate order asked for grants that have been approved—that is the language of the order.

**Ms Carroll:** Yes. They have all been approved. Some of them were approved prior to the change of government. Some of them are where the new lot of approvals have already gone through. So they have been approved, but it might be that the funding agreement is yet to be signed.

**Senator McLUCAS:** The Senate order identifies a portion of 770 discretionary grants. Could we have on notice those grants that are not identified in your tabled document to the Senate? That would be terrific.

**Ms Carroll:** We will take on notice what we can give around that.

**Senator McLUCAS:** Thank you.

**CHAIR:** There being no other questions on this agenda item—

**Senator MOORE:** Chair, I have some questions about the graduate program which would fall within this item. Ms Carroll, do I direct the questions to you?

**Ms Carroll:** Yes.

**Senator MOORE:** I just want to check on, again, the movement between the different departments. As to graduate programs within this particular part of Indigenous services, is there an allocation in this year's intake?

**Ms Kelly:** In negotiating the machinery-of-government change, there was an assessment done of the proportion of the grad program operated by the former FaHCSIA, now DSS, that related to the Indigenous affairs part of the department, and we have taken those grads into the Department of the Prime Minister and Cabinet. So I believe we have 45 grads, all up.

**Senator MOORE:** When you say 'all up', is this in your particular area?

**Ms Kelly:** That includes the pre-September PM&C grads, of which there are approximately 22. So now we have a grad program that has more than doubled in size.

**Senator MOORE:** And all up you have how many again?

**Ms Kelly:** Forty-five.

**Senator McLUCAS:** Is that across the whole of PM&C?

**Ms Kelly:** Yes, that is correct.

**Senator McLUCAS:** Can we disaggregate that figure to the number of people who are graduates who have transferred?

**Ms Kelly:** Twenty-two is the figure that relates to the pre-September PM&C grad offers, and 45 is the total figure.

**Senator MOORE:** Is that 23, then, Ms Kelly? I am not in Treasury but I think I can do that!

**Ms Kelly:** My only concern is that we may have a grad as part of one of our other MoG changes, with deregulation and Office for Women. So I just want to confirm that. It is certainly in that vicinity. It is only a matter of one or two.

**Senator MOORE:** How does that compare, do you believe? You said it had gone up. Didn't you say in your statement that you thought there was an increase in your grad program?

**Ms Kelly:** The pre-September PM&C program was 22 grads. The post-September PM&C program will be 45 grads.

**Senator MOORE:** I am trying to find out about the allocation to graduates through this program. I know the way the graduate scheme works and that people move through and all that kind of stuff. Will the same access to graduate experience be done in this part of the organisation as it was in the previous department?

**Ms Kelly:** We are actually considering those arrangements now as part of finalising the changes to the new PM&C. We have a people and leadership committee that is considering that matter at the moment.

**Senator MOORE:** We might come back to you at the next estimates. Have there been any offers made that have not been able to be fulfilled, the same as happened in the Department of Foreign Affairs and Trade?

**Ms Kelly:** Not as a result of the machinery-of-government changes.

**Senator MOORE:** Any others?

**Ms Kelly:** Not that I am aware of.

**Senator McLUCAS:** Can I ask a question about Indigenous cadetships? Does that go here?

**Ms Kelly:** Yes, Senator.

**Senator McLUCAS:** Can you tell me what the status of the Indigenous cadetship program is?

**Ms Kelly:** I might ask Ms Crosby to deal with that.

**Ms Crosby:** In terms of the program itself, I assume you are talking about the Pathways program that is run by the Australian Public Service Commission. In terms of the number of cadets that we will be taking, we believe—and obviously we are still in negotiation on the staff transferring across from the eight different agencies—that we will be picking up about 15 entry level Indigenous staff. Some of those are through the Pathways program; others are through a program that is run by the former DEEWR.

**Senator McLUCAS:** I do not think I am talking about Indigenous cadets in Prime Minister and Cabinet but the broader Indigenous cadetship program.

**Ms Crosby:** That would be a question for the Australian Public Service Commission.

**Senator McLUCAS:** Minister, have you been engaged with the Indigenous cadetship program?

**Senator Scullion:** Not as yet.

**Senator McLUCAS:** Not at all.

**Senator Scullion:** Well, not as yet,

**Senator McLUCAS:** I understand there was a review into the program.

**Ms Carroll:** If it is a Public Service Commission program, you would need to ask the Public Service Commission that question.

**Senator McLUCAS:** I have been contacted by a parent of a child who was due to start a cadetship on 18 November, with CSIRO. According to the parent of that young person, he was told that that cadetship was frozen. I am advised that your office intervened on this particular cadetship, Minister.

**Senator Scullion:** This is a question that should have been put to the Public Service Commission, but if you can provide the details today I will make sure we get some information back to you either today or on notice, Senator. The nature of these questions should not wait until estimates. It is obviously very important that the parent get some answers around this issue and, by all means, please direct them to my office.

**Senator McLUCAS:** I am asking you here.

**Senator Scullion:** And I have answered that I will take it on notice and get an answer to you today.

**Ms Carroll:** Excuse me, Senator, I have just been informed that we think the case you are talking about—there are different programs with similar names—is part of the Indigenous Employment Program. It would come up this afternoon when we talk about employment. It is not the general APSC cadetship; it is part of a program.

**Senator McLUCAS:** What is the name of that program?

**Ms Carroll:** The Indigenous Employment Program.

**Senator McLUCAS:** All right. We will talk about that later. Thank you.

**CHAIR:** We will now move to agenda item No. 2, which is Closing the Gap: COAG Reform and Stronger Futures.

**Senator McLUCAS:** Just before we do, Chair, I have a couple more questions about congress.

**CHAIR:** You have one minute, Senator McLucas, before we move on.

**Senator McLUCAS:** Is the government committed to the future sustainability of congress as the national representative body for Aboriginal and Torres Strait Islander peoples?

**Ms Carroll:** We have been meeting with the congress. I met with the co-chairs of the congress just in the last week or so. We have been working with them around what their charter is and what their clear priorities are. We are going through the process of working

with them. Obviously, any particular funding issues in relation to the congress are part of the broader whole-of-government process.

**Senator McLUCAS:** I understand but what I am trying to get to is perhaps more a question for the minister. Is the government committed to the future sustainability and engagement with congress as a representative body of Aboriginal and Torres Strait Islander people?

**Senator Scullion:** Perhaps I can answer that in two ways. The sustainability of that is obviously a matter for the congress. I think it is a matter for their membership and how well the wider Aboriginal and Islander people respect them as legitimate spokespeople for them. Currently they have membership of about one per cent of the Australian population. Around 10 per cent of them bothered to vote with only 800 members voting. I know that is a matter they are working on. So in terms of sustainability, that is a matter of the congress and they tell me they are working hard in that area. In terms of the relationship with government, I rely on a whole range of advice from different stakeholders and among those is the congress. We look forward to enjoying a relationship and that has to be based on the independence of the congress. I have already met with the new co-chair here and with one of the existing co-chairs. I do not see that that relationship will change. They are going to be an integral part of the environment of the relationship between Aboriginal people and government. There are a number of other elected organisations like the land councils across New South Wales, Queensland, South Australia, Northern Territory and Western Australia that are also elected bodies. All these organisations will also be consulted and will want to have their views put to government. We need to be taking them all into consideration.

**CHAIR:** Thank you, Minister. We will now move to agenda item No. 2—Closing the gap and stronger futures.

[09:31]

**CHAIR:** Mr Gleeson, do you wish to make an opening statement?

**Mr Gleeson:** With your indulgence, Mr Chairman, I would like to make a brief opening statement, given that there is a new committee and a new set of arrangements. The National Partnership Agreement on Remote Service Delivery comes to an end on 30 June 2014. I know the minister is driving work on successor arrangements to build on the lessons learnt from the remote service delivery. My office has been delivering on this legislation for the last four years to monitor, assess, advise, drive and report on service delivery to the 29 remote service delivery communities. The work of my office results in governments, communities and service providers working together to influence positive change in remote service delivery communities and directly influences the way governments work together. Combining our firsthand community experiences through 146 visits to remote service delivery communities, with the information we gather from our vast network of stakeholders, this has given us a truly informed and unique view of Indigenous affairs from a remote perspective. I encourage that this be maximised in the consideration of future options for service delivery to remote Indigenous Australians.

My biannual reports capture much of this intelligence, experience and lessons learnt and I am pleased to say that the minister released my most recent eighth report yesterday. In that report I drew particular attention to prioritising efforts, given we are in the final year of the

national partnership agreement, and to fully consider the sustainability of these efforts. The report highlights three areas requiring further attention. I particularly focus on local governance capacity, reforming funding arrangements and simplified and meaningful monitoring and evaluation. Finally, the report also clearly highlights five priority areas that will yield the most significant results before the end of the NPA.

**Senator SIEWERT:** As you say in your report, you are not making new recommendations; you are highlighting ones and it is good to see the report against some of those recommendations. One of the fundamental things—to tell you the truth, it is not a new thing to be saying we need local decision making. There is a lot of talk about that. How do you do it?

**Mr Gleeson:** First of all I would like to say that while there is clear evidence and examples of local decision making in place, I am not sure from my experience that that has been extended to its fullest potential. I have noticed that the government has already indicated support to Empowered Communities—at least, in terms of design and looking into that particular model. I think this is an example of how we can look at trying to develop a holistic model whereby a community has greater control over design, over delivery and over their funding arrangements—so, they are prioritising things according to their needs.

The remote service delivery arrangements do go some way in that direction, but I think there is further scope for that to be enhanced. I am actually pushing to see this particular model being pursued in a much more consistent way to a broader set of communities. For example, the issue of pooled funding—that, again, is provided directly to a community to facilitate their better choices in how they have services delivered.

**Senator SIEWERT:** So you give people a suite of programs and they choose which programs?

**Mr Gleeson:** Not choosing the programs—obviously, government looks at the policy—but they would have a choice in who the service providers are in different areas of those programs.

**Senator SIEWERT:** So you are just saying that they get a choice of who they get to deliver their services, rather than the services and the approach that they particularly want to take? I would argue that just choosing who your service provider is is not giving you power over decision making.

**Mr Gleeson:** No. Essentially, what I am saying here is that there are a number of cases where there are functions which are mandated—for example, community safety which, obviously, will be provided by government. But there may be others which are provided at the local level which could be chosen by the particular community. A quick example is that there is a range of services provided through local government organisations. We have infrastructure development where some communities have their own batching plant. They can actually do the contract work themselves.

**Senator SIEWERT:** Okay. I understand that point. I am thinking of the bigger picture in some other areas of decision making. So, the community decides what level and what form: more control over education, more control over local schools and how they operate; and alcohol controls, with a minimum but much better—allowing communities to make those decisions over their health services. Do you see that you can do that level of decision making?

**Mr Gleeson:** I think—

**Ms Carroll:** Perhaps if I could just interrupt there? Just to build on what Mr Gleeson said around the Empowered Communities: that is part of what the Empowered Communities design is about, actually to see how far you can go, what is actually possible and thinking about how much it can go into schools, how much it can go into housing and how much can it go into all the different components, rather than just very small pockets of items that communities might have control over. I just wanted to reinforce that point from Mr Gleeson.

**Senator SIEWERT:** Okay. I know we are going to run out of time and as much as I would like to explore this further, I am sure we will into the future. I do have some specific questions around Closing the Gap. Can we go very quickly to justice targets? As you know there is very strong support for including justice targets in the strategy. Where are we in developing inclusion of those justice targets?

**Ms Edwards:** As you know, Senator, we have talked on various occasions about the work that has been done, particularly through the ministerial council of attorneys-general. As you say, there is a lot of public debate about these issues. I think it is clear that the government has put a high priority on safe communities, which obviously have an impact on justice—given that contact with the justice system is often associated with an element of dysfunction or violence in the community. In that way it is a priority being pursued. There is no current process to develop a justice target, however.

**Senator SIEWERT:** Has that been discussed under the approach the new government is taking?

**Ms Edwards:** It is early days and the government is still developing responses to those issues.

**Ms Carroll:** We are still in the process of providing advice and talking to the new government about those issues.

**Senator SIEWERT:** As Mr Gleeson just articulated, the remote service delivery commitment finishes next year. What process has been put in place to continue it? What is the new process?

**Ms Carroll:** The normal budget process for programs that are finishing applies. The national partnership finishes, as you know, at the end of this financial year. So that would be part of the government's normal budget process, for decision by the new government.

**Senator SIEWERT:** I presume it is an issue you are working on now?

**Ms Carroll:** Definitely.

**Senator SIEWERT:** What consultation process are you undertaking—or review process?

**Ms Carroll:** At the moment, a lot of the work we are doing is internal to government, but there are also some—

**Ms Edwards:** There is an RSD evaluation underway.

**Senator SMITH:** I want to move to the issue of the National Partnership Agreement on Indigenous Early Childhood Development, which I understand will expire in June of next year. That is the end of a six-year program.

**Ms Edwards:** Detailed questions on this should be directed to the Department of Education, but I do have some limited material.

**Senator SMITH:** My questions are at a relatively high level. Anything you can provide me with will be appreciated. I can follow through with the Department of Education later. If I understand it correctly, the national partnership agreement committed to 38 children and family centres to provide a mix of child care, family support services et cetera across remote areas. I think \$547 million was allocated to that program. Is that understanding correct?

**Ms Hosking:** PM&C has taken responsibility for the National Partnership Agreement on Indigenous Early Childhood Development in relation to element 1, covering the children and family centres. Element 2 and element 3, which relate to maternal and child health and reproductive health, have stayed with the Department of Health. Under the national partnership, the element that relates to the children and family centres provides \$292.62 million to state and territory governments to establish 38 children and family centres across Australia by June 2014.

**Senator SMITH:** How many have been established to date?

**Ms Hosking:** We currently have 23 of the 38 centres constructed. A further eight centres are expected to be completed by the end of 2013, with the remaining centres to be completed by 30 June 2014. A number of the centres that are still under construction are providing interim services from different premises.

**Senator SMITH:** Are there any planned centres that will not be built by June 2014?

**Ms Hosking:** The advice we have from all the states and territories is that they will all be constructed by 30 June.

**Senator SMITH:** When I have had a cursory look at the sites, it looks as though 15 of the 38—so just under half—are being built in urban areas. Can you provide an explanation or justification for that?

**Ms Hosking:** This national partnership was never intended to focus only on remote services. It was a partnership that was intended to support Indigenous children and their families in a range of settings. At the start of the national partnership, there were negotiations with each of the states and territories about the appropriate location. As I understand it, there was a process by which the current locations were determined—and they do range across urban, regional and remote settings. The majority are in remote.

**Senator SMITH:** Just on that point: Ms Hosking, could you outline for me the decision making as it related to the Commonwealth engagement with states and territories?

**Ms Hosking:** This is going back to the early days of the national partnership, but as I understand it there were negotiations between the Commonwealth, which would have been the Department of Employment, Education and Workplace Relations, and each relevant state. There was a steering committee established under the Working Group on Indigenous Reform, which looked at this issue and obviously there were bilateral negotiations with each of the states in terms of identifying appropriate locations that would best support Indigenous people.

**Senator SMITH:** So am I correct in saying that the Commonwealth did its own research, its own due diligence and developed its own view about where the best locations would be

and the states and territories developed their own understanding and then they came together and negotiated it?

**Ms Hosking:** I do not think it was two such separate processes as you are describing. I think it was more done in combination. Obviously this is going back beyond the Department of the Prime Minister and Cabinet but my understanding is that there would have been a more shared process that relied to a fairly significant degree on the advice coming from the state and territory governments about where the need was in their own jurisdictions.

**Senator SMITH:** So who made the final decision? How did the final decision-making process work? Who had the final sign off on the sites?

**Ms Hosking:** I think we will have to take that one on notice to go back to the detail. My understanding is there would have been an agreement between the relevant ministers, but I think we need to confirm that given the passage of time and the machinery-of-government changes.

**Ms Carroll:** What normally happens in national partnership agreements is that a final proposal would be put from the states for the Commonwealth minister at the time for agreement, so effectively because it is a Commonwealth-state agreement there is agreement between the state government and the Commonwealth government at the time. Broadly, that would be the Commonwealth minister at the time with the relevant state or territory minister at the time.

**Senator SMITH:** So the state sends to the Commonwealth its preferred locations, the Commonwealth looks at that and says, 'Yes, we agree,' or, 'No, we do not agree, and this is our final list for you to sign'; is that right?

**Ms Carroll:** I think as Ms Hosking said, there would be a lot of negotiation going on both at the officials level before it got to ministers and then the final process would be that a final set of locations would be provided for agreement.

**Senator SMITH:** I appreciate that. I would be interested in knowing—and you can take this on notice—how the final list was different from the original list that was provided to the Commonwealth by each state and territory.

**Ms Carroll:** We will see if that is possible to get. We will see what is possible.

**Senator SMITH:** And in addition to that where the final decision was actually made—was it a ministerial decision, was it a department decision et cetera. This is a six-year program with 38 planned to be built and we still have eight that have not yet been completed. What is the reason for the delay? We are talking about family centres, child-care services et cetera. Why the delay over six years?

**Ms Hosking:** My understanding is that there are a range of different approaches that have been taken in the different jurisdictions and that the key reasons for the length of time in finalising construction would be a combination of the consultation with the relevant communities—

**Senator SMITH:** If we look at the eight where there is a delay, can you identify which jurisdictions they fall into? I am particularly interested to know whether the eight are in one jurisdiction or if they are spread evenly?

**Ms Hosking:** Five of the centres that have not yet been constructed are in the Northern Territory. Two of the other ones are in WA and one is in New South Wales.

**Senator SMITH:** What is the reason for the delay? Can you tell us what you know but also take it on notice.

**Ms Hosking:** I can provide more details, but essentially it is a combination of a complex consultation process for the communities about the nature of the centres.

**Senator SMITH:** Do some communities think that a childcare service or a family service is not important?

**Ms Hosking:** I do not think that is the case.

**Senator SMITH:** These negotiations on the rollout of a childcare centre and a family services centre in the Northern Territory have been taking six years.

**Ms Hosking:** There is a complex combination of reasons. Some issues surrounded land tenure in the Northern Territory that have been quite complex and have taken some time to resolve. There have been interim services provided in communities in the meantime, but we have been concerned particularly in the Northern Territory about the delays and have been in regular contact with the Northern Territory government trying to help them to get the centres resolved within the life of the partnership.

**Senator SMITH:** On notice, Ms Hosking, could you provide some explanation for the delay around those eight sites? Could you also detail for me what community consultations have taken place across those areas?

**Senator McLUCAS:** I want to go to the broader framework around the Closing the Gap commitment. Minister, I understand the government is committed to the Closing the Gap framework.

**Senator Scullion:** You are correct in that understanding, Senator.

**Senator McLUCAS:** Is the government committed to all the Close the Gap targets, including the new early childhood target?

**Senator Scullion:** Indeed, we are.

**Senator McLUCAS:** Is the government committed to maintaining the funding under each of those targets?

**Senator Scullion:** As I said, we are committed to those targets. The reason for my hesitation is that I do not wish to mislead you. The funding under Closing the Gap covers a considerable number of programs, and I would not want to mislead you. Generally, we support the targets and I am not aware at this stage of any particular changes in the funding, but I will check on that. I will only correct the record if it needs to be corrected. My understanding at the moment is that we will not be reducing or changing funding in that regard.

**Senator McLUCAS:** When you do check that, can you also check the amount of money that will be allocated by your government to achieving those targets in the years ahead?

**Ms Carroll:** We can take that on notice, Senator.

**Senator McLUCAS:** Will the Prime Minister continue to report annually on progress toward Closing the Gap between Aboriginal and Torres Strait Islander and non-Indigenous Australians in the parliament?

**Ms Carroll:** We are working at the moment on advice to the Prime Minister around any reporting etcetera that the Prime Minister might want to do into the future. None of that is established and set yet.

**Senator McLUCAS:** How many reports to the parliament have we had on Closing the Gap?

**Ms Edwards:** Five, and the reports are given on the anniversary of the giving of the apology.

**Senator McLUCAS:** So, you are providing advice to the Prime Minister on whether they will continue.

**Ms Carroll:** On any process going forward.

**Senator McLUCAS:** Has the Prime Minister requested that brief?

**Ms Carroll:** No, it is just a normal part of incoming government to be looking at all the key issues or items that have been occurring and whether they should continue in the same or different form at the same or different time.

**Senator McLUCAS:** We will revisit this area in February.

**Senator PERIS:** I wanted to congratulate you on your appointment as the Minister for Indigenous Affairs.

**Senator Scullion:** Thank you.

**Senator PERIS:** My questions are around the alcohol management plans. How many are there? Are they ready to be signed off by the minister?

**Senator Scullion:** I will probably be corrected, but I understand that there are 22 that are in some sort of a format, and some are ready to be signed off or ready for me to consider. I have not considered them at the moment, but I am about to consider some for signing off or otherwise.

**Ms Carroll:** Can we just clarify? We are not trying to be difficult, but there are different kinds of alcohol management plans. If we are moving into specifically talking about Stronger Futures in the Northern Territory, then we might just make sure we have got the right officers at the table to answer any of those specific questions. So it is about the Stronger Futures in the Northern Territory particularly?

**Senator PERIS:** Yes.

**Senator Scullion:** When will that be on the program?

**Ms Carroll:** We can do that now.

**Ms Edwards:** Our understanding is that there are 23 currently being developed through the team in the Northern Territory under the Stronger Futures national partnership agreement. There are also other discussions going on in various communities, and none of those have been formally put to the minister as yet for endorsement, but they are at various stages of development and many are well advanced.

**Senator PERIS:** Are you able to tell me where they are?

**Ms Edwards:** I can take that on notice.

**Senator PERIS:** Will the minister sign off on the alcohol management plans that meet the minimum standards?

**Ms Edwards:** Legislative framework provides for the minister to approve them, and, yes, they must meet the minimum standards that are in place—that is a legislative arrangement.

**Senator PERIS:** Have there been any changes to the alcohol management plans since 7 September.

**Ms Edwards:** Since September?

**Senator PERIS:** Yes. Since the change of government.

**Ms Edwards:** I am not aware of any overarching, across-the-board changes, but they are in continual development with communities, so there would have been ongoing processes in various places and changing and revising since, and also before, September.

**Senator PERIS:** Will funding be committed to these plans? If so, how much?

**Ms Edwards:** Funding is committed to the Tackling Alcohol Abuse Implementation Plan under the Stronger Futures national partnership agreement, and those amounts remain in place. I can provide you with those details, but it is the same as has been provided previously.

**Senator PERIS:** Will assessors be required to enter all licensed premises in Alice Springs, as per the agreement, and how will this be monitored and enforced?

**Ms Edwards:** Just to go back one step: there is a process in the Stronger Futures act that allows the Commonwealth to request the Northern Territory to make assessments of specific premises. There is no current request for assessment at this stage.

**Senator PERIS:** Will the government take action in response to any policy changes by state or territory governments attempting to roll back alcohol restrictions? If so, what action, and if not, why not?

**Ms Edwards:** I can tell you that the department closely monitors actions across Australia, but the issue of policy of government action is a matter for the government.

**Senator PERIS:** Will any full-strength alcohol be allowed back into any of these remote communities?

**Ms Edwards:** Again, to go back a step, there are alcohol restrictions in place across various areas in the Northern Territory under the Stronger Futures act, and there has been no recent change or any anticipated change to those that I am aware of. There is a process to change restrictions, but again I am not aware of any current process to consider such a change.

**Senator SIEWERT:** Can I ask about pre-school attendance here?

**Ms Carroll:** Under Stronger Futures?

**Senator SIEWERT:** Yes. We are measuring enrolments in pre-school—are we measuring attendance?

**Ms Hosking:** I think this is probably not so much a Stronger Futures question. It is in relation to the Closing the Gap target. The main mechanism that we work with in states and territories to collect information on enrolment and attendance is actually through the National Partnership on Early Childhood Education, which is managed by the education department.

We could just let you know in general terms. As part of the extension of that national partnership there is a process of looking at better measurement of attendance, which is now being collected through the ABS National Early Childhood Education and Care Collection, so that we can have a much better picture of that. That is part of the mainstream national partnership.

**Senator SIEWERT:** At this stage, basically, we are not uniformly collecting the attendance data?

**Ms Hosking:** Probably the education people could give you more information. The new ABS National Early Childhood Education and Care Collection is taking a uniform approach to collecting attendance data. They will be able to provide you with some more information on that. The question is more how that then sits in with targets and so forth within the national partnership.

**Senator SIEWERT:** Thank you.

**CHAIR:** Thank you. That concludes the time for this section.

**Senator Scullion:** Chair, I wonder if I could provide some information to Senator McLucas regarding some of her earlier questions. The charter letters are not discoverable because they are cabinet in confidence. In terms of the general responsibilities, as Minister for Indigenous Affairs I have lead on all matters. Clearly the Prime Minister has indicated that he is keeping a very close interest in this area as a major priority. Mr Tudge is his parliamentary secretary and will be directing his work program in regard to his priorities. A suite of changes were provided to the committee about three days ago—I am not sure whether you received them—and I asked that you be provided with a summary of effective policies and programs. All the Indigenous programs that have transferred to Prime Minister and Cabinet have already been received by the secretariat. If you do not have them I am happy to provide them again.

**CHAIR:** Thank you, Minister.

#### **Proceedings suspended from 10:01 to 10:14**

**CHAIR:** I will reopen the proceedings of this committee. Minister, did you wish to make a further statement?

**Senator Scullion:** I thought we should start a convention that as soon as material comes to hand we will provide it to the committee. This is such an opportunity. I indicated that I would take on notice the Closing the Gap targets just for clarification. So, in clarification, we are committed to the existing targets and we are committed to examining those in development, which are: disability, justice and early childhood. I think there was another question on notice that Mr Eccles can respond to.

**Mr Eccles:** Senator Smith was asking about the Joint Select Committee on Constitutional Recognition. Apparently a motion to establish the committee was agreed to in the House yesterday and the intention of the government is to establish the committee as soon as possible.

**Ms Carroll:** Chair, we have one other matter. I will ask Mr Shevlin to clarify.

**Mr Shevlin:** Senator McLucas asked a question about the new advisory committee, the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Advisory Group,

which is co-chaired by Professor Pat Dudgeon and Dr Tom Calma. That has transferred to the Department of the Prime Minister and Cabinet.

**CHAIR:** We now move on to health issues. I welcome Samantha Palmer, the First Assistant Secretary, Indigenous Health Service Delivery Division, Department of Health, and officers to join the officers of the Department of the Prime Minister and Cabinet for this session on health issues. Do you wish to make an opening statement?

**Ms Palmer:** No, thank you.

**Senator McLUCAS:** Just going back to the separation of responsibilities, you would be aware, Ms Palmer, that we talked about this in Health estimates on Wednesday. For the record, can you explain to the committee what elements of Health have transferred to Prime Minister and Cabinet? What elements are remaining with the Department of Health?

**Mr Butt:** We might ask Prime Minister and Cabinet to begin the answer to that question and then we will tell you what remains with Health.

**Ms Hosking:** I can outline first the health policies and programs that have transferred to PM&C. These include strategic policy functions for Indigenous health, including the Aboriginal and Torres Strait Islander Health Performance Framework; the life expectancy modelling project and health expenditure project; the social and emotional wellbeing program including the Bringing Them Home and expanding Link-Up services for the Stolen Generation. As Mr Shevlin clarified, that includes the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Advisory Group; it includes the renewal of the Aboriginal and Torres Strait Islander social and emotional wellbeing framework; from the Stronger Futures National Partnership with the Northern Territory, it includes the Mobile Outreach Service Plus program; the substance misuse service delivery grants for Indigenous drug and alcohol treatment services; the alcohol and other drug workers funded through the Stronger Futures program; the petrol sniffing prevention program; the National Sorry Day Committee; and the National Stolen Generations Alliance.

**Ms Palmer:** The activity remaining with the Health Department includes Indigenous primary health care services; child and maternal health programs for Indigenous Australians; further Aboriginal and Torres Strait Islander chronic disease flexible fund programs; Stronger Futures in the Northern Territory health apart from those MOS Plus that have moved to PM&C; Indigenous early childhood development, antenatal and reproductive health program; improving ear health services for Indigenous children; improving trachoma for Indigenous Australians; the accommodation related to renal services for Aboriginal and Torres Strait Islander peoples in the Northern Territory; the Torres Strait health protection strategy for Saibai Island clinic; renal dialysis services in Central Australia; Stronger Futures in the Northern Territory oral health services; Stronger Futures in the Northern Territory hearing health services; and the National Aboriginal and Torres Strait Islander health plan.

**Senator McLUCAS:** So the health plan stays with Health.

**Ms Palmer:** Yes.

**Senator McLUCAS:** Where within government then would be the responsibility for implementing the Closing the Gap initiatives in the area of Aboriginal and Torres Strait Islander health?

**Ms Palmer:** That sits under the Aboriginal and Torres Strait Islander chronic disease fund, so that sits with Health.

**Senator McLUCAS:** Minister, your responsibility is health policy—

**Senator Scullion:** That is correct.

**Senator McLUCAS:** and Minister Nash will have responsibility for health service delivery—am I right? I am not trying to be smart, I just really want to understand this.

**Ms Hosking:** The dividing line to some extent has been that the Department of Health has continued to take responsibility for primary healthcare services, including where they are Indigenous specific, and also programs that are particularly targeted at specific diseases and so forth. The programs that have transferred into PM&C have been largely more in relation to the broader social determinants of health around socio and emotional wellbeing, petrol sniffing et cetera, but also that strategic policy function so we can link up the work that is happening in PM&C with the work in Department of Health, and we will continue to work very closely to make sure that that works in a very coordinated and concrete way. The advantage of this is that it then allows us to draw on the other social determinants of health beyond the specific health programs.

**Senator McLUCAS:** You almost pre-empted next question. You said that you worked closely together. Are you then going to any formal structures that ensure that that work will be very close? If you split the policy and the delivery, if you do not really keep close, frankly, you do not get the best outcomes.

**Ms Carroll:** Certainly, Senator, there is a range of mechanisms in place. The first mechanism is actually a secretaries' committee on Indigenous affairs, which is chaired by the Secretary of Prime Minister and Cabinet, Dr Watt. It includes the secretary of health. Underneath that secretaries' committee, the deputy secretaries are meeting around specific topics. They meet regularly with the Department of Health at both a first assistant secretary and deputy secretary level, but also with, for example in my case, the Department of Education. Mr Eccles meets regularly with Attorney-General's, so there is very close connection right through, and I know that Ms Hosking and Ms Palmer regularly talk to each other and there is very close connection. As I understand the risk that you are identifying, the key will be for us to maintain that very close connection over time and we certainly will be ensuring that we have got the right structures in place to do that.

**Senator McLUCAS:** As to funding arrangements, if policy is being developed in PM&C and service delivery is happening in Health, who is going to pay?

**Senator Scullion:** Perhaps I can assist, Senator. I am also responsible for the health performance network and for the health expenditure analysis. The performance network keeps us in touch with the outcomes, as you identify are a very important area, and of course the health expenditure analysis gives us oversight into ensuring that the programs are being delivered efficiently.

**Senator McLUCAS:** My question still stands.

**Ms Carroll:** I think the other key component is that obviously the Department of Health, more broadly, will be doing all the policy work around primary healthcare services and all of those because of the strong link to mainstream services. So really, Prime Minister and Cabinet

has that strategic policy which is about linking up all the different component parts, but there is a key part of policy that is being done by the Department of Health.

**Ms Palmer:** Senator, for the list of the programs I read out we have all the funds associated with those programs in the Department of Health.

**Senator McLUCAS:** My concern is that, if PM&C decide we need a new program and we have a committee and we decide that, who is going to pay for that new program? Sorry, that is probably a bit rhetorical—and I think I have put my issue on the record.

**Senator SIEWERT:** We did not explore yet what we are doing and where we are up to with the health agreement—the question I asked previously—the national partnership and who signed up.

**Ms Palmer:** Certainly, Senator. The national partnership agreement was offered in very early August. The Queensland government signed up to it but they did not comply with the requirement to agree funding prior to signing, so their signing has meant that that agreement has not come into effect because they did not undertake the process—

**Senator SIEWERT:** Basically, it is an in principle agreement—is that right?

**Ms Palmer:** It cannot come into effect because the precondition for it was not achieved in that they had to actually agree the funding.

**Senator SIEWERT:** Oh, all right.

**Ms Palmer:** The objective of the National Partnership Agreement was for commitments from the states as to how much they would spend on Indigenous health over time. That commitment and agreement did not occur before the signing, so the signing by Queensland has not come into effect. No other states have formally responded at this time.

**Senator SIEWERT:** And what was the time line for them? Did you say, 'Could you please get back to us by August?'—I think you said? Was that the date?

**Ms Palmer:** It was offered in early August and I do not believe that a time frame was put on a request for reply. No—no time frame was put on the request for reply.

**Senator SIEWERT:** Why not?

**Ms Palmer:** The agreement is offered by the Prime Minister.

**Senator SIEWERT:** So, can I ask PM&C why? Surely, we need to agree this; we need to get this signed and have the next phase ready to be implemented as soon as possible?

**Ms Carroll:** Senator, I am not trying to be difficult but that is in the other part of Prime Minister and Cabinet, and we would need to take that on notice, because we do not have those officers here today. They were here on Monday. I am not trying to be difficult, but we—

**Senator SIEWERT:** I understand. I did not think you were! But I suppose it does not stop me from being frustrated. Could you take that on notice? Where are the negotiations with the states up to? Do we have any that are close to commitment?

**Ms Palmer:** My understanding is that state officials have advised they were waiting for advice from the new government as to their intention with the NPA, and that it is under government consideration.

**Senator SIEWERT:** So therefore, can I go back to the minister and to PM&C and ask if it is the government's intention to proceed with the plan?

**Ms Carroll:** I will just need to take that on notice. We might be able to get you an answer shortly; but I would not want to say one way or the other because I do not have a briefing on it here.

**Senator SIEWERT:** Okay. I know you are not trying to be difficult but it seems to me a fairly simple question—is this government committed to the next phase of the national Indigenous health plan? It is—

**Ms Carroll:** As far as I understand it is, but I will just confirm that for you.

**Senator Scullion:** We will try to get an answer to you today.

**Senator SIEWERT:** So you do not know?

**Senator Scullion:** No. I am not prepared to put something on the record that might not be right. We have already had to correct the record a couple of times because of my attempts to answer questions where I was not exactly sure and that is the case now. But we will take it on notice and we will get back to you as soon as we can.

**Senator SIEWERT:** Minister, you know I do not usually try and play games on these issues, but this one is pretty important—and you really should know—is this government committed to the national Indigenous health plan?

**Senator Scullion:** Well, the short answer is 'yes'. If there is any difference to that I will let you know on notice.

**Ms Palmer:** Senator, if you do not mind me clarifying: I think it is worth pointing out that the health plan is very different to the NPA on Closing the Gap in Indigenous Health. They are two very different things.

**Senator SIEWERT:** Yes, I understand that.

**Ms Palmer:** I am sorry, but your question keeps talking about the 'health plan'. To be clear: you are asking about the NPA?

**Senator SIEWERT:** Yes.

**Ms Palmer:** Thank you.

**Senator SIEWERT:** Yes, I do mix up the two and I do phase in and out with my language, and I apologise. But you will get back to me on that?

**Senator Scullion:** If my answer needs some clarification or addition.

**Senator SIEWERT:** Thank you. In that case, to go back to the issues around the states, that is why you have not been following the states up?

**Ms Palmer:** That is correct.

**Senator SIEWERT:** Could we come back to that later this afternoon to clarify, if possible? I know it is not on the agenda, but that would be good.

I want to go on to the specific areas now—to renal health. Can we have an update please on spending of the \$13 million that is now \$10 million?

**Ms Palmer:** At the last estimates I advised that we were waiting on Finance advice as to the return of that \$10 million and its availability this financial year, and that has been confirmed, and that funding is available for consideration by this government—available to spend in full.

**Senator SIEWERT:** The \$10 million, not the \$13 million?

**Ms Palmer:** Yes, the \$10 million, because the \$3 million from the very first year was returned to consolidated revenue. However, we did at the last estimates talk about a number of activities, and some of those activities were completed between last June and now and funded from separate Indigenous health funds. So they have not been taken out of the \$10 million.

**Senator SIEWERT:** So the whole of the \$10 million is there.

**Ms Palmer:** Correct.

**Senator SIEWERT:** Not that I want to knock off the other things, but those things are still funded, and the other \$10 million is still there?

**Ms Palmer:** Correct.

**Senator SIEWERT:** What are the plans for that \$10 million?

**Ms Palmer:** That \$10 million is under consideration of government. I do not have any plans I can talk about today.

**Senator SIEWERT:** Okay, so just to be sure I have my interpretation right: that means that you are essentially going back to the drawing board about how to spend that \$10 million?

**Ms Palmer:** We have provided advice to government and we will wait for their advice on what to do next. But I do have some other updates that I can give you that have followed since last June. You will recall that last June the previous minister had written to the WA health minister and also the South Australian health minister.

**Senator SIEWERT:** Yes.

**Ms Palmer:** So, I can report that on 8 August Minister Hames from WA responded to the previous minister's request for support in the form of operational costs for proposed dialysis services in Kiwirrkurra, Warmun and Warburton.

**Senator SIEWERT:** Yes.

**Ms Palmer:** Minister Hames responded that those areas were covered under the tristate agreement that was signed between the three governments—WA, South Australia and the Northern Territory—in 2010 and that they fell within the Northern Territory geographical catchment area. So, in effect, those three projects were not supported by WA because of that tristate agreement. The South Australian minister wrote back on 27 June, and you will recall that the previous minister wrote with respect to seeking a commitment for working with the department to facilitate a workshop around discussing renal dialysis infrastructure and service delivery for patients in the APY lands. Minister Snelling responded that he did not support a workshop being held with stakeholders. He also indicated that there were significant infrastructure issues associated with permanent renal dialysis services being placed around the APY lands. In particular, he highlighted electricity supply and water supply issues and also significant workforce issues associated with that remote part of Australia. But he did suggest that a meeting be held between officials.

We held that meeting in July to discuss dialysis infrastructure and service delivery, and South Australia Health at that time expressed a preference to continue with the mobile bus service rather than setting up permanent dialysis activities. Following that, the South Australian officials put in a request for \$9 million for a range of infrastructure supports for

that mobile bus service—things like sealing of the car parks where the bus would be parked, covers for the bus, accommodation costs for running the bus et cetera. But that request did not proceed, because it was not in relation to expanding dialysis services; it was around supporting the bus.

**Senator SIEWERT:** So, we are back to the drawing board with both WA and SA. Is that correct?

**Ms Palmer:** Correct. We were not successful in getting any further.

**Senator SIEWERT:** That tristate agreement in 2010: am I correct in my understanding that that relates back to that dispute about a WA patient not being able to go into Central Australia?

**Ms Palmer:** It is about cross-patient flows and making sure that funding flows with those patients. But also I think it related to the Central Australian renal study, which recommended a hub-and-spoke model for patients to actually be seen in Tennant Creek and Alice Springs and provided a mechanism for NT to get funding back from those states.

**Senator SIEWERT:** So, the WA government's position—they did pay some at the time, from recollection.

**Ms Palmer:** I do not have any information about cross-patient flows and expenditures between the states, but I do have some colleagues here from acute care, and there are some HHF projects that relate to renal dialysis, and some of those are WA projects. If you would like them to talk to you about those they have that information here today.

**Senator SIEWERT:** That would be appreciated. The bottom line is that we have patients who are not getting support, because states are still playing—shoving them between the states and the Territory and the Commonwealth. That is the bottom line.

**Ms Anderson:** If I understand Ms Palmer's introduction, you were discussing cross-border flows of patients. These are fairly routinely undertaken. Obviously patients are not necessarily aware that they are crossing a border when they seek access to care. They are part of the warp and weft of the funding arrangements for delivery of public hospital services across Australia. They are typically the subject of inter-jurisdictional agreements and are usually relatively unproblematic. They use the pricing schedule that has been established by the Independent Hospital Pricing Authority, in the main, unless they choose to establish a different setting for their prices. It is normally a matter of fairly straightforward accounting to firstly count the number of patients who have travelled and what sorts of services they are accessing and then identify a dollar value or cost for those services. And then the remittance happens between jurisdictions. So these patients accessing dialysis would not be in any way distinguishable, except for the fact of that care, from any other patient crossing a border to access care.

**Senator SIEWERT:** I have two questions. One is: this is about actually providing more in-community dialysis; that is what you were pursuing with the state, wasn't it?

**Ms Palmer:** We were, because the recommendation for the hub-and-spoke model also flowed through to recognising that there was not enough accommodation for people to come in, and that is why the Commonwealth put the money up. In the absence of the NT accepting that money, as I think we discussed previously, we were looking for other options to use that money effectively.

**Senator SIEWERT:** Chair, I am wondering if I can ask the departments and the minister whether we are able to get a briefing on this? It is going to take us quite a long time to unpick this so that we can get our heads around what Ms Anderson was saying. This issue has been going around and around for quite a while. I am wondering if we could get a briefing on how all this is working, because I really do want to see how we can make some progress.

**Senator Scullion:** Perhaps I can assist. In the future the matters being dealt with by the Minister for Health, which this is, will be dealt with and we are trying to facilitate the process, because we know this is the first time around. So I will ask the Minister for Health if he can provide an update in terms of a brief and provide that to you on notice.

**Senator SIEWERT:** That would be good.

**Senator Scullion:** So, this particular question will be dealt with in that other place. But on this occasion I will ask the minister to provide you with an update and a brief on those matters. I understand that he is considering them at the moment.

**Senator SIEWERT:** That would be appreciated, because I do think there is a level of complexity here that we are not going to get to the bottom of today. And, quite frankly, I am sick of coming here—and this is no reflection on you—and getting little snapshots and not seeing any progress.

**Senator MOORE:** Regarding the renal stuff, perhaps I could just clarify: we would like a written brief, getting the amalgamated information that we have been receiving over at least five estimates, and then we would like a personal briefing to the committee. So it is a double whammy: it is not just a written brief we are seeking; it is a two-part brief. And that is common practice in this committee—or it was common practice.

**Senator Scullion:** I can seek that briefing from the minister. And, as I said, we will try between now and the next set of estimates to clarify with the committee. It is unfortunate, with the change in the committees—I met with the previous committee and gave them a brief, and I have tried my best to provide some of those interim issues. Hopefully they will evolve today and we can ensure that there will be some more clarity about where we would be asking these questions in the future.

**Senator MOORE:** And because the committee is kind of augmented and is now going back through F&PA, perhaps you can come back through the secretariat of F&PA and then through that secretariat other people are interested—it is a core group.

**Senator SIEWERT:** On petrol sniffing: could we get a briefing about where we are up to in Darwin, with the tank, or an update?

**Ms Hosking:** We are in the final stage of negotiations at the moment with the relevant providers to finalise contracts in that matter with a view to having the forecast completion date of the facility in the second half of 2014.

**Senator MOORE:** That is later than we thought originally, is it not?

**Ms Hosking:** Yes.

**Senator MOORE:** How much later?

**Ms Hosking:** I am not sure of the delay since we last reported to you, but it is a delay. The delay largely reflects the complex contract negotiations that we had to go through and the fact that the project is going to be delivered through a number of related contracts with fuel

producers, storage providers and construction contractors. We actually have multiple contracts that need to be in place before we can sign our contract with Vopak, the provider of the bulk storage facility. They have to finalise their contract arrangements with Shell. We are now actually in the very final stages of these negotiations and the contract should be finalised very quickly from now.

**Ms Carroll:** If I could just clarify, we got the funding for that through the process, and it had been agreed and signed off by the minister. So it is the contract negotiations that are being finalised at the moment. But we recognise that it is much later than you were probably last told.

**Senator MOORE:** We had a very similar response last estimates. I think it was similar except for the last sentence. Who is doing these negotiations?

**Ms Hosking:** It is PM&C.

**Senator MOORE:** Who in PM&C?

**Ms Hosking:** Mr Shevlin.

**Senator MOORE:** That is hard, Mr Shevlin—you got the pass straightaway! So, Mr Shevlin, you are doing these negotiations?

**Mr Shevlin:** I am, yes.

**Senator MOORE:** Perhaps you can tell us why these are so complex. We have been told consistently that it is the complexity of the negotiations. I do not want to take too much of your time, but surely PM&C is well versed in complex negotiations.

**Mr Shevlin:** It is complex because the parties that we are dealing with are not used to dealing with government departments and certainly this work has transitioned from the Department of Health. It is not our normal business in dealing with fuel producers and fuel distributors and terminal operators, so they have approached the Commonwealth negotiations as they would a normal commercial transaction. So there has been a level of understanding in terms of why particular clauses are in contracts. That has been a protracted process. As Ms Hosking referred to, there are related contracts, and because of the slippage we have had to renegotiate our contract with Shell Australia that was in place, but it had a requirement in our contract with Vopak that the facility had to be available by 31 December this year or else our contract with Shell Australia would terminate. So we have had to work in parallel with Shell to ensure their continuing engagement—

**Senator MOORE:** And they are okay?

**Mr Shevlin:** They are all okay. And we have actually worked as closely as we can with all parties. There is strong commitment by all of them to do it. It is just that we are unfamiliar bedfellows, and that has taken a bit of work on all sides.

**Senator MOORE:** So, the second half of 2014?

**Ms Hosking:** That is right. And, having said that, I appreciate that there have been delays reported to this committee before, but we are expecting the contract to be signed in the next week or so.

**Senator MOORE:** Well, that is the most positive hope we have had for a long time—next week or so! So, basically I will be generous, Ms Hosking, and say that before Christmas we should have that signed.

**Ms Hosking:** I feel very confident saying that the contracts will be signed by then.

**Senator MOORE:** As soon as that happens, Minister, can we be told about that one? We do not normally get advice about signed contracts when it happens, but perhaps with this one in particular we could get some advice that the ink meets the page. That would be great.

**Senator Scullion:** Yes.

**Senator SIEWERT:** I have a specific question about Marla Roadhouse, then I would like to ask some general questions. I understand Marla Roadhouse is no longer selling low-aromatic fuel. Is that correct?

**Mr Shevlin:** Marla Roadhouse is one of the sites that we have traditionally referred to as a 'refusing' site.

**Senator SIEWERT:** They were previously selling it, weren't they?

**Ms Hosking:** Our advice is that they did provide low-aromatic fuel between 2006 and 2010.

**Senator SIEWERT:** Since then, what have you been trying to do to encourage them to restock it?

**Ms Hosking:** I understand that there have been attempts to have a series of meetings and contacts occur between the relevant provider and the then department of health, including a letter that was sent to the relevant person in July encouraging them to voluntarily comply with low-aromatic fuel. The latest update I had was that letter that was sent in July.

**Mr Shevlin:** That is the most recent engagement that we have had with them. In July, Marla indicated they would be prepared to transition to low-aromatic fuel should other sites within the Coober Pedy area also come on board. Those are discussions that we are having with the local communities. I had a staff member who visited Cooper Pedy earlier this year.

**Senator SIEWERT:** What sort of time lines and process are you putting in place? Are we starting to use the new legislative powers on that?

**Ms Hosking:** We are still in the process of providing advice and finalising guidelines for the government's consideration in relation to the use of those provisions.

**Senator SIEWERT:** When are those guidelines going to be finished?

**Ms Hosking:** We have draft guidelines, but they need to be considered in the context of the—

**Senator SIEWERT:** So you have finished them and given them to the minister?

**Ms Hosking:** We are still in the process of looking at some of the detail of those guidelines before they are finalised. They are close to being finalised. We need to take a few additional things into account.

**Senator SIEWERT:** What are they?

**Ms Hosking:** The things that I think are most important in those guidelines are the process of consultation that is required to be consistent with the act, as well as the relationship with state and territory legislation.

**Senator SIEWERT:** Have each of the states and territories got back to you about the status of their legislation?

**Ms Hosking:** My understanding is that the last formal letter on that that was provided to the states and territories was under the previous government at the time that the legislation was still being finalised. I am not sure if Mr Shevlin can talk about the responses to those letters.

**Mr Shevlin:** The previous minister wrote to his state counterparts and there was a mixture of responses to that. Generally it was broad agreement. I think Western Australia indicated they did not intend to proceed with legislation and would rely on the Commonwealth. Since that time we have briefed Minister Scullion on the development of the guidelines and the minister has started some of those consultations.

**Senator Scullion:** This matter will continue to be a part of my bilateral discussions with the jurisdictions. It is, as you would be aware, Senator, a priority of mine that they have framework legislation very similar to the volatile substances act of the Northern Territory. My view was on the public record during your support and parliament's support for the Commonwealth legislation and I am still of the view that the legislation that can be produced by the various jurisdictions would be far more useful in this regard. Those issues and others, of course, are part of my ongoing bilateral discussions.

**Senator SIEWERT:** What is the time line for your bilateral discussions, because in the meantime we are getting retailers that are not stocking and are not moving to restock?

**Senator Scullion:** I can report that in the Northern Territory, as you may be aware, there have been some significant breakthroughs with some of the serial offenders and places like Ti Tree now have Opal fuel. A number of the people have left, as you may be aware, through natural attrition—the recidivist offenders that the previous committee that was considering these matters would be well aware of. In terms of the timing of the responses from the jurisdictions, I obviously cannot provide an answer to that. But this will be a priority matter in terms of my ongoing bilateral discussions with the jurisdictions.

**Senator SIEWERT:** The problem here is that we are now a significant way down the track and they still have not moved. Unless you set a deadline, they are not going to move. We should be abandoning that process and using the legislation.

**Senator Scullion:** Where it can be demonstrated that the legislation will be of use to ensure that we get some movement in that area, I can assure you that it will be applied.

**Senator SIEWERT:** What about this issue around Cooper Pedy?

**Senator Scullion:** The issue around Cooper Pedy is that we do not wish to act until it is the last circumstance. The use of legislation and punitive action in that regard should be our last course of action. As we have heard from the officers, there are ongoing discussions about Cooper Pedy. We are hopeful that it will not require legislative action. However, if it does I can assure you that that will take place. We will not be waiting for the legislation to somehow appear in South Australia. That is not a timeframe that would be appropriate. But we believe that negotiation in other areas should take place and exhaust themselves first. If they are not successful, we will certainly use the legislation to the capacity that we can.

**Senator SIEWERT:** The problem that we have here is that this has been going on for a long time.

**Senator Scullion:** I acknowledge that.

**Senator SIEWERT:** Unless you set—and I am moving away from the states to the actual issues of the retailers—a deadline they will keep you in discussions perpetually.

**Senator Scullion:** I appreciate that. As you would be aware, there was a some seven-year timeframe in the Northern Territory. We are just now getting to the point where people understand that we are fair dinkum. Those issues in terms of the rollout in South Australia are far more recent. It is reasonable to ensure that we exhaust the processes. The assurance that I have given you is a genuine assurance. If I can see that we have exhausted all the normal processes of negotiation and they are clearly not going to move on those then we will use whatever capacity the Commonwealth has.

**Senator SIEWERT:** Okay. I do not agree with you, but I will pursue this again in February.

**Senator MOORE:** I have a question on the petrol-sniffing strategy through until 2015-15. The original funding for that was \$115.86 million over five years. I am seeking to have a reaffirmation of that funding commitment.

**Ms Carroll:** Any funding into the future is obviously always a part of broad government consideration, so I would want to say that the government is committed. But clearly there is a commitment to the issues around petrol sniffing et cetera and that will be part of the normal deliberations of government as we go through.

**Senator MOORE:** And it is currently in the out years funding in the budget.

**Ms Carroll:** Yes.

**Senator McLUCAS:** That question covers what we needed to ask. How many petrol suppliers in the Territory are—and I forget Mr Shevlin's descriptors—

**Mr Shevlin:** 'Refusing sites'.

**Senator McLUCAS:** How many refusing sites do we have?

**Ms Hosking:** In Australia?

**Senator McLUCAS:** In the Northern Territory.

**Ms Hosking:** We have six overall.

**Senator SIEWERT:** That is six who have refused, and then there is this scale where they give them time to refuse and refuse—to say no, no, no, no—

**Senator McLUCAS:** And then really refuse.

**Senator SIEWERT:** And then there is the point when it is really no.

**Ms Hosking:** My understanding is that three of the six are in the Northern Territory.

**Mr Shevlin:** That is correct.

**Senator McLUCAS:** Is there a descriptor for those who you are negotiating with at the moment who have not yet finally refused?

**Mr Shevlin:** The concern with most of the sites, particularly those in the Northern Territory, is our capacity to expand the rollout. That shows how important the development of the storage facility in Darwin is. The particular concern that we have is that, if we are having to encourage suppliers to transition to low aromatic fuel, should there be a disruption in that supply we will lose the goodwill that we have been seeking to develop. We are taking a

cautious approach and ensuring that we have the storage facility and then the capacity to ensure delivery.

**Senator SIEWERT:** Have any stopped supplying since last estimates?

**Mr Shevlin:** Not that I am aware of.

**Senator SIEWERT:** Where is Yalata up to?

**Mr Shevlin:** We are continuing in negotiations with them. That community, as you are aware, approached the department about six years about a facility. We were looking at providing a standalone facility at the old roadhouse. A contract was offered to the community in that space. For internal reasons, they did not sign that and they have come back to us over this year with an alternative proposal to site that facility within the community. We got back to them and inquired about the efficacy of that, because previously they had been opposed to it because of traffic congestion and safety concerns within the community. In September, the CEO got back to the department to say that that is the preferred approach of the community. We are continuing to work with them on the proposal. Those discussions are ongoing. But they have been delayed very much by the position that had been adopted by the community.

**Senator SIEWERT:** So you are not adverse to putting it in the community if that is the preferred approach?

**Mr Shevlin:** And if we can be satisfied that the risks of that are manageable. We do not wish to put the community at risk.

**CHAIR:** Thanks very much.

**Senator McLUCAS:** I wanted to ask some questions in the general opening section on the Prime Minister's Indigenous Advisory Council. Have nominations closed for the advisory council?

**Senator Scullion:** Yes.

**Senator McLUCAS:** How many applications were received?

**Ms Carroll:** Close to 300 applications.

**Senator McLUCAS:** How many members have been selected from the application process?

**Ms Carroll:** The advisory council is still be finalised. We anticipate that it will be announced very shortly. In addition to the expressions of interest that were sought, other information was provided to the government, both in the incoming government brief and through regular briefing, about possible candidates for the advisory council. The final selection of that advisory council is going through the process at the moment.

**Senator McLUCAS:** So there were approximately 300 applications and then there will potentially be members selected from people who did not apply. Is that what I am hearing?

**Ms Carroll:** To be precise, there were 230 applications. All I am saying is that the department had also provided advice, as would normally be the case, about the advisory council.

**Senator McLUCAS:** And potential participants.

**Ms Carroll:** And potential participants, yes.

**Senator McLUCAS:** How many members will the council have?

**Ms Carroll:** That will be a decision for the government.

**Senator McLUCAS:** Have members been appointed yet?

**Ms Carroll:** As I understand it, those processes are all still in train.

**Indigenous Business Australia**

[10:57]

**CHAIR:** I welcome Mr Chris Fry, the chief executive officer of Indigenous Business Australia; Mr Leo Bator, the chief operating officer; and Mr Satish Kumar, chief financial officer. I have some questions about the Tjapukai Aboriginal Cultural. It is owned by Indigenous Business Australia. Last year, it was revealed through estimates that there was a plan to invest \$14 million in upgrading it, despite published figures revealing that the value of the asset was only \$1.4 million. The IBA board agreed to the funding, against the advice, I understand, of the administration. How much has already been spent on the planned \$14 million renovation to date?

**Mr Fry:** This is one of our assets that is currently 100 per cent owned by IBA. The board, in 2008, took over the asset because some of the other shareholders were unable to contribute capital ahead of the impact of the GFC. At that time, the asset required considerable upgrading. The board, a little over two years ago now, made the decision that the commercial viability of the operations required a capital upgrade. That upgrade is \$12 million rather than the \$14 million that you noted. At this stage, the board has asked management to investigate the costing. We have got a very firm process in place. We have gone to tender for the redevelopment. We are in the process of what they call value engineering to determine value for the tenders that we have received.

**CHAIR:** How much of the \$12 million has been expended thus far?

**Mr Bator:** The number would be around \$5.7 million. That is what has been spent on phase 1, which was an upgrade of the external facilities, allowing us to move to phase 2, which is the internal work, and continue the business. Phase 1 was external work to allow the business to continue during phase 2 of the operation.

**CHAIR:** Okay. Suffice it to say, the \$12 million is pressing ahead.

**Mr Bator:** The works went to the Public Works Committee for approval, which was given. At the moment, as Mr Fry has indicated, the board is asking for ongoing information about the throughput of the organisations, its productivity and tourist numbers. They are keeping a very constant vigil on how it is performing. We have had an increase in visitation to the park.

**CHAIR:** Thank you. The coalition in opposition requested that the previous government commission an independent review by a retired judge into IBA's involvement in Tjapukai and other matters. Has the government contacted IBA or the department about implementing the inquiry?

**Mr Fry:** I have not seen anything officially in that regard.

**CHAIR:** Have you seen anything unofficially?

**Mr Fry:** No, I have not seen anything unofficially either. I was not trying to avoid the question. I have no knowledge of—

**CHAIR:** I am familiar with people avoiding questions—that is okay. Thank you.

**Senator McLUCAS:** I do not have any pressing questions for the IBA. I just wanted to note that you have had some quite amazing successes in recent years. Do you want to talk about home ownership on traditional country?

**CHAIR:** Rather than have a general chat, we should focus on specific questions.

**Senator McLUCAS:** Okay.

**CHAIR:** Mr Fry, is it correct that IBA approved in principle a \$2 million loan in July this year to Muway Constructions, which is a joint venture construction company with the Bunuba people of Fitzroy Crossing, basically to bail out the Bunuba Cattle Company, which owes the National Australia Bank approximately \$9 million?

**Mr Fry:** With regard to the approval in principle of \$2 million, that is correct.

**CHAIR:** Was this done in conjunction with advice provided by Mr Mike Stephens, a consultant to Bunuba, who is paid from money provided by the IBA?

**Mr Fry:** Mr Stephens has been engaged as an expert in the area and has been providing advice to assist with the proposal to make sure that we are across the relevant assumptions and market validations and so forth.

**CHAIR:** So he is a consultant and he is paid from money provided by the IBA.

**Mr Fry:** That is correct.

**CHAIR:** Is Mr Stephens also a paid adviser to the Indigenous Land Corporation?

**Mr Fry:** I understand Mr Stephens has some duties there. I am not fully across what the ILC relationship is, but I understand he has some. With respect to the engagement with the Bunuba transaction, Mr Stephens was engaged by us ahead of the time that I think he is now sitting on a committee in some respect with ILC.

**CHAIR:** Did or does Mr Stephens have any substantial northern cattle business experience?

**Mr Fry:** Mr Stephens, I believe, was chair previously of the Association of Agricultural Consultants and has considerable contacts and understanding across Australia on the cattle industry, and it was on that basis that we engaged him.

**CHAIR:** Did you and Mr Stephens attend any meetings with the CEO of the ILC to discuss Bunuba matters?

**Mr Fry:** I believe the initial meeting with the ILC was with the acting CEO in November or maybe December of last year. Mr Stephens at that stage was not engaged by IBA. Subsequently, in more recent times, I have had meetings with the CEO of ILC, and Mr Stephens has been present at one of those meetings.

**CHAIR:** Did he say which role he was acting in?

**Mr Fry:** Yes, at the start of that meeting Mr Stephens quite clearly stipulated that he was acting on behalf of the Bunuba people as engaged by IBA.

**CHAIR:** You do see the potential for some conflict of interest in this area?

**Mr Fry:** Mr Stephens, at the start of that meeting, made very clear the role that he was undertaking and asked for support and permission, if you like, to be still engaged in that meeting. That was discussed and that interest was declared at the start of the meeting.

**CHAIR:** Is it correct that Mr Stephens informed the Bunuba Cattle Company last month, following a meeting with you and the ILC, that the IBA had agreed to provide another \$3 million 'soft loan' to Bunuba and that the ILC agreed to provide \$5 million to purchase Bunuba's cattle herd?

**Mr Fry:** I do not believe that is correct. From an IBA perspective, that is not correct.

**CHAIR:** I have no further questions. Does anyone else have any questions for Indigenous Business Australia? No? Thank you, Mr Fry and officers, for attending today.

### **Indigenous Land Corporation**

[11:08]

**CHAIR:** I welcome Mr Mike Dillon, the chief executive officer of the Indigenous Land Corporation. Mr Dillon, do you wish to make a brief opening statement?

**Mr Dillon:** Thank you. Yes, I have a brief statement. Senator, you will be aware that there has been quite a bit in the media recently about Ayers Rock Resort. I just wanted to say two things about that. One is that this raises, in the ILC's view, fundamental questions about the quality of public administration and corporate governance and, in particular, what happens when major decisions go wrong. That is an issue for the parliament and for government. The second thing I would like to say is that I am happy to answer any questions about that.

**CHAIR:** Thank you, Mr Dillon.

**Senator McLUCAS:** Mr Dillon, I was going to go to that matter myself. It has been covered in the media quite extensively and I think it is important that this committee gets a full understanding of the history of this purchase. I was wondering if you could assist the committee by taking us through the facts as they are over time from the beginning when the decisions were made?

**Mr Dillon:** Thank you, this is a very complex series of events that has transpired, so I will have to keep it to a very high level and I will do my very best. But I should warn you that there may be some significant issues or events that I skim over or leave out.

I might start by saying that what has transpired with Ayres Rock is not about the management of Ayers Rock Resort. The Ayers Rock Resort is a well-managed facility with committed and professional staff and it has always had the support of the ILC board. We think it is going extremely well in its own terms. The second thing that these issues are not about Aboriginal employment per se. The ILC and Voyages have together a terrific record in growing Indigenous employment not just at Ayers Rock where we have gone from two to 205 Aboriginal staff over the last three years but across the whole ILC consolidated entity, if you like, where we are running at around 30 per cent Indigenous employment. At Mossman Gorge it is over 80 per cent Indigenous employment and at the ILC itself around 30 per cent Indigenous employment. We are absolutely committed to Indigenous employment. Over the last three years at Ayers Rock the Indigenous Land Corporation has invested around \$9 million in Indigenous employment and training, over and above the purchase price. This is an indication of the level of our commitment to making significant and substantial gains for

Indigenous people nationally in the hospitality and tourism industries. I just want to set that in context because there has been a lot of misinformation in the media, if I might frame it in those terms.

The issues at stake here are about the decision of the previous board of the ILC to purchase Ayers Rock Resort. They paid \$317 million. The transaction involved borrowings of almost \$200 million.

**Senator McLUCAS:** When was that, Mr Dillon?

**Mr Dillon:** That was in 2010. There had been a series of discussions from 2008 through to 2010. In October 2010 the decision was made. The assumption—and the information that went to the board—underpinning that transaction was that the revenues and profits from the resort would actually cover the interest payments and the principal for those borrowings and finance arrangements. The reality is that just 2½ years in those assumptions have been proven to be incorrect. Not just wrong; fundamentally and absolutely incorrect. I can go to the detail later on.

Key questions that I think arise for government and for the parliament, actually, from a series of events like this are these: was the price too high; was the due diligence adequate; did the then ILC board take adequate account of the risks; and were normal administrative processes followed and, if not, why not? I think these are important questions for government and for the parliament.

I note an op-ed piece in today's *Financial Review* by Gary Banks where he basically says very similar things. He says:

... transparency should be enhanced where it does matter, such as in cost -benefit analyses for major government projects.

... ..

Restoring the basis for trust in public policy comes down to two words, 'good process'.

The financial results arising from the decision have been disastrous for the ILC. Disastrous for the ILC—not for Voyages—for the ILC. The ILC stands behind its subsidiaries. It covers all liabilities and it covers its deficits. The write-down of \$62 million in the Voyages financial statements for last year and the accompanying full operating loss of \$84 million for 2012-2013 gives a sense of the problem. From memory, the previous year was around \$23 million. The losses over the two years total \$109 million. The budgeted loss for next year will total \$20 million, plus any further write-down in the value of the asset. The ILC board has instituted a full speaking valuation of the asset to understand just what its value is, and so the losses could be higher.

How the previous board of the ILC made this decision, to my mind is inexplicable and perhaps even inexcusable. The due diligence process highlighted the risks they faced. They had the information. Key board members expressed reservations and concerns, but they were essentially, apparently, sidelined. Ministers Wong and Macklin wrote separate and strongly-worded letters expressing reservations and concerns about the purchase. These letters were amongst the strongest—in fact were indeed the strongest—letters I have ever seen from a minister to a statutory corporation in my 30 years of public sector experience.

**Senator McLUCAS:** Mr Dillon, I wonder if it would be appropriate for you to table any correspondence on this matter from ministers Wong or Macklin?

**Mr Dillon:** With the ministers' permission I would be more than happy to table that correspondence.

**Senator SMITH:** Is there any correspondence that the ILC might have written to the minister or ministers about it and can that correspondence be tabled as well?

**Mr Dillon:** I would be more than happy to table the response from the then chair, Ms Shirley McPherson, particularly to both Senator Wong and Minister Macklin. If I can summarise her response, it was desultory, paltry and I would liken it to 'as paltry as a bandicoot's breakfast'. It was pathetic.

**Senator McLUCAS:** Can I just—

**Senator SMITH:** Can we have a written statement so that the committee might be able to start asking you some questions. We are on a time constraint. Is this in a prepared form that you can circulate?

**Mr Dillon:** I do not have a written statement.

**Senator SMITH:** So you do not have a written statement? You have come very prepared and you obviously know that this is going to be an important issue for the committee—

**Mr Dillon:** It is because I have been reading the media.

**Senator SMITH:** Excellent—I expect that in someone in your role—but you do not have written statement that you can circulate so that we might be able to proceed to some questions? Senators might be able to read that statement while we begin the questioning.

**Mr Dillon:** With Senator McLucas's consent I am happy to leave it there. As I said, there is a lot of information I could lay out here. There is a whole raft of issues, but if you want to open it up to questions I would be happy attempt to answer them.

**CHAIR:** Let's go to some questions.

**Senator McLUCAS:** I wonder if Mr Dillon could table those letters. I do not know the dates, and I agree with Senator Smith: I think the response from the chair would be valuable for the committee to have.

Mr Dillon, you said that there were a number of letters from Minister Wong and Minister Macklin to the chair of the ILC board—is that correct?

**Mr Dillon:** There was at least one letter from each minister in October 2010 and then, as I recall, Minister Wong wrote the day before the transaction in fact, and asked under section 16 of the CAC Act for further information. The response that was provided was, essentially, 'this deal is too good for us to put it on hold', because in her correspondence, Minister Wong had asked the ILC to defer the consideration. What happened was that the ILC made the decision to acquire the very next day—

**Senator SMITH:** I am happy to take your word, but if you do have the letters then it would be wise to circulate them because of the time constraint. Do you have a schedule or a table of all the letters on this matter from the ILC to Minister Wong and to Minister Macklin in addition to the letters from Minister Wong and Minister Macklin back to the ILC on this matter?

**Mr Dillon:** I do not have a table of that correspondence.

**Senator SMITH:** You do not have a table but you would have a collection of them?

**Mr Dillon:** I could take that on notice and provide you with a list of that correspondence.

**Senator SMITH:** You have brought with you some letters, but you have not brought with you all the letters?

**Mr Dillon:** As I said at the start, we would have thousands and thousands of documents on this issue going back over two years.

**Senator SMITH:** No, I am asking for letters from the ILC to Minister Wong and to Minister Macklin. Senator McLucas, if I understand her question, is asking for letters from Minister Wong and Minister Macklin back to the ILC. I do not expect there will be thousands of those, because that would not be good practice, I would not have thought, at that sort of level in the government.

**Mr Dillon:** The ILC would have responded to each of those letters from ministers and I would be happy to table those letters. I would be happy to let you know if there is other correspondence to those ministers that is relevant to this transaction.

**Senator SMITH:** Put it all in a table and then senators can make a judgement about which of those letters they would like to see.

**Ms Carroll:** Senator, if I can intervene, we are just getting some clarification. The table of the actual letters is not a problem at all, identifying what the letters were. We were just need to take on notice to give some advice to the minister on the release of those letters, because it was deliberations of a previous government. It is a statutory organisation but we just want to take it on notice, before the letters themselves were actually released, to give ourselves a quick opportunity to check things and provide some advice to the minister.

**Senator SMITH:** Of course.

**Senator McLUCAS:** I understand that, Ms Carroll, and that is quite appropriate. Could I ask, then, what were Ministers Wong and Macklin seeking in their correspondence with the ILC board?

**Mr Dillon:** From memory, in essence a number of things. They wanted to fairly and squarely put on the table the risks of this transaction. I think it is fair to say that ministers and, indeed, departments and agencies must have had concerns about the size of the transaction and the risks involved. I think the second letter from Minister Wong actually asked for information, in particular around sensitivity analyses for the net present value analysis of the transaction, the so-called Grant Samuel projections that went out over 10 years. The debate has gone on in the media about whether the resort is profitable or not, but one of the concerns we have is that those projections, three years in, are not being met. We are already \$34 million down on projections of \$60-odd million in profit. Again, it just highlights the extent of our concern because the current ILC board has essentially inherited this problem.

The reason the board is keen to understand what has gone on is because it has got some hard decisions to take going forward—extremely hard decisions. In the absence of a turnaround in the tourism market—I do not mean a slight lift up but a fundamental turnaround—this transaction is going to impact for at least 15 or 20 years on the ILC's core statutory functions—our land acquisition and land management functions. Of a budget of \$50 million each year, which comes from the land account, around \$15 million or so goes on our internal processes. Of the \$35 million available for our core functions, at least \$20 million will have to go to paying off this debt, the interest and the principal.

**Senator McLUCAS:** I understand that. I go now to what powers Ministers Wong and Macklin had in their relationship with the ILC. Did they have any ability to approve or not approve the purchase of Ayers Rock Resort?

**Mr Dillon:** The legislation, as I understand it—and I should qualify this statement because I am not a lawyer—apart from some minor issues around some inherited functions from ATSIC, does not provide the minister with the power to direct and therefore the ministers had, I think, very limited powers to actively intervene. It is my assessment that given the legislative construct they were faced with, this correspondence amounted to 100 per cent of what they could do. They could not have done anything more apart from legislating.

**Senator McLUCAS:** So your observation is that both Minister Wong and Minister Macklin were very concerned about the potential purchase price. They acted in writing to the ILC board but they had no power to direct the board not to pay that sum for the property.

**Mr Dillon:** That is correct.

**Senator SMITH:** I am just thinking where to start, Mr Dillon. As you say, it is a very, very complex issue. I might just go back to your comments about it being an important issue for parliament, it being important to get the governance right and it is important for scrutiny. I am just wondering whether at any point the former Minister Macklin and former Minister Penny Wong were asked or invited to authorise an inquiry by the Australian National Audit Office.

**Mr Dillon:** That is correct.

**Senator SMITH:** What is correct: that they were asked to?

**Mr Dillon:** My understanding—and I say 'my understanding' because I am relatively new in this job, three months or so—

**Senator SMITH:** I understand that. I am relatively new myself.

**Mr Dillon:** My understanding is that the current board of the ILC did write to Minister Macklin and request her to initiate or put in place an audit by the Australian National Audit Office.

**Senator SMITH:** I am sure that letter is in the table of letters that we will get. So the ILC had spoken to the Australian National Audit Office, had a discussion and then suggested it to the minister, or of their own consideration put that as proposition to the former minister?

**Mr Dillon:** My understanding is the latter, that the ILC did this unilaterally. There was no discussion with the audit office that I am aware of.

**Senator SMITH:** That would sound like a very sensible and appropriate course of action. The National Audit Office is well regarded. It conducts many, many inquiries. As a member of the Joint Committee on Public Accounts and Audit, I am very familiar with that. What was the government's or the minister's response?

**Mr Dillon:** As I understand it, the timing here was the early part of this year. The minister indicated that she would like the ILC to put in place its own review, a so-called 'end-to-end review'. There was a view, I think, in the bureaucracy—and I think that it emerged in the minister's correspondence—that the ILC should be looking forward as well as back and so we get this so-called end-to-end concept. That review was then put in place by the ILC. It is currently underway and we are expecting it to be finalised in early 2014.

**Senator SMITH:** I do not understand your comments in the evidence that the former ministers could not do anything more, that the best that they could do, the strongest argument they had, was to write a letter. That does not actually stand up to scrutiny because there is an Australian National Audit Office process. The Auditor-General goes to committees, goes to departments, indeed, goes to ministers at least annually and perhaps even twice a year, asking for ideas about audit inquiries. So it is not true that the former ministers did everything they could. In fact, if I understand what you have shared with us, they consciously and deliberately said that scrutiny by an independent statutory body like the audit office was not a good idea. That does not make sense when we have seen in the papers—as you quite rightly point out—a breakdown in confidence. We have the CEO of Virgin Airlines saying that he cannot understand why there was a purge—to use the word in one newspaper. So it is not true, Mr Dillon, that the former ministers did everything that they possibly could, because it sounds like they put their foot on the cable in regard to an Audit Office inquiry. I am assuming that we will be able to see the letter from the ILC to the ministers asking for an Audit Office inquiry, Ms Carroll, or you would consider that in the deliberations.

**Ms Carroll:** We are considering it.

**Senator SMITH:** Did the letter from the ILC about the Audit Office inquiry go to Minister Wong and Minister Macklin?

**Mr Dillon:** You have raised a range of issues there. I would have to check that, and I will put that on notice.

**Senator SMITH:** You started by sharing with us a very comprehensive account of your understanding of this issue. You said that time would not allow for some significant issues to be canvassed. Requests and denials around Audit Office inquiries, I would have thought, would have absolutely formed a critical part of your evidence. I am curious to know—

**Senator McLUCAS:** Senator, do you also think—

**Senator SMITH:** I am sorry, Senator McLucas; I gave you the courtesy of letting you ask your questions. Mr Dillon, if the ILC wrote to Minister Wong and, let us assume, Minister Macklin asking for an Audit Office inquiry, were the contents of that letter shared by the ministers with their departments?

**Mr Dillon:** I would have expected that that would have been the case.

**Senator SMITH:** So in addition there will be some departmental advice going back to the minister about whether this would be a good idea.

**Mr Dillon:** Absolutely. I am pretty sure that that in fact happened. Can I just go back to your first statement?

**CHAIR:** Mr Dillon, I am loath to interrupt, but I want to indicate to Senator Smith and Senator McLucas that we are running short of time. I ask that you hasten with your questions, Senator Smith, so that I can go to Senator McLucas.

**Senator SMITH:** Absolutely. I will finish on this particular query: based on what we know from the verbal evidence, it was decided, for whatever reason, that the suggestion of an Australian National Audit Office inquiry was not a good idea. So you then went down the path of a \$300,000 end-to-end review. Is that right?

**Mr Dillon:** It is of that order—\$340,000 is the figure in my mind, plus, I think, around \$50,000 for the valuation. So it is approaching \$400,000.

**Senator SMITH:** So the resources of the Australian National Audit Office were not good enough, were not thorough enough and were not appropriate, so we have gone externally and spent \$350,000 on an end-to-end review?

**Mr Dillon:** The point to make is that a review by the Audit Office would have cost a lot of money too.

**Senator SMITH:** Except that you get the authority, the independence and the credibility of the Australian National Audit Office. More than that, you get a report which comes back to the Joint Committee on Public Accounts and Audit and you get additional scrutiny—it is a public report. I would have thought that that would be an excellent process by which to examine and bring these issues to rest.

**Mr Dillon:** For all those reasons, the chair of the ILC has asked for a public inquiry by the parliamentary committee on public accounts. We do want to see this put into the sunlight. We do want to see the transparency. We do want to see the accountability. There is a whole raft of questions here that are unanswered.

**Senator SMITH:** The Australian National Audit Office would have been a very good first port of call.

**Senator McLUCAS:** Who is conducting the end-to-end audit?

**Mr Dillon:** A firm called McGrathNicol.

**Senator McLUCAS:** You said the report was going to be finalised in early 2014?

**Mr Dillon:** That is correct.

**Senator McLUCAS:** In terms of the parliamentary inquiry question, has there been communication between the ILC and the government prior to that coming into the public arena?

**Mr Dillon:** Yes, the ILC has written on, I would say, numerous occasions to the government since the election. At least eight letters have gone to the government on various aspects from the ILC since the election. We have had one letter from Senator Scullion in response, regarding the composition of the board, and we have a response from the Minister for Finance, but we have had no substantive response to our letters expressing concerns about the processes of public administration and the quality of corporate governance, the issues that I have referred to.

**Senator McLUCAS:** Without being an auditor myself, I think Senator Smith's comments about the appropriateness or not of the ANAO deserve further discussion. McGrathNicol is a respected company. I cannot answer this question, but the assertion is that the ANAO would have been the right place to go. I do not know whether or not that is the case, but I certainly think an end-to-end audit would be useful given that we are talking about issues of probity and also issues of governance. This report will certainly provide some more information to the ILC and potentially also to this committee. I think we have more to ask questions about in the future. Thank you, Mr Dillon.

**CHAIR:** Thank you, Mr Dillon. That concludes our time. I would now ask for representatives of the National Aboriginal and Torres Strait Islander Health Equality Council to join the minister at the desk.

**Ms Carroll:** Can I just clarify that that is actually an advisory council—it is not a statutory body—and it is an advisory council to the Minister for Health; it is not an advisory council to Minister Scullion.

**CHAIR:** So it should not be in this portfolio.

**Ms Carroll:** That is right.

**CHAIR:** Thank you for that, Ms Carroll. We will take note for future estimates. Let us move on.

**Senator McLUCAS:** So the health equality council is not here—is that what you are saying?

**Ms Carroll:** That is right, because it is an advisory council to the Minister for Health.

**Senator McLUCAS:** Understood.

**Senator MOORE:** Could we have got that information a little earlier than today?

**Ms Carroll:** Sorry. We were clarifying that, but we will make sure we do that in the future.

**Senator MOORE:** Yes. I am just pointing out that we had a meeting last week to try to see what was going to happen here, and we would not even have called them if we had known they were not with us. So that would be fine.

**CHAIR:** I think it is clear that, with the transition to the finance and public administration committee, there have been a couple of administrative areas in which we can improve, and that goes from our point of view as well as from the department's. We will find our feet very shortly.

**Senator Scullion:** On this occasion, Mr Chairman, if the senators wish me to provide some questions on notice to the Department of Health in that regard, I will be happy to do so.

**Senator MOORE:** We will do that.

**CHAIR:** That is very good of you, Minister. I think Senator McLucas has a couple.

**Senator McLUCAS:** Yes. We will do that. With this transition, I think we are doing okay given it is all new.

**CHAIR:** We are doing okay.

#### **Office of the Registrar of Indigenous Corporations**

[11:38]

**CHAIR:** We will move—and I will look to Ms Carroll for advice here—to the Office of the Registrar of Indigenous Corporations. I welcome Mr Anthony Bevan, Registrar of Indigenous Corporations. Would you like to make an opening statement?

**Mr Bevan:** No, I have no need for an opening statement.

**CHAIR:** Thank you very much.

**Senator McLUCAS:** We do not have any questions of ORIC.

**CHAIR:** Are you sure you would not like to make an opening statement?

**Senator MOORE:** I will ask a couple of questions. Welcome, Mr Beven.

**Mr Beven:** Thank you, Senator.

**Senator MOORE:** Can you just clarify for us what your current staffing is.

**Mr Beven:** My current staffing is 45.72 FTE—full-time equivalents.

**Senator MOORE:** Where are you located?

**Mr Beven:** The main body of my staff are here in Canberra, in Woden, but I also have offices in Alice Springs, Darwin, Broome, Perth, Cairns and Coffs Harbour.

**Senator MOORE:** I know there will be an annual report, but could we get a model of where they are and those kinds of things.

**Mr Beven:** Sure.

**Senator MOORE:** In terms of the process, you take issues and complaints about what is happening in various agencies—is that right?

**Mr Beven:** My statutory role is to regulate the Corporations (Aboriginal and Torres Strait Islander) Act 2006. There are just over 2,500 Aboriginal and Torres Strait Islander corporations registered under the act, and one of my statutory functions is to look into complaints about those corporations.

**Senator MOORE:** Can you tell me whether you have any outstanding complaints on your workload at the moment?

**Mr Beven:** Yes.

**Senator MOORE:** How many, Mr Beven?

**Mr Beven:** On a yearly basis, last year we received 662 complaints. At any time we would have a number of complaints ongoing.

**Senator MOORE:** I was just wanted to get that on record, because I am aware of the workload that can come in. Mr Beven, in terms of a process, is there an average turnaround for complaints? Do you keep data on that?

**Mr Beven:** Yes, we do, Senator.

**Senator MOORE:** I will just put that on notice. We will not ask you to go through—

**Mr Beven:** It is publicly available on our website.

**Senator MOORE:** I have got that, but in terms of the process and also in terms of a record of your workload over the last 10 years?

**Mr Beven:** That is as far back as I can—

**Senator MOORE:** That is why I picked it! Just in terms of the growth, because my understanding is that there has been quite a significant growth in that period. Is there an education process linked to your organisation?

**Mr Beven:** Yes, Senator. Another one of my statutory functions is to provide public education in relation to the CATSI Act and corporate governance. We provide free corporate governance training to corporations registered under the CATSI Act. Last year we provided that training to 897 people and 198 corporations, and we provide that all around Australia.

**Senator MOORE:** And there is a regular travel requirement for that. Do you have a schedule or is it response demand?

**Mr Beven:** In May of each year we plan our training activities, and that is available on the front page of our website. We also provide what we call 'corporation specific training' and that is where specific corporations approach us and request training. That is on a needs basis.

**Senator MOORE:** Is there a fee involved in that?

**Mr Beven:** No, all of our training is free of charge to Aboriginal and Torres Strait Islander corporations registered under the CATSI Act.

**Senator MOORE:** And we will be able to see that in your annual report as well, and my understanding is that that has been an increasing workload as well.

**Mr Beven:** Yes. Last year we had a record number of participants and training activities, the highest we have ever had.

**Senator MOORE:** On notice, can you advise how many of your 45.7 staff are involved in the education role?

**Mr Beven:** Yes.

**Senator MOORE:** That would be lovely. Thank you, Mr Beven.

**CHAIR:** Thank you very much, Senator Moore. Mr Beven, thank you. I think that concludes the questioning. We appreciate your attendance here today.

**Mr Beven:** Thank you.

#### **Office of Township Leasing**

[11:42]

**CHAIR:** We will move on to the Office of Township Leasing, and I invite Mr Greg Roche, Executive Director. Welcome, Mr Roche. Do you wish to make an opening statement?

**Mr Roche:** No, thank you, Mr Chair.

**Senator SIEWERT:** What is the process that you are going through now? You seem to have a stepped-up approach to township leasing. Can you take me through the process you are now embarked on?

**Mr Roche:** Just to make it clear at the start, I administer leases. I have no role in the negotiation of leases, so decisions about—

**Senator SIEWERT:** So how does that process work then?

**Mr Roche:** I am happy to give a broader explanation as to how the process works and perhaps departmental officers might be able to provide specifics. The short answer, Senator, is that a group of traditional owners or a land council will normally approach the government with a proposal, or it has been the case that ministers have written to land councils indicating government support for township leasing and making in principle offers, then particular groups of traditional owners may indicate interest and it will go from there. But I have to say, each process has been slightly different from the one before.

**Senator SIEWERT:** Mr Stacey, is that where your part of the process comes in—you respond either to the approaches from traditional owners? Or do you also, where there is the proactive reach-out, do that as well?

**Mr Stacey:** Essentially, yes. To add to what Mr Roche said: the process is under the Land Rights Act, and we follow the requirements of the legislation, particularly section 19A. If

there has been interest expressed in negotiating a township lease, we seek to meet with the traditional owners and the land council that might want to be representing those and then proceed to negotiations on the basis that, ultimately, any township lease has to be agreed by the traditional owners after there has been full consultation with the wider community and agreement from the land council.

**Senator SIEWERT:** Thank you. How many leases are now in place?

**Mr Roche:** Are you talking about township leases?

**Senator SIEWERT:** Yes.

**Mr Roche:** There are a number of township leases: the original owner over Wurrumiyanga, formerly known as Nguiu; and, also in the Tiwi Islands, a township lease in relation to Milikapiti and Wurankuwu. There is also a township lease which covers the three Aboriginal communities on Groote Eylandt, namely Angurugu, Umbakumba and Milyakburra.

**Senator SIEWERT:** And they have been in place for quite some time.

**Mr Roche:** The first lease, which was the Wurrumiyanga lease, was signed in 2007. The Groote lease was signed in 2008, and the Milikapiti and Wurankuwu leases were signed in 2011.

**Senator SIEWERT:** Where is the latest announcement? In Arnhem Land?

**Mr Roche:** Yirrkala is in East Arnhem Land. That is correct.

**Senator SIEWERT:** That has been signed now too, hasn't it?

**Mr Roche:** That is an agreement to negotiate. It is not a township lease.

**Senator SIEWERT:** So you have not reached agreement yet. Okay.

**Mr Stacey:** I will add to the comments by Mr Roche. The minister, after visiting Gunbalanya, a community in West Arnhem Land, and then later the community of Yirrkala in East Arnhem, had reached agreement with traditional owners present to commit to negotiating a township lease, not actually to enter into a township lease.

**Senator SIEWERT:** Thank you. That differentiation is important. What is the usual time line? Do you have a defined process for that negotiation?

**Mr Stacey:** The statements of commitment are not legally binding documents; they are like an MOU. For Gunbalanya, in the discussions the minister had with traditional owners it was agreed to try to seek to reach agreement by the end of June 2014; in the case of Yirrkala, by the end of September. But I do stress that this is a statement of commitment to seek to negotiate an agreement on the basis that it is not a legally binding document.

**Senator SIEWERT:** I understand. Have there been any proactive approaches to land councils or approaches from any traditional owners to start the process of discussion?

**Mr Roche:** In 2011 I conducted a road show across the major Top End communities—the RSD communities, which you would be aware of. That was done with the support and assistance of the Northern Land Council. Arising out of that has been informal contact at various times in the last couple years, including Gunbalanya, but nothing formal has emerged other than the Gunbalanya approach.

**Senator SIEWERT:** Okay, thank you. That is from the community coming to you. Have there been any other, proactive approaches to any land council?

**Senator Scullion:** Perhaps I can assist with that. I met yesterday—time flies—with the full meeting of the Northern Land Council in Darwin. There was much discussion around the various benefits or otherwise of section 19A leases, as there has been for awhile. We probably ran a question-and-answer process for about an hour and a half on that matter. There is considerable interest. With regard to the answer just given by the executive director, I add that I think part of the challenge is that, when you go to consult, they are very interested but we do not know where to go there. That is why the process is saying: 'Here's a commitment to negotiate. This is a time frame under which we can provide advice.' That can become quite organised. Much of that process was input in Gunbalanya. The second time, in Yirrkala, I was invited to the community to go discuss some of those matters, and that is how that process evolved.

**Senator SIEWERT:** Okay. Thank you for that clarification.

**Senator PERIS:** Thanks for that. My questions are around the consultation bit. To go back to Gunbalanya: when you went out there recently, on your website you put a press release about their historic Arnhem Land lease agreement. Are we able to obtain who the signatories to that MOU are?

**Mr Stacey:** Yes.

**Senator Scullion:** Certainly. Perhaps I can clarify that this is a two-stage process. The first stage is to have some community understanding and agreement, so there should be no confusion between the memorandum of understanding between the community members and some traditional owners and the final document, which would obviously only include traditional owners and would be, effectively, a part of the Northern Land Council process. But I am certainly happy to make that document available.

**Senator PERIS:** Okay. You say you were invited to Yirrkala. With Gunbalanya, what is your make-up? Is it like you and Warren Mundine representing the government to go speak to them? Who is involved with the Northern Land Council? Is it the full executive members or is it just the chairman? Is it a couple of lawyers? How do you come to an agreement as such?

**Senator Scullion:** I have to admit it is a pretty eclectic approach. In each circumstance it will be different. Particularly with regard to my travel, Mr Mundine happened to be there at the time. It was not specifically with Mr Mundine because we wished to approach a 19A lease. He was travelling around the country talking to people. There were some efficiencies with travelling with me at that time. Clearly, it was important that the land council lawyers be represented at Gunbalanya since this was the first process, and we ensured that they were there. I take this opportunity to commend and thank the land council for their assistance in these matters. It has been very useful. Whilst they were not present in Yirrkala, I was unaware that the 19A process was going to be a focus of discussions there to the degree it was. There were a number of other issues, as you would possibly be aware, that I am being involved in in Yirrkala.

So each circumstance is different, but basically it is not only a function of when I am in the community. As you would be aware, we had some discussions with the land council yesterday. They are all interested in receiving information, so my colleague Mr Roche, as the

executive director, will be providing information as those requests come in. The notion that I or someone has to be present in that consultation process is not the case, but it has been the case that I have been there and they asked to lay out a consultation process. So we will turn up, and they can make arrangements to be at certain time and certain places. I think it has been useful.

**Senator PERIS:** So you hope that will be finalised on 30 June. Before you reach that point, are you going to adopt a model like, say, the full executive of the Northern Land Council signing off on that agreement? As I understand, there are executive members representative of each of the regions in the Northern Territory. Gunbalanya could have four or five traditional owner groups. Will you consult with all of the traditional owner groups, or is it just one specifically? Do you get your tick if it is one out of the six, or is it the majority? That is what I am looking at. If they are committing to a 99-year lease, is everyone going to be fully consulted and informed—the land council, the traditional owners and you?

**Senator Scullion:** In this case what happens is that the Northern Land Council are the executive agency of the Commonwealth. The consultation process has me floating around there, as you would. We are just in consultation and providing information. When it comes to the signing of the lease, it is a process in which the Northern Land Council do the official process about the traditional owners and which ones are affected. They have a very clear series of processes that they must follow under the act. No doubt they would consult all traditional owners who are traditional owners of, in the case of your question, Gunbalanya, and that would be the second stage. That is quite a well documented stage that is separate from me. It is something the land council conduct, and they conduct it as it is laid down in the act.

**Senator PERIS:** Thank you. There was one other thing. Currently, in the Northern Territory 66 remote communities have had surveys conducted giving the clear boundaries for plots of land. Clear legal boundaries make it easier for people to lease blocks for longer than 12 years and for 99 years. Are they targeted communities or did these communities come to you?

**Senator Scullion:** Perhaps Mr Stacey can have a more comprehensive answer. I am not aware exactly which communities they are.

**Mr Stacey:** I think you are talking about remote communities across the Northern Territory where we are seeking, as part of the National Partnership agreement on remote Indigenous housing to improve housing. The communities we are talking about have all agreed to leases over 40 years for public housing. As part of that process there is work done as you described to conduct surveying and establishing new subdivisions. As you say, it provides an opportunity in the longer term for other benefits like home ownership, economic development and investment by government once you have proper tenure and particularly surveying in place like any other town.

**Senator PERIS:** There was an article just the other day in the *NT News* that talks about those 66 remote communities. It ends:

The changes will enable the communities to adopt a Western-style economy by giving individuals the ability to borrow from a bank against a secured plot of land.

Have you heard this? If so, how would that occur?

**Mr Stacey:** For the actual borrowing that you are talking about, that is going to require an appropriate lease arrangement first. The Territory government may well be moving to establish normal town planning arrangements across communities and link to the leasing for public housing, but that on its own is not going to be sufficient to secure a mortgage. You will still need longer-term leasing.

**Ms Carroll:** Perhaps I could clarify. Part of the cadastral surveys you have been referring to are actually over the whole town. They are not specifically around the public housing that might exist. The cadastral survey is over the whole town to have that survey done for different leasing options as you go forward. One of the key limitations in a lot of these towns is having the cadastral survey work done. That is the work that is being done in those communities.

**Senator PERIS:** Thank you.

**Senator Scullion:** I think your question goes around the fundamental differences between a standard lease on Aboriginal leasehold land and a 19A lease. The 19A lease certainly has led in both the Tiwi Islands and Groote Eylandt, where they are in play at the moment as well as in a couple of other places that were mentioned by the executive director, to the community, as part of that 19A lease, making conditionality on the lease before it is drawn up. For example, there may be classes of people who may purchase housing because of initial community concerns about having other people living in their community. So obviously there is a spectrum. There may be a large amount of conditionality. One community in Arnhem Land I was speaking to want to have the local committee decide who you can sell it to. Those things have been settled in the community. That would not be particularly mortgageable. It goes all the way through to movements to say you would be able to purchase with no restrictions. Obviously that is more mortgageable. But the section 19A lease allows a reflection of the community's concerns about the future, and all of those things can be set out by traditional owners before the signing of the lease as has been the case in both Groote Eylandt and the Tiwi Islands.

**Senator PERIS:** One last question. One thing I always come across is employment opportunity. Quite often people will sit there and watch contractors come in when there are people within their own community perfectly capable of building their own houses. Would you set up some sort of clause to say the construction of houses in communities will involve 30 or 40 per cent Aboriginal people?

**Senator Scullion:** In terms of the 91A leases, that would be a matter for the traditional owners. From the way they have been speaking to me and, I am sure, you, that would obviously be the case. In the other arrangements, I know the significant building contracts in the territory—principally the ones we have just seen in 3C here—attempted it. In the past I have been somewhat critical of the outcomes of that. I know you will have a continue interest. But I would suspect that most of the large housing programs, if they are held on Aboriginal land, should have some dictate, not as part of the leasing arrangement but as part of the contractual arrangement to purchase the house, about Indigenous employment. That is certainly my view. I think that to a large degree it has been in the past.

**Senator PERIS:** Thank you.

**Senator McLUCAS:** I have a follow-up question for Mr Stacey on the mapping he was talking about with Senator Peris. There was some work done on Cape York of a similar

nature. My understanding was that it was a joint piece of work between the federal government and the Queensland state government. Can you give me an update on how that mapping activity has progressed?

**Mr Stacey:** I am sorry, but I cannot now. I will have to take it on notice.

**Senator McLUCAS:** Okay. In general, one would hope that we are getting to a conclusion on that mapping exercise. It is work that I was aware of probably two years ago. But I am happy if you could provide us some information on notice. Thank you.

**CHAIR:** Thank you, Mr Roche, for your attendance. Before I move on: Mr Stacey, I am advised that you are the person we should address questions to with regard to ABAs. We might deal with some questions which Senator Smith has provided to me to ask in his absence. Other senators can contemplate whether they have questions on ABAs.

In August, the member for Lingiari announced that \$90 million would be spent from the Aboriginals Benefit Account. I understand the purpose was to build housing for government workers. Can you explain to me the process to approve this use of ABA funds?

**Mr Stacey:** I believe that that is a reference to a proposal to establish a new company in the Northern Territory which would build and manage staff housing in remote communities on the basis that one of the ongoing problems with securing better service delivery in remote communities has been the lack of housing for staff, including specialists such as doctors, delivering those services. In this particular case, there had been assessment of this proposal going on for quite some time before any announcement was made by Mr Snowdon. There was a proposal submitted to the ABA Advisory Committee at its meeting earlier this year. The committee had concerns about that proposal. There were subsequent discussions involving the then minister and the ABA Advisory Committee. As a result, the advisory committee indicated their support and an announcement flowed on from that—that there would be a commitment of that amount to support the staff housing company.

**CHAIR:** When did the advisory committee first contemplate this proposal?

**Mr Stacey:** I am not certain. I think—but I stand to be corrected—it was in July of this year.

**CHAIR:** What was the assessment process that had taken place before that? By whom was it undertaken?

**Ms Gumley:** The staff housing proposal originated from the Northern Land Council and the Central Land Council having put together proposals to the ABA for their own staff housing in areas in the Northern Territory. As a result, rather than only looking at proposals for staff housing for those two organisations, we—FaHCSIA—did some work with the land councils involved. We worked on the proposals with them and with Indigenous Business Australia over some 12 to 18 months—on an idea for an Aboriginal owned company to provide staff housing not only for government but for any employer. As an Aboriginal owned company, it would be able to rent out those facilities, employers would lease back and it would be one of the first arrangements to enable private investment on Indigenous land. The company would get long-term leasing arrangements, construct facilities, lease them back to government and put them into place. So it originated out of two proposals from land councils but was something on which the department worked with the land councils for some time. We then took it back to the committee—three times in total, I think.

**CHAIR:** To the advisory committee?

**Ms Gumley:** Yes, the ABA Advisory Committee.

**CHAIR:** So they were not involved in the proposal initially.

**Ms Gumley:** The land councils are members of that committee, so some of their members had been involved in developing the proposal. But the ABA committee does not develop the applications to the committee; they consider them. So some of the members had been involved, but the proposal was considered by the committee on a number of occasions. We met with them, went through matters where they had some concerns and reshaped the proposal until it was something on which we got agreement.

**CHAIR:** What were the matters about which they had concern?

**Ms Gumley:** They were about how quickly the company would transfer to Indigenous ownership and the required level of majority ownership we were considering. There were matters around where we should build, the size and scope, how quickly the company would grow and the size of the investment versus competing priorities for the ABA. So they had a number of matters that we spoke to on the three occasions I went and briefed the committee.

**CHAIR:** You mentioned that the advisory committee agreed to the proposal on the third meeting. Is that correct? You had three meetings, and at the third they signed off on it.

**Ms Gumley:** I met with the ABA committee three times on the matter, and then there was a small group of members that considered the proposal just to make sure that we had covered off all of the matters that they had raised.

**CHAIR:** So there was a subcommittee of the ABA Advisory Committee?

**Ms Gumley:** It was not a formally—

**CHAIR:** That is my terminology.

**Ms Gumley:** There was a small group of members of the ABA. The ABA committee has delegates from the land councils, and, in the last one, there was a meeting of the land councils, who came together to see whether the department had picked up all of the matters at hand. That is partly because, in this instance, it was the executives of the land councils that met to take on the issue. That is important because the land councils were the ones that were thinking about becoming the equity partners in the organisation. The ABA committee usually has individual delegates representing the land council, but, because this was such a substantive proposal and had the commercial development aspects, the land council chairs, or their representatives, were at that meeting.

**CHAIR:** It is through naivety that I am asking this question. There is a governance issue in my mind that you have prompted. Is the ABA providing the funds—the \$90 million—for this? Am I correct?

**Ms Gumley:** Not quite. The ABA committee is an advisory group to the minister. The minister takes the decision on the expenditure of the ABA funds, so the minister approves projects. The committee can give advice to the minister, and the relevant minister will take that into account.

**CHAIR:** And yet it was not the full committee that provided that advice or signed off in the end; it was a section of it. Is that correct?

**Mr Stacey:** The situation was that the former minister, anxious to see the matter settled after a lot of work done to assess and work through, asked for a meeting of the committee, but not all members attended that meeting. It was not a subcommittee; the chair and senior members from NLC, CLC and Anindilyakwa Land Council on Groote Eylandt were there. A meeting was called, but not all members were able to attend.

**CHAIR:** Are you able to provide me with—and you may want to take this on notice—the members who did attend and those who were eligible to attend?

**Mr Stacey:** Yes.

**Ms Gumley:** Yes.

**CHAIR:** Are you able to tell me whether the decision reached at that meeting was a unanimous decision of the committee?

**Ms Gumley:** Yes, it was a unanimous decision at that meeting.

**CHAIR:** Thank you very much for your assistance. We will now move to the Torres Strait Regional Authority.

#### **Torres Strait Regional Authority**

[12:13]

**CHAIR:** Welcome. Mr Elu, do you wish to make an opening statement?

**Mr Elu:** Yes, a short one. First, I would like to acknowledge the traditional owners and pay my respects to them and their elders past and present. Thank you for inviting us to this gathering. As described in many Senate estimates, the Torres Strait is an important part of the Australian nation. We are the only part of Australia that borders another country, and, I think, it is a country that has many problems. Of course we are a statutory authority under the Australian ATSI Act and we see ourselves as the primary source of information to this parliament from the Torres Strait region. I welcome the new minister, who has been working in Torres Strait for a while now so he knows the region. I thank you once again for inviting us.

**CHAIR:** Thank you very much.

**Senator McLUCAS:** Thank you so much for coming down, Mr Elu and your colleagues. I agree with you that the TSRA is the primary source of information to the Australian parliament about issues in the Torres Strait. There are two issues that I want to particularly talk about with you today. You would be aware, and you know this better than anyone, that there has been some confusion about the funding for what we all call seawalls, but is called the Torres Strait Coastal Protection Works project. I thought it would be a good opportunity for the TSRA to put on the record where we are up to and what decisions have been made around this project. There were some funds that were committed by the former government and some funds, I believe, committed by the state government. This is your opportunity to be very clear with us and, in fact, the community about where that is all up to.

**Mr Elu:** I will make a statement and then hand over to the CEO. That is true: there were commitments made by the Minister for FaHCSIA in the last government, and the Queensland government made their commitments. The thing that happened this time around was that there was an application from the Torres Strait Island Regional Council, which is the local government entity up there, to RDA. I think that is where the confusion happened, because

the RDA funds took a long time to come forward. The previous government was treating RDA as a contribution of the Commonwealth as well. For the specifics, I will ask the CEO to comment.

**Mr See Kee:** I would also like to pay my respects to the traditional owners of the land and any traditional owners or elders who are present here today. There were a couple of announcements made in relation to seawalls funding. From the Australian government side, there was a joint announcement that happened on 4 June 2012 for about \$12 million. There was a joint announcement by then Minister Crean and then Minister Macklin, and, out of that money, \$7 million was going to come from the department—FaHCSIA at the time—and \$5 million was going to come from Regional Development Australia. The Queensland government also made an announcement on 14 January of this year that they would be contributing \$12 million to that. The TSRA subsequently, in a previous financial year, also contributed its own \$2.2 million because it recognised the importance of this project. Up until now, there is \$2.2 million from the TSRA, and, in the 2011-12 financial year, we received \$1 million from FaHCSIA, which was the Australian government's contribution. So the outstanding amounts right now are, I think, the \$5 million that RDA have been negotiating directly with the Torres Strait Island Regional Council for and the \$6 million that we were going to receive from FaHCSIA, which would have completed the Australian government contribution. So, at this stage, we are not too sure where that is up to.

**Senator McLUCAS:** Mr See Kee, is there a contract on the money that was committed through FaHCSIA?

**Mr See Kee:** There is a memorandum of understanding that we have with the department. That was done previously for the \$1 million that we do have, but there is no contract for the remainder.

**Senator McLUCAS:** Does the memorandum of understanding indicate that there will be future moneys? I will call them milestone payments; I do not know if that is the right word.

**Mr See Kee:** I will have to take that on notice, but from my recollection it was specifically for the \$1 million that we received at the time.

**Senator McLUCAS:** The money that was allocated from the TSRA, the \$2.2 million, where was that money from—reserves, is that right?

**Mr de Mamiel:** The funds, the \$2.2 million, were an underspend, or a surplus, at the end of a financial year. The board elected to allocate that to the major infrastructure program for that particular purpose. The board decided that was a really important project to demonstrate leadership on.

**Senator McLUCAS:** I agree. Mr See Kee, coming back to the FaHCSIA money, I wonder if that memorandum of understanding can be tabled for the committee? That might indicate whether or not there were plans for future payments. Was there any discussion about a payment schedule for the up to \$7 million from FaHCSIA?

**Mr See Kee:** There was some discussion around when the money may have been able to be provided, but really we did not get anything to say, 'This is when you are going to get dollars.'

**Senator McLUCAS:** I also asked questions of the Department of Infrastructure and Regional Development on Monday about the \$5 million from the RDA. The officer indicated

that he agreed with me when I said that we were very close, we basically just needed a signature. Is there any information you can provide the committee about your knowledge of those negotiations between the Department of Infrastructure and Regional Development and TSIRC? You may not be able to do that.

**Mr See Kee:** I am not able to provide any information.

**Senator McLUCAS:** Now that money has been—I am very careful about using the word frozen because the government is telling me that is not what has happened—but it is paused, it is being reviewed; and the project is still urgently needed in the Torres Strait. To whom was the Queensland government contribution of up to \$12 million going to be paid?

**Mr See Kee:** The Queensland contribution was going to be paid to the major infrastructure program. The major infrastructure program is a jointly funded program that the Australian government and Queensland jointly fund for the Torres Strait region—we are into the fifth iteration of the major infrastructure program. That money has not been provided yet. That is dependent on when we can actually secure these dollars.

**Senator McLUCAS:** My understanding was that the contribution from Queensland was simply to identify that their contribution to MIP was to be badged as seawalls and they would not be providing—this money was not on top of current contribution to MIP; the MIP contribution that they provide was to be used for the seawalls project.

**Mr See Kee:** That is correct. Originally they were going to put \$13.2 million towards the major infrastructure program. But in the announcement from the Queensland minister for local government on 14 January, they announced that \$12 million of their money was going to be used towards the seawalls project and the remaining \$1.2 million, or about that, was going to be used for the environmental health component of the major infrastructure program. Since then, the chair has been lobbying the state government to seek the shortfall, if you like, of the money that is needed for the environmental health aspect of the major infrastructure program.

**Senator McLUCAS:** I will come to that in a moment. That concerns me as well. You are saying, Mr See Kee, that that money has not—TSRA controls the cash, shall we say—

**Mr Elu:** The MIP trust fund—

**Senator McLUCAS:** for the MIP trust fund. Has any money come from the Queensland government for their contribution for MIP 5?

**Mr Elu:** Not at this stage.

**Senator McLUCAS:** When would that have been due?

**Mr Elu:** I think the government sort of waits for one to blink, and then puts the money in and then it happens. That is what I think was happening here. Just before the election we came and talked to Ms Macklin. She said their money was ready and when Queensland put their money in the Commonwealth would put their money in, but she was talking about the MIP fund. She was upset and we were upset that the Queensland government made that split between MIP and the seawalls project. She would rather that we in the Torres Strait region had made that split. Anyway, that is what happened—people were waiting for one to blink and then the election came along and everything stopped.

**Senator McLUCAS:** MIP 5 is over which financial years?

**Mr de Mamiel:** MIP 5 goes out to 2016—the 2015-16 financial year, commencing 2012-13.

**Senator McLUCAS:** How much is the allocation on an annual basis from both governments?

**Mr de Mamiel:** The MOU is yet to be signed off for MIP 5. The funding from the Commonwealth is phased over four years and it starts off at a low amount and increases in the second and third years and in the fourth year there is a lesser amount. It is phased over the projects. We have not yet negotiated or signed off on the MOU as to when Queensland is going to provide the \$1.2 million.

**Mr Elu:** That was the way we were hoping for that money to come to us, and we decide how much goes to seawalls and how much goes to MIP. It was a total bucket of about \$23 million. With that split the Queensland government forced on us it has come back to \$8 million.

**Senator McLUCAS:** Have you received any of that money from Queensland yet?

**Mr Elu:** No.

**Mr See Kee:** We are waiting to finalise the memorandum of understanding, and then the money will flow for the MIP 5 projects.

**Senator McLUCAS:** Was MIP 5 meant to start in 2012-13?

**Mr Elu:** This year. Hopefully the seawalls will be put in this year. The money allocated—\$2.2 million from us and \$1 million from FaHCSIA—went into planning and design and all that. That has all finished, so it is sitting there now. If we do not carry that out now—the wet season is around the corner; it is starting to rain up there—we will be a year out with the planning and the designs might change.

**Senator McLUCAS:** Have you completed the planning process?

**Mr Elu:** The planning process and all that is finished—that is three years and \$2.2 million.

**Senator McLUCAS:** And the planning is for Saibai, Boigu—

**Mr Elu:** Saibai, Boigu, Warraber, Poruma.

**Mr See Kee:** The dollars were there for the 2012-13 financial year to start. What is happening now, though, is that even though there is a bit of a phasing issue in terms of funds there are dollars there to finish off MIP stage 4, which is what we are doing now. We are projecting that that will be ending around about the end of next month. We have dollars from the Commonwealth to start works in MIP 5. There is a project list that was endorsed by the TSRA board, the respective councils, and also it was signed off by the minister. It identifies which projects we could have done with the full amount of money for the major infrastructure programs but also the ones that we can only do with the funds that we have. So for the major infrastructure program, environmental health component has \$21.2 million from the Australian government and \$1.2 million from the Queensland government.

**Senator McLUCAS:** So you have had to prioritise MIP 5 because of that?

**Mr See Kee:** Absolutely.

**Senator McLUCAS:** Could you provide the committee with a list of the original proposals for MIP 5 and the reprioritised list of works that you now only have the funds to do.

**Mr See Kee:** Yes, that is fine.

**Senator McLUCAS:** I hope that has provided some clarity—

**Mr Elu:** But clarity does not provide the funds.

**Senator McLUCAS:** It does not provide the funds, I agree. You will be aware that I have been talking about this in the parliament since 2002, and we still do not have a seawall or any mitigation infrastructure in the Torres Strait. My disappointment about the process is absolute. My concern is that the money from the RDA could have been signed off.

**Mr Elu:** The idea was specifically for seawalls. So we do not get that money. Then Queensland made that decision.

**Senator McLUCAS:** But my understanding was that the contract was with TSIRC—

**Mr Elu:** That was my understanding.

**Senator McLUCAS:** And I still have not been able to ascertain why that was not signed before the election. I do not know if you have any knowledge of why that happened, but it would be good to know. That is all I wanted to go to. Thank you so much for coming down. Hopefully that will assist our community to understand this better.

**CHAIR:** If there are no further questions for the Torres Strait Regional Authority, I thank the officers for their attendance today. We do appreciate it.

The committee is running ahead of schedule and I am advised that, for the next item on the program, representatives from the employment section of the Department of Prime Minister and Cabinet are available. With the committee's consent, for the next 15 minutes or so we might move to that aspect of the program, which will cover the Australian Employment Covenant, the Remote Jobs and Communities Program and the Indigenous Employment Program.

**Senator MOORE:** Senator Pratt is very interested in issues around environment. My understanding is that there are officers present for that as well, but it is not on the schedule.

**CHAIR:** Yes, there are, but they will not be back until after lunch.

**Senator MOORE:** I just want to put that on record. It does not appear there. Thank you.

[12:31]

**CHAIR:** I welcome back officers from the Department of Prime Minister and Cabinet for the session on education and employment. Does anyone wish to make an opening statement?

**Ms Gumley:** No, thank you.

**CHAIR:** I think Senator Siewert has a question on employment.

**Senator SIEWERT:** Has the Australian Employment Covenant been completed? What is its status, particularly in relation to the new money that I understand has been made available to the process that Andrew Forrest is chairing. Can you explain the process for us.

**Ms Gumley:** The Australian Employment Covenant was a private sector initiative that was led by Mr Forrest. It was established in 2008. It did receive some preliminary funding from the Commonwealth government to help establish it. The covenant is a demand led

initiative, so rather than providers such as Job Services Australia or Remote Jobs and Communities providers, which are largely supply driven, this one is very much targeted at employers. From 2009 to 2012 we provided 7,038 under two contracts to assist in establishing the covenant. That contract has now concluded. The Australian Employment Covenant is now managed by GenerationOne. It does not receive any government funding, but it is still in place and it has over 60,000 positions available. It has already delivered on 17,700 jobs.

**Senator SIEWERT:** In the past, when I have explored this, you have not been able to tell me how you identify those jobs. Has that now been done?

**Ms Gumley:** The Australian Employment Covenant does not receive government funding. What they do is collect 'working with' employers that sign a covenant, which is a binding agreement, to pledge jobs. Then they collect data on when those pledges are converted into jobs. The advice that we have had from the AEC and Generation One this week to prepare for today it is that they are now at 17,700 jobs. The covenant is still operating, employers are actively engaged, and it has established that there is a very strong demand from employers for Indigenous employees. Now we need to understand and look at the range of employment and training programs that we have for Indigenous Australians, both mainstream and targeted programs, to see if they are actually delivering what is required. The government has appointed Mr Andrew Forrest to conduct that review which is currently underway. It was established on 7 October and will report on 7 April. Just this week we had the preliminary round of consultations in a number of venues around Australia.

**Senator SIEWERT:** How many venues? Is it going to take you a long time to tell me where they are?

**Ms Gumley:** I could run through them quickly for you. We did Perth last Friday. On Tuesday we did Adelaide and Alice Springs. On Wednesday we met with people in Kununurra and Darwin. Yesterday we met with people in Brisbane and Sydney and today there is a further meeting in Melbourne. In each location we have had a roundtable of leaders, employers and key stakeholders in that region.

**Senator SIEWERT:** Who decides who is invited?

**Ms Gumley:** Invitees were a matter for Mr Forrest in consultation with Mr Tudge, who is guiding and shaping that review, with relevant input, of course, from Minister Scullion.

**Mr Eccles:** We advertised quite widely for the town hall sessions and also used our on-the-ground network to make sure that Indigenous communities, leaders, providers and industry people were able to attend.

**Senator SIEWERT:** In other words, you had two sessions in each centre?

**Ms Gumley:** That is correct.

**Senator SIEWERT:** You had a roundtable and a town hall session?

**Ms Gumley:** Yes.

**Senator SIEWERT:** How strongly were the town hall sessions attended?

**Ms Gumley:** Very. There was standing room only in Kununurra with people outside. We are happy to confirm on notice the details. In Alice Springs there were probably 300-plus people in the room. In Adelaide there would have been about 150 and in Sydney, yesterday, there were probably about 130 people.

**Mr Eccles:** There were about 200 in Darwin and 250 in Perth.

**Ms Gumley:** So, good engagement and participation.

**Senator SIEWERT:** Will there be notes or outcomes from those town hall meetings publicly available?

**Mr Eccles:** We had contemplated putting out the outcomes of the meetings. The role of the meetings was to inform Mr Forrest and Mr Tudge on the breadth of issues and that would influence the final report. We will take that one on notice. If that is what people are after it is something we could look at.

**Senator SIEWERT:** Thank you. What is the cost of, and how much money has been allocated for, the review process?

**Ms Gumley:** At the moment the review is being conducted by Mr Forrest on a voluntary basis, so there is no cost for him. There are some staff from Prime Minister and Cabinet who are providing support to the review. Professor Marcia Langton has been employed as an adviser to the review.

**Senator SIEWERT:** What is the budget allocation for that?

**Mr Eccles:** No specific budget has been set aside. Most of the costs are being borne from the department. Once the review is progressed we will be able to give you an idea of the cost.

**Senator SIEWERT:** You are providing the secretariat support to the process?

**Mr Eccles:** That is exactly right.

**Senator SIEWERT:** The travel and such?

**Mr Eccles:** Logistics and some policy support as well for Mr Forrest, and also, as you say, the administrative support—the secretariat.

**Senator SIEWERT:** Is that the end of the consultation process?

**Mr Eccles:** No, not at all; it is just the beginning. The last couple of weeks have really been a broad-brush initial touch. There will be follow-up consultations next week, and it is not just being done; the minister in his travels is also seeking views of communities and others around employment issues. Next week Mr Tudge and some of us will be meeting with a number of employers. We will also be doing site visits to a number of enterprises; that is probably the best way. There will be visits to communities. The consultation will be ongoing. There is a submission process where submissions have been invited; they close at the end of the year. So I think it is probably best to say that these initial consultations are almost part of the early phase to understand what the key themes might be, and then there are certainly significant opportunities for further involvement for everyone.

**Senator SIEWERT:** Thank you. Will the report that Mr Forrest completes be a publicly available document straightaway? Is he tabling a publicly available report, or is it one that is going to the minister and then may be released? Do you understand?

**Ms Gumley:** Yes, I do. That would be a matter for government to consider Mr Forrest's report and then determine if they would like to release it.

**Senator SIEWERT:** Okay. The government have already determined. In other words, the answer to my question is that the government have already determined it is a report to them

and they will determine whether it is publicly released, as opposed to a committee that does a report and releases its own report.

**Ms Gumley:** You are correct, Senator.

**Senator SIEWERT:** Yes, thank you.

**Ms Gumley:** It is advice to government, and then they will consider what they do with it.

**Senator SIEWERT:** Okay. Do you have an understanding of the time line for decision making beyond the April report? Maybe, Minister, it is a question I should ask you: is it anticipated that it will be ready for budget decisions for the 2014-15 financial year?

**Senator Scullion:** I think the first element of the report and the reason we are reporting relatively early, before the end of the year, is to give us a bit of a focus about how long this is actually going to take. It is almost a bit of a scope. It is very difficult to know what you do not know, so the interim report is to provide us with enough information so we would be able to make a decision on exactly when the report will be able to be considered.

**Senator SIEWERT:** In terms of the expectation of the report, we are not just talking about remote jobs here; we are talking about the full issues around Aboriginal and Torres Strait Islander employment.

**Senator Scullion:** That is right.

**Ms Gumley:** That is correct.

**Senator SIEWERT:** Thank you.

**CHAIR:** I know there are other questions, but given there is only one minute we might resume after the lunch break.

**Senator SIEWERT:** Do you have any questions on this particular process?

**Senator McLUCAS:** No, I have questions on another issue.

**Senator SIEWERT:** Then maybe we could just finish on this.

**CHAIR:** Please finish, yes.

**Senator SIEWERT:** There was some reporting in the media around expenditure. So there is actually no expenditure or cost being incurred other than what you have already articulated, outside Professor Langton as an outside consultant and then those travel costs?

**Ms Gumley:** That is correct.

**Mr Eccles:** That is right—at this stage, yes.

**Senator SIEWERT:** Is GenerationOne involved in any way in this particular process, or is Mr Forrest acting as—

**Mr Eccles:** Mr Forrest is acting as himself in this. It is certainly Mr Forrest's review.

**Senator SIEWERT:** And GenerationOne is continuing with the covenant.

**Mr Eccles:** We are in very close contact with GenerationOne around election commitments, and it is fair to say that we are also involving them and talking to them about the review in some detail, as you would with stakeholders.

**Senator SIEWERT:** As a stakeholder?

**Mr Eccles:** Yes.

**Senator SIEWERT:** What is your list of stakeholders? Who are the people that are invited to the roundtables?

**Mr Eccles:** There is no defined list of stakeholders. Those that were invited to the roundtables include state ministers, businesspeople, community leaders and employment providers. They are normally a smaller group, in the order of 15 people.

**Senator SIEWERT:** I understand that.

**Mr Eccles:** The decisions were made by Mr Forrest, in consultation with us, about who would be good to get that range of views.

**Senator SIEWERT:** Are you able to provide us with a list of the stakeholders that were invited to each of those meetings?

**Mr Eccles:** Absolutely, yes.

**Senator SIEWERT:** Thank you. That would be appreciated.

**CHAIR:** The committee will now suspend until 1.30, when it will resume in the employment and education area.

**Proceedings suspended from 12:45 to 13:30**

**CHAIR:** I welcome back the officers from the Department of the Prime Minister and Cabinet for this session continuing on education and employment.

**Senator SIEWERT:** To clarify, is it better that I just seek the Aboriginal employment figures when I do the catchall that I usually do? I ask a broad range as a catchall.

**Ms Gumley:** You can ask here. We have people available to take the questions as well as those on the closing the gap component on employment as well.

**Senator SIEWERT:** Is it too early yet to have any indication of employment figures on the Remote Jobs and Communities program?

**Ms Gumley:** We certainly have some on job placement data.

**Ms Kemp:** Are you after some job placement figures for the Remote Jobs and Communities program?

**Senator SIEWERT:** Yes, please.

**Senator Scullion:** I want to take the opportunity to answer a question that was asked previously. Senator McLucas, you asked a question about Indigenous cadetships this morning?

**Senator McLUCAS:** Yes I did.

**Senator Scullion:** The Indigenous cadetship support element of the Indigenous employment program was being tested for consistency against government priorities and commitments before any new spending proceeded, as is the normal process. Indigenous cadetship support applications meeting the usual eligibility requirements are continuing to be processed. The department spoke with the particular individual's parents this week to reassure them and offer them an interim arrangement until the cadetship was finalised. I am pleased to report that, as part of the normal process, the cadet was advised of the cadetship that was approved this morning.

**Senator McLUCAS:** This morning?

**Senator Scullion:** Yes, this morning.

**Senator McLUCAS:** That is great. Minister, did the parents of the cadet contact your office?

**Senator Scullion:** No. If you would like to ask the department, they can perhaps provide some information.

**Senator McLUCAS:** So the contact was directly with the Department?

**Mr Eccles:** That is my understanding. We will find the people who held the discussions with the family, but my understanding is that this case was well known to the department. Officers have been in discussions with the parents throughout the week on the expectation that things would proceed, and that the arrangement was resolved yesterday or today.

**Senator McLUCAS:** How many Indigenous cadets are in this program, for which I hesitate to use the word 'frozen'?

**Mr Atkins:** There were eight or nine cadetships—we are not quite sure—on which processing began this morning. That is the entirety of the backlog of claims.

**Senator McLUCAS:** Are they the only ones affected by the review?

**Mr Atkins:** There are no other claims that I am aware of on our books at the moment.

**Senator McLUCAS:** Was it as a result of the telephone call from the parents of the young CSIRO cadet that motivated the department to deal with it?

**Mr Eccles:** I am not sure that that is a correct characterisation. I think the department's motivation for dealing with it was that, as soon as we had the approval processes sorted, it had been in train for some time. I would not want to leave the committee with the inference that it was because of phone calls that this was unwedged. This program had been going through the process that the Department of Finance would have alerted the committee to on getting government signoff.

**Senator McLUCAS:** Of all Prime Minister and Cabinet's frozen programs, which ones have been reviewed and are continuing?

**Mr Eccles:** Are you after which programs have gone through the process?

**Senator McLUCAS:** Yes, and proceeding like the Indigenous Cadetship program.

**Mr Eccles:** I would need to take on notice which ones. All programs across all government that fit within the criteria were affected. You understand that, of course.

**Ms Carroll:** We can take that on notice. As I indicated earlier, all our programs are in the process—some have popped out the other side and some are still in the midst of the process. I think we undertook on notice earlier to give you what we could on all of those. We will make sure that we capture all of this, but it is the iterative approval process as it comes through.

**Ms Kemp:** I now have the number of job placements since the commencement of the program on 1 July. It is 1,637; the number of seven-week outcomes is 113; and the number of 13-week outcomes is six. The program has not been operating long enough for any 26-week outcomes. The number of education commencement outcomes is 615 and the number of education completion outcomes is 75.

**Senator PERIS:** There are specific employment programs for Aboriginal people in the Northern Territory. One of them is with Prime Minister and Cabinet for the arts.

**Mr Eccles:** Responsibility for the arts is with the Attorney-General's department. Senator, if you wanted to give us an indication we could seek clarification for you on notice.

**Senator PERIS:** On 12 November three art centres in the Northern Territory—Merrepen Arts, Injolak Arts and Elcho Island's arts centre—received an email from the Department of Prime Minister and Cabinet with a notification of their funding. Part of the email that they received said that the whole-of-government review process would need to be finalised before the government can enter into new grant spending commitments.

**Mr Eccles:** I might just check on that. Is the information you have at hand that that email came from the Department of the Prime Minister and Cabinet and not from the Office of the Arts?

**Senator PERIS:** It is an email that links a person's name with @pmc.gov.au.

**Mr Eccles:** Okay.

**Ms Gumley:** Can I clarify: were they applying for an arts grant or were they applying for Indigenous program funding to support jobs at the arts centre?

**Senator PERIS:** They are applying for jobs at the arts centre.

**Ms Gumley:** In that instance, it is probably part of the package of proposals that are being considered through the Indigenous Employment Program. As Ms Carroll mentioned earlier, some projects that we fund through the individual programs have been put forward and have already been considered through that process, and their Indigenous Employment Program does regular batches, effectively, of proposals to put forward to the minister for consideration.

**Mr Eccles:** I know it is difficult for you to give me the name, but there are a number of people who work with the Office for the Arts who may still have an @pmc email address as a sort of shared service arrangement going back to the days when sports and arts were with the portfolio. So I would need a little bit more information before we can follow up on this.

**Senator PERIS:** I guess the minister is aware of the three centres that I am talking about. They are now in a situation where that funding was utilised for Aboriginal employment within the arts centres. Their concern is that if they do not receive funding before 31 December they are in jeopardy of closing, and there will be a significant amount of repercussions that will occur because of that. Could the minister let me know where that sits. Will the funding be continued?

**Senator Scullion:** Perhaps I can help. Merrepen Arts and two other arts centres in the Northern Territory are part of a \$2 million contribution to 15 arts centres. I am not sure and I cannot accurately describe exactly what the grants were for. I understand that they have been held up in exactly the same process—they had to go through the finance process. Whilst I am a big fan of the ABC, I was told by one of the reporters this morning that Merrepen had actually got its money. I understand it is on its website or on its Facebook site. I am actually still having that checked this morning. All of those funding applications are being dealt with in exactly the same way. Out of the 15, I understand that they did not get their application in until the caretaker period, so they were not able to be considered. They are now being reconsidered in exactly the same way to ensure that—I think we had it on the previous one in terms of the cadetships—that they were consistent with government priorities and commitments before the new funding process happened. There was simply a break in the traffic during the election, and they are now being considered again in the normal way. I

should be able to advise whether the advice I received from the ABC a couple of hours ago is, in fact, correct. I will let you know as the day progresses whether or not they have actually received their funding.

**Senator PERIS:** Is that review process expected to be made before the end of this year?

**Senator Scullion:** I have not been able to validate that, but the information I have is that they have indeed received their funding. There was a bit of confusion, I think, as I have indicated in the media, that upon reading—as you would read the email that you have got—that email certainly does not say that you are not receiving the funding. I think people read it as if they are not receiving the funding. Perhaps it could have been better worded, but clearly the consideration about their future is being considered in exactly the same way it always would have been. The challenge is that there was a bit of a break, so it has been delayed from the time that we went into caretaker period till now. But I am finding out about that to validate those particular arts centres, and I will be able to provide the committee with that. If I get the information, I will provide it before the end of the day.

**Senator PERIS:** Thank you.

**Senator PRATT:** I had some questions about the RJCP and about Working on Country. I might start with the Working on Country questions.

**Mr Eccles:** Working on Country was not on our schedule, but we have got people here.

**Senator PRATT:** I understand that. It is a bit of a catch up. It was formerly part of environment. I was told that it was no longer in environment.

**Mr Eccles:** We can either get those people in now or the RJCP people are at the table.

**Senator PRATT:** Let us just see how I go asking the questions. They may or may not require more detailed information.

**Mr Eccles:** Okay. We will get the Working on Country team in.

**Ms Carroll:** I am wondering if we could finish the questions around the employment programs while we have got employment people here.

**Senator PRATT:** My questions in relation to RJCP are about its intersection with Working on Country in any case.

**CHAIR:** I am sure the officers will do their best to facilitate that. Let us proceed.

**Senator PRATT:** What is the relationship of the RJCP with the Working on Country program?

**Ms Gumley:** The remote jobs and communities program is an employment support service in each region. They have that permanent presence. In some instances, the organisation that runs the Working on Country also run the RJCP provider; but that is not necessarily always the case. Given Working on Country has a number of different funding streams that go into it, if there are job opportunities there than the RJCP provider could work with them in filling those positions.

**Senator PRATT:** Working on Country placements are eligible from an employment point of view for a RJCP placement?

**Ms Gumley:** If they are a full-time or part-time paid position, so a real job—

**Senator PRATT:** What is the status of that range of programs, as far as meeting that qualification goes?

**Ms Gumley:** We would need to get other officers to the table. I am sorry, my expertise is in the employment area.

**Ms Milliken:** The positions for Working on Country can be either full-time or part-time.

**Senator PRATT:** So they would have filled the requirements of an RJCP placement, then?

**Ms Gumley:** They would. If they are paid job, then they would be. If they work experience opportunity or more like a Work for the Dole or Green Corps type arrangement—

**Senator PRATT:** My understanding is that they are not. Ms Milliken has just confirmed that that is the case.

**Ms Gumley:** Yes, they would be an eligible vacancy. A RJCP provider could work with someone to get them job ready and put them in that vacancy.

**Senator PRATT:** Therefore, can I ask if the RJCP program recognises and is prepared to work with Working on Country providers for the need to support targeted and quality training for rangers and potential rangers that can be placed into that program?

**Ms Gumley:** Yes, certainly. So Working on Country or any job in remote areas is important for the RJCP provider to be working on. Rather than looking at necessarily starting with what the jobseeker needs are, it is important to look at what the employer needs are so that we can get some demand support into that equation. If the Working on Country employer has particular needs to get that individual job ready, they can talk to the RJCP provider about what they need and the RJCP can help them in the selection of their employee and then provide that support to get them into a job. Once they are in a job, they can provide some support to keep them there.

**Senator PRATT:** In terms of it being support to keep them there, does that mean that the RJCP training can be available for some of the existing Working on Country employees? Noting that there are often not a lot of other employment opportunities there.

**Ms Gumley:** Yes. If it is about somebody who is already employed, that is not necessarily something that would come from the remote jobs and communities program. But certainly for new employees—someone going into a role—they could access support from the remote jobs and communities provider and support in mentoring, et cetera, to keep them there.

**Senator PRATT:** In some of these instances you have, because of the need for further development, you are clearly dealing with people who may just be at certificate I level who are already employed and getting up to certificate II or certificate III. From that point of view it is a little bit of a long bow to draw to say to someone that, because you are already working, RJCP should not be there to support you with a, say, level II or III certificate. Is that reasonable?

**Ms Gumley:** I think what you are talking about is perhaps what people might call a career upgrade or a step-up. I might be employed as a ranger now but in fact I need skills to get to the next level. Some of that might be around what an employer would normally provide. As well there is also support available for all Australian employers through the Australian

workforce fund, I think it is called. My apologies, I will provide the name of the program to you.

**Senator PRATT:** Does that includes these kinds of rural and remote locations, though?

**Ms Gumley:** I would have to get more detail on that. It is a program that would be run out of one of the other agencies.

**Senator PRATT:** I guess where this is headed is that, sometimes dislocating these programs and having those narrow things where you can only access training at the beginning until you have got a job—as you would be aware having oversight of the RJCP—sometimes that really does not work and you need to consolidate that support through the programs that you have already got on the ground. Would that be correct?

**Ms Gumley:** They would need to be thinking carefully about what services—and you are right, in remote Australia it often is difficult to get access to the full range of services. As an employer and working on country an employer would also be eligible, like every other employer, to apply for Indigenous Employment Program funding. While there is obviously a careful balance between supporting employees who are already in work, the OAP does have some scope for that sort of support. But would we need to consider it in terms of how important is it to support that individual already in work verses the many applications that are coming in from other employers who have interest in employing new people.

**Senator PRATT:** But if you are talking about a lot of remote communities, there are some competing employers but everyone knows who they are, I guess—what the local opportunities are.

**Ms Gumley:** Yes, it would be employers competing for Indigenous Employment Program funding. But if you would like to give the secretariat the details of the particular projects, I am happy to see if we can get our Northern Territory office to contact them about what support might be available.

**Senator PRATT:** West Australian, probably, yes. Can I ask which range of programs nationally have been committed to? All range of projects that have been committed to contract but not executed, will those contracts all be honoured?

**Ms Milliken:** There are 54 contracts in place at the moment and there is one under development. So the majority of projects are already in place. The contract cheques have been executed some time ago.

**Senator PRATT:** That is good. Are there any programs additionally that do not have contracts or were they all resecured recently?

**Ms Milliken:** All of the current projects have contracts.

**Senator PRATT:** In terms of the contracts under development, are the women's range of programs being developed within the existing 54 contracts or are they separate contracts?

**Ms Milliken:** To which particular women's range of proposal are you referring, Senator?

**Senator PRATT:** I guess it is fairly varied. I think in most instances sometimes they sit side by side within the same contract. I am not sure of the arrangements. I am seeking to ask to find out.

**Ms Milliken:** There is not a separate women's ranger program.

**Senator PRATT:** I understand that.

**Ms Milliken:** They are part of the existing ranger projects. Around 25 per cent of the Indigenous rangers are women.

**Mr Salmond:** Ms Milliken is correct on that. There are some groups developing women's ranger projects within current program expenditure, but they are already accounted for in contractual arrangements in place.

**Senator PRATT:** So they are, therefore, within those 54 contracts and in some instances they will be—I am well aware that within those 54 contracts some contracts deal with a multiple range of programs and multiple units and others with a smaller number, and that the women's programs are developed, if you like, within those contracts.

**Mr Salmond:** That is right.

**Senator PRATT:** I am seeking an explanation or description of the relationship of how the Department of Environment, which has currently been managing the Working On Country program, is being moved into PM&C and what those poor reporting arrangements now look like.

**Ms Milliken:** The Working on Country program is administered within the Department of Prime Minister and Cabinet, in the Environment Programs Branch in the Delivery and Network Division in the Indigenous Affairs Group. That reports through that structure in the department. There is also going to be continued close engagement with the Department of Environment, so while it is an Indigenous program focusing on environmental matters it is also important to maintain the connection with the broader environment department.

**Senator PRATT:** People I have been speaking to as part of Working on Country, who have Working on Country contracts, say that in the main they are still dealing with the same people, but once they get up the tree a bit they are starting to get confused about who they now need to talk to. Is there some kind of reporting structure that you can table or take on notice that you are able to give me so that I can see how that works?

**Mr Eccles:** The process that we went through in the transition to the new department was that the teams that were working on it, including the assistant secretary, Mr Salmond, came over with us. What has changed—probably the only change—has been Ms Milliken and me in terms of line responsibility. We will provide you with a list of contacts that you can provide to your constituent stakeholders.

**Ms Carroll:** Perhaps I could add that as part of machinery of government people from different departments are coming into Prime Minister and Cabinet in groups—in fact, the people from Environment yesterday formally became staff members of Prime Minister and Cabinet. I recently was out and met some of the rangers. I think some of the confusion also comes from the fact that they did not understand the move into Prime Minister and Cabinet generally. One of things we are also looking at is our communication broadly out not just to all of our staff but where there are funded service providers et cetera. Over the coming weeks we are looking at how we do that.

**CHAIR:** I have a couple of questions on the Remote Jobs and Communities Program. The timely transfer of assets from previous employment services to the new providers would have played a critical role in ensuring a smooth transition, yet many providers complain that CDEP assets were not transferred to them. Given that RJCP providers entered into contracts on the

basis that these resources would be available to them, can you explain why there has been a problem and is the department satisfied that all CDEP assets have been accounted for?

**Ms Gumley:** CDEP assets have been transferring over to RJCP providers, but it is not the case that those assets are a Commonwealth owned asset that the Commonwealth could direct that they should be transferred from one to another. When those assets were purchased with CDEP funding they had a caveat on the use of them. Those assets are owned by the organisation and the Commonwealth has what is called an interest in them. When we look to transfer from a CDEP organisation to another organisation there is a quite clear process that we have to go through. First of all is to look at the individual asset, understand what it was for and what the caveat was for. We then look at the value and have that asset appropriately valued, and then decide who is best placed to have that.

In some instances the assets in fact had been fully depreciated and therefore there was not an asset value to transfer across. But in other instances those assets have moved across quite smoothly.

**CHAIR:** Are you satisfied that all the assets from CDEP have been accounted for?

**Ms Gumley:** I am. I think we have had a careful, considered process in looking at the asset transfer, and we also did quite a lot of preparation work with the CDEP organisations prior to RJCP starting. Part of that was about making sure that the asset registers et cetera were all up to date and that everything had been properly accounted for. If you have specific details where there might be a particular instance that we could look at again—

**CHAIR:** I wish I did, Ms Gumley, I wish I did. But I do not. The original documentation said that six months would be given to allow for a smooth transition, I understand. And yet I am also advised that the successful tenderers were not announced until May and June of this year, with a start of early July 2013. Is that correct and, if so, why was the process delayed?

**Ms Gumley:** It was not actually a tender process, it was an expression-of-interest process. That selection process took longer than expected. I think our first announcements were in April and the last announcements were in June. It is the case that they were progressively announced, so some providers had an earlier start to prepare and get ready. But there were also some transition support arrangements put in place with CDEP organisations extended in locations for a couple of months. That also enabled the RJCP providers some extra time to set up.

**CHAIR:** How many of the bidders—and I do not want to get caught about semantics here, that is my terminology—organisations which put in expressions of interest, received less than one month's notice of the transfer?

**Ms Kemp:** We will take that on notice.

**Ms Gumley:** We will—

**CHAIR:** Take it on notice. I heard that—I could hear it from here. We credit you with that, Ms Kemp! So you will take that on notice?

**Ms Gumley:** Yes.

**Mr Eccles:** Senator, we are aware of the challenges of the time frame and what some of the asset transfer issues have meant out there, and we are working with the RJCP providers to try and streamline the program and get it up and running.

**CHAIR:** How would you then, Mr Eccles and Ms Gumley, characterise the impact that the delays in announcements have had on the operation of the scheme in the first few months?

**Ms Gumley:** Without a doubt it made it difficult—very difficult—particularly in some locations. In setting up in remote Australia there is lead time required and staff, facilities and making contact with job seekers. Some providers had a late and slow start and that has definitely caused some implementation challenges. But we have been working with those providers and with the government around what we can do to provide support to those providers.

**CHAIR:** Are there any concerns with the participation rate?

**Ms Gumley:** The participation rate now is over 80 per cent nationally. There are still a couple of locations that sit below that, I think, and so there are still a couple of locations where we would be working in a very targeted way with those providers. We would always be working to get above 80 per cent, noting that you want to have as many job seekers who are required to be actively on the case load.

**CHAIR:** I understand. Thank you for that.

**Senator PERIS:** My questions are around the RJCP stuff as well. Can the department provide details of how many service providers there are currently in the Northern Territory?

**Ms Gumley:** Yes.

**Mr Eccles:** While they are looking that up, Senator, I can confirm that your earlier question is a matter for the office for the arts, and we will ask them to provide the information on notice to you.

**Senator PERIS:** Okay.

**Ms Gumley:** Some of our regions also go slightly across the border—for instance, Mount Isa and Alpururulam, that general region—while Mount Isa itself is excised. I think there are 19, but we will just do a count on that for you.

**Senator PERIS:** So there is a total of 43 different organisations or entities—

**Ms Gumley:** Nationally.

**Senator PERIS:** And 19—

**Ms Gumley:** I think there are 19 regions in the Territory and there might be a provider that is delivering in a couple of places. Were you after the number of regions in the Northern Territory?

**Senator PERIS:** This program was rolled out in May this year. Am I able to obtain the funding that has already been rolled out to specific service providers?

**Ms Kemp:** It is a demand driven program. They receive service fees for their servicing of the job seeker when the job seeker commences and then outcome fees and a series of other fees as time goes on. I can give you a breakdown of how much funding the provider receives per job seeker they service. We can times it by the number of job seekers. That information is easily available.

**Senator PERIS:** That would be fantastic—for the Northern Territory.

**Senator McLUCAS:** I also have it for the rest of Australia as well.

**CHAIR:** If we could wrap up this line of questioning because we need to move on to education—

**Senator PERIS:** The questions are not that long. To date, has there been any sort of review of the RJCP since the new government came to office?

**Ms Gumley:** No. There is no specific review of the Remote Jobs and Communities Program. There is a review of all employment and training programs underway by Mr Andrew Forrest, and RJCP will be an important component of that.

**Senator PERIS:** Do you have statistics on the uptake of the RJCP in those specific regions—for example, how many jobs have been provided?

**Ms Gumley:** Ms Kemp just provided the national data about job placements and outcomes. If you would like us to provide the information about outcomes by state or territory, we could do that on notice.

**Senator PERIS:** Two more questions and they are to the minister. Minister, you have visited a couple of communities recently in the Northern Territory and you quoted that it was a complete disaster and that people were disengaged from the program. I have also travelled to a couple of those communities and I share your concern for them. You also said that the program was contracted out for a five-year period and that the department would look at ways of improving it within its legal obligations, that you are making this a priority and that people need to re-engage. Both of us know the dire consequences of Aboriginal people not being employed. What are your plans? I am sure we saw the same things out there. Are you looking at redeveloping a new program or are you going to replace certain aspects of the RJCP to ensure that we can obtain meaningful and purposeful outcomes, as in people getting jobs. It is about community development.

**Senator Scullion:** As the officers have indicated, this will be a significant part of the Forrest review. There are other elements, as you have noted, and I think we would have had parallel feedback. Part of the challenge is that, with regard to the implementation phase, instead of having a six-month lead time for many of the people who won the contracts, they were sometimes awarded only a few weeks, sometimes days, before they had to start, so equipment and staff issues were very difficult. They were focused internally. You will soon know, being a member of the Labor Party, what happens with introspection and the same thing happened with many of the contractors—they were looking at themselves instead of the people they should have been looking at. They just did not have the capacity to do two things and I suspect that was part of what we both observed.

Notwithstanding that there is a review afoot, I have looked very carefully and spoken widely to a number of CDEP providers. I am looking at a couple of initiatives. I am sorry that I am not able to share them with you now. I have to go through some other processes before that is the case. In terms of your question around RJCP more generally, it is wounded. But I think we can heal it. I do not think just abandoning it would be useful at this time, given what the insecurity has caused so far. RJCP will be a fundamental part of the future. It will be subject, of course, to the Forrest review. I think we can move to do some tweaking around the edge to make it more effective, but RJCP will be part of the engagement future in terms of employment.

**CHAIR:** Senator Peris, I am going to have to stop that short because we are going to move on to the education area and I know that there are some questions. We will start with Senator Siewert.

**Senator SIEWERT:** I want to ask about the truancy program that has been reported to have started as a result of the drop in attendance at schools.

**Senator Scullion:** We have not made any announcements about what we will do about the drop in attendance. We all share your concern, Senator Siewert, that over the last five years attendance rates in remote Aboriginal communities particularly have gone backwards, not forwards. Very much like RJCP, we have some initiatives that we are considering at the moment and we will be announcing those initiatives when the normal clearances for those sorts of things are complete.

**Senator SIEWERT:** So, regarding the comments that were reported in the media around having truancy officers, that process has not started or it was speculation?

**Senator Scullion:** That process has not started, but clearly part of that solution is community engagement. You know yourself, Senator, that bottom-up processes, particularly with wide levels of community support, are the ones that are, through all the evidence we certainly had the committees that you have previously been associated with, fundamental to our considerations that matter. As I have indicated, we are not in a position at this stage to make any particular announcements, but we are working very hard on the situation at the moment.

**Senator SIEWERT:** So we can be confident that those reports that there was going to be a number of truancy officers in place is not true?

**Senator Scullion:** No, I did not say that. I just said that at this stage we are not able to make an announcement.

**Senator SIEWERT:** So there are considerations being given to truancy officers being put in place? How many, where, and what is the funding?

**Senator Scullion:** I am, as you have seen through most of the process today, also subject to rigorous financial scrutiny. I am going through that process and we hope to make an announcement shortly.

**Senator SIEWERT:** I know I will not get anywhere so I will move right along because we are running out of time. What consultation have you undertaken? What is the basis of evidence on which you are considering any measures that you may be announcing in the not too distant future?

**Senator Scullion:** I will be better placed to answer those questions when I make the announcement.

**Senator SIEWERT:** Surely you are considering these measures now. Are you undertaking a consultation process to develop those measures?

**Senator Scullion:** No.

**Senator SIEWERT:** Are you intending to announce measures that are a fait accompli or a process by which you are going to make a decision?

**Senator Scullion:** Those are matters that are still under consideration.

**Ms Carroll:** Obviously, the other component is progressing any of the specific issues around school attendance through COAG, because, clearly, school attendance is an issue for the state governments as well. Discussions with state and territory governments would take place as part of a COAG commitment and consideration of that is not announced or any of those things, but, clearly, it is an issue that would be of concern to COAG.

**Senator SIEWERT:** The current program that the government pinned its hopes on was the same program. What are the attendance records? How many parents have been suspended from payments? Have you got all the data available for SEAM?

**Ms Carroll:** Yes.

**Ms Hosking:** Senator, as you are aware, the new SEAM model commenced rollout in the Northern Territory. There have been two places where the rollout has occurred this year in term 1 and in term 3. In terms of numbers and people involved and the outcomes of the process to date, as of 1 November, there were 1,833 parents currently in scope for the SEAM enrolment component. The children currently in scope were 3,161. The percentage of children enrolled in point-of-time data was 95.8 per cent. There had been 238 income support payment suspensions since March 2013 involved in the enrolment component of SEAM. At the moment, at 1 November, there were fewer than 20 people with income support payment suspensions.

In terms of the attendance side—and I can give you several numbers here—there have been 349 people referred to compulsory conferences and given compulsory conference notices. The total attendance income support suspensions have been 31, with the current attendance income support, suspensions being fewer than 20. When I say fewer than 20, DHS provides the data in a way that if there are fewer than 20, they just say fewer than 20.

**Senator SIEWERT:** Have you been doing an analysis of how this has been impacting on attendance over time?

**Ms Hosking:** We have a couple of different approaches in relation to that. There is a longer and larger scale evaluation piece of work happening, which will be the best and most definitive source of information in relation to that issue. We are actually just waiting for the last evaluation to come out in relation to the trial, which will be in early 2014, and then the first evaluation of the new model in the Northern Territory will be available towards the end of 2014.

There has been some evidence in particular schools of impact on attendance. For example, in Ntaria, Hermannsburg, during the week of community information sessions, attendance was at 49.4 per cent. But following the sessions four weeks later, the attendance rate was 68.9 per cent and it was still at 60.3 per cent 10 weeks later. We have to get that sort of information on a case-by-case basis from the Northern Territory government. We do not actually get the attendance data for individual students on a real-time basis in that way outside the evaluation processes so we look at the overall results for those things.

**Senator SIEWERT:** I thought that was going to be one of the agreements that was reached with the NT government, that you were going to get better access to the attendance data.

**Ms Hosking:** My advice from the relevant officials is that at this stage we do not get that data. I think that is something we do need to have a continuing conversation with the

Northern Territory government about. On those particular cases we have been able to negotiate that data but it is not routinely provided.

**Senator SIEWERT:** So you negotiate on a school-by-school basis?

**Ms Hosking:** Yes.

**Senator SIEWERT:** But all you have got is Ntaria?

**Ms Hosking:** That is the only one I have got here, yes.

**Senator SIEWERT:** Have you got the others?

**Ms Hosking:** No, I have not been advised that we have any others.

**Senator SIEWERT:** So when you said 'that I have got here', you mean—

**Ms Hosking:** I was suggesting that if you wanted me to check whether we had any others, I can take that on notice—

**Senator SIEWERT:** That is what I was getting to.

**Ms Hosking:** I have not been advised that we have any other information, but I can take that on notice.

**Senator SIEWERT:** If you could, that would be appreciated. In terms of the first evaluation of the trial, why is it taking so long to get that final evaluation?

**Ms Hosking:** I do not know the reason for the delay. That evaluation is being finalised within, I think, the department of employment now in terms of the changes, where the particular evaluation unit is. That was always scheduled for the end of 2013. Our latest advice is that we should have it in early 2014.

**Senator MOORE:** I want to follow up on the review processes, Ms Hosking. One of the things we have been trying to find out is where and at what timing we get data on the SEAM trial. Up until this hearing, SEAM has not been discussed on this day. It was held onto very strongly by another committee so, whilst we have always been interested in SEAM, we could not ask questions in this area. What we have been trying to find out is exactly what data is released when about SEAM. We were involved in the beginning with the original trial. Is the data you are reading out released publicly on a quarterly basis? How is it done? Is it on the website? Is it something that is tabled?

**Ms Hosking:** I can take that on notice. I do not know myself, so I will find out.

**Ms Carroll:** I think the data has come from the Department of Human Services, because they are the ones who do the triggers et cetera. I know we have done this in the past, but we can look at what can be regularly provided at each committee hearing or whatever.

**Senator MOORE:** That would be very useful.

**Senator SIEWERT:** That would be really good so that we get all the income support data. If we could get that, that would be good. Thank you.

**Senator McLUCAS:** I want to go back to Senator Siewert's questions around truancy officers. Minister, you indicated to Senator Siewert that we have not employed any truancy officers yet.

**Senator Scullion:** That is correct.

**Senator McLUCAS:** There is an article that says, 'I want to see truancy officers who can go to each house and get children to school.' In that same article it says you have ordered your department to hire truancy workers to be sent to homes. Have you done that?

**Senator Scullion:** One was a view I had, and I hold that view. The second is an utterance that I did not make and is incorrect.

**Senator McLUCAS:** So you have not asked your department to hire them?

**Senator Scullion:** No, I have not and I did not say that.

**Senator McLUCAS:** That is all right. I have been misquoted too. So the department is providing briefings for you about school attendance in the broad?

**Senator Scullion:** Yes, indeed. As I have indicated, there is no secret that we are working on a program to ensure that we are getting kids to school at the beginning of next year.

**Senator McLUCAS:** Have you also asked the department to cover in that briefing the potential of giving truancy officers the ability to issue on the spot fines?

**Senator Scullion:** Without evading the answer perhaps I can give a more general answer. First of all, the answer is no, I have not. The reason for that is that it is my personal view that in many particularly remote Aboriginal communities where the highest level of disconnection is occurring that strong compliance arrangements are not the ones we should be thinking about at this stage. The communities know, as I and many people on this committee do, that there are complex barriers to people getting kids to school. It may be local transport, they have lost their shirt, there is some bullying at school or there is some factionalism within the community. It is quite complex. I can tell you that no amount of compliance or fines is going to fix that.

Compliance is something should happen at the very end of the discussion. I am very hopeful that initiatives that I will be supporting will be initiatives that support families in getting people to school rather than talking about the stick. We have a long way to go before we think that is an appropriate tool. We are talking about communities where by and large up to 50 per cent of those people enrolled to go to school are not going to school. As we have seen from the report that came out recently, that is something that has gotten worse over the last five years.

So the answer to the question specifically is no, I have not asked people to introduce fines. There have been some conversations around a \$2,000 fine being just a joke. Perhaps smaller fines will be appropriate. No doubt conversations about that will happen, but they are not matters that I am actively considering.

**Senator McLUCAS:** Ms Carroll, I suppose this is a little speculative but if the Commonwealth employed truancy officers under what legislation would fines be able to be imposed by a federally funded or employed truancy officer?

**Senator Scullion:** Chair, I do not usually intervene in these ways and make a point of order about a hypothetical, but I would like anyone listening to this to know that in answering the question we were somehow considering compliance and things when currently we are not.

**CHAIR:** Thank you, Minister.

**Senator McLUCAS:** It is true though that in a speech that the then opposition leader gave to the Sydney Institute in March of this year he said, 'On-the-spot fines administered by truancy officers would be a much more straightforward way to proceed.'

**Senator Scullion:** That is, no doubt, his view.

**Senator McLUCAS:** So he has not asked you to contemplate in the briefing you have requested from the department to canvas the potential of truancy officers imposing fines?

**Senator Scullion:** There is no likelihood of me reflecting on conversations with the Prime Minister in this place.

**Senator McLUCAS:** But your job is to work directly to the Prime Minister. We have read that everywhere.

**Senator Scullion:** Indeed, that is the case. He is very keen, as he has said so many times, to get the children to school, to get individuals engaged in employment and to ensure we all live in safer communities. Those are my principal tasks.

**Senator McLUCAS:** The coalition policy document on Indigenous affairs says, 'All remote communities with unacceptable school attendance should be able to access SEAM.' The printed material says that. Are we looking to rollout SEAM any further in the country?

**Senator Scullion:** I will allow my officers to deal with that but, yes, we are.

**Ms Carroll:** Obviously, any future rollout or expansion of SEAM would be decisions for government and part of budget processes as they go forward. Clearly what we are looking at are some changes between the initial form of SEAM and that which is being rolled over the Northern Territory. There is a series of evaluations that are due to come in for us to look at and all of that will inform advice that we give to government as we go forward on the best way to look at SEAM and any expansion of SEAM.

**Senator McLUCAS:** As Senator Moore has alluded to, it does require the support of a state and territory government for data on school attendance. I understand Queensland was a bit timid about joining up with SEAM in the past but now are providing information and partnering.

**Ms Carroll:** Clearly anything around school attendance has to be done in partnership with state and territory governments as they have primary responsibility for schools. So any policy options as we go forward involve things that the Commonwealth can do to support and there are things that states and territories would need to do. We are in conversations across governments and looking at working with states and territories about what might work in their particular jurisdiction. One of the particular issues always is the data and the information about children attending school and how that information can be shared et cetera. At the moment, we have been having some bilateral discussions with different jurisdictions because what is happening in the Northern Territory is quite different from what might be happening in Queensland et cetera. As I mentioned earlier, if the Prime Minister chose it could be something that could go on the agenda for COAG as we go forward.

**CHAIR:** Senator McLucas, I ask you to draw your line of questioning to a conclusion so we can move on.

**Senator McLUCAS:** My direct question is whether the relationship with Queensland strong and do we have a shared view about where SEAM is being rolled out and where it could be rolled out.

**Ms Carroll:** We have not had specific discussions about SEAM, but we have had discussions about school attendance.

**Senator McLUCAS:** But in the FRC communities we do have SEAM operating.

**Ms Carroll:** Not at the moment, no. What we have agreed with Queensland around SEAM in Cape is to look at school attendance measures, of which SEAM is one option, and we have agreed to continue to talk about what might be implemented in the Cape.

**Senator McLUCAS:** Can I put on the record, as a former school teacher, that if you do not come to school, you cannot learn.

**CHAIR:** We are now going to move on to the session on Indigenous housing and sport with officers of the Department of Prime Minister and Cabinet.

**Senator Scullion:** While they are coming to the table, I wonder if I could just update you on a couple of things. I had a question from Senator McLucas about whether a particular family contacted my office. I said no, but I was in error. A departmental liaison officer in my office received a call earlier this week from the cadet's father. My office attempted to contact the family on two occasions, but were eventually advised by the department that they had been in contact and that they were dealing with the matter. My apologies.

**Senator McLUCAS:** That is okay. Thank you.

**Senator Scullion:** In regard to the art centres, I can add that the Attorney-General's Department has advised that the Merrepen Arts Centre at Daley River, Injalak art centre at Gunbalanya and the Elcho art centre at Galiwinku have been notified that funding has been approved, so they are not worried anymore. However, funding agreements are being negotiated, so no funding has actually been transferred to the centres—but they have been told and this is simply a process. They are now confident that the funding is coming, it is just a short matter of time while the details are resolved.

**Senator PERIS:** Thank you.

**CHAIR:** This session will be dealing with Indigenous housing and sport. I welcome back the officials. Are there any questions of this part of the program? There being none, I thank you. Before I conclude the proceedings today, I will refer again to Senator McLucas, who wanted a couple of further moments on the earlier piece.

**Senator McLUCAS:** I did indeed. Thank you, Chair.

**CHAIR:** I am now advised there are some housing questions as well.

**Ms Carroll:** Could we do housing while we have got the housing officers at the table?

**CHAIR:** We will do housing. I will go to Senator Siewert.

**Senator SIEWERT:** It may be a question that I have to ask the minister, but are there any proposed changes to the current housing programs?

**Ms Carroll:** Not at present.

**Senator SIEWERT:** So the programs around the rollout of SIHIP will continue?

**Ms Carroll:** At the moment they are certainly continuing.

**Senator Scullion:** In a much improved way, I hope.

**Senator SIEWERT:** We have all had our criticisms of the program. There is the actual operational side of it, but there are also the targets. You know as well as I do that the report that was carried out still showed a fairly high overcrowding level, as I would term it. That is why I am asking about changes to the program. Do I understand that you do not intend to change the program itself, but you are making changes to make it more effective. Is that how I should interpret it?

**Ms Carroll:** I think the minister today has been talking about some immediate priorities for immediate changes, and obviously there is work that we regularly do around informing the minister and the government—with the change of government—and we are continuing to do the work as it currently is and make any administrative efficiencies. We are always looking for those things, but that does not mean that, over the next few months and after further briefing, there would not be some further work done. But in terms of the immediate high-priority changes, we are making sure we efficiently do what we are currently doing and give the opportunity to brief the minister and the new government.

**Senator SIEWERT:** I understand what you said about priorities. To do that, will you be undertaking a review of the operation of the current program?

**Ms Carroll:** Not a formal review.

**Mr Stacey:** A review in fact was done in 2013, which was required under the National Partnership Agreement on Remote Indigenous Housing, by an independent consultant. The report was published on the former FaHCSIA website, so it is available.

**Senator SIEWERT:** Senator Scullion, I know you have made numerous comments about the operation of the program. Do you consider that review sufficient to deal with the issues that were raised? Do you intend to do further reviews or is that the extent of the process you are undertaking?

**Senator Scullion:** I do not think we are going to rely entirely on the review for information about how well the program is running. You would be well aware of my views and, I think, everyone's views, including the government's views more generally, but we would be using all of the other information that comes to hand. Most of that was covered in the review, but we would use not just the review in consideration of how we would ensure we have some more effectiveness and efficiencies in the program. I have to say, though, that much of this program is locked into pretty significant long-term contractual arrangements. I am not being defeatist about it; I am just being a bit fair dinkum about the challenge in front of us. I think we are all aware of where it got off the rails and we will certainly be focusing in those areas to ensure that the contractors that are contracted to do something are in fact being held to task. I take a very personal role in this. I do not really think I have anything more to add except that we will be using much of the information that came from the review to inform us in the future.

**Senator SIEWERT:** Is that program subject to a Commission of Audit review?

**Ms Carroll:** The Commission of Audit will look broadly at all national partnerships and all of those things. I cannot imagine that the Commission of Audit will specifically focus down on something like Indigenous housing, but it certainly might be covered in broad as it goes forward. But we will know that over time.

**Senator SIEWERT:** So you have not made a submission to or communicated with the Commission of Audit?

**Ms Carroll:** Not specifically around Indigenous housing.

**Senator SIEWERT:** Thank you.

**Senator MOORE:** Ms Carroll, at this stage is it anticipated that the current reporting processes will continue as they are, particularly from state and territory governments reporting back?

**Ms Carroll:** Yes.

**Senator MOORE:** Will the linkages with those reporting programs to deferrals of payments back to states and territories should they not meet the expectations of the program be maintained?

**Ms Carroll:** Yes.

**Senator MOORE:** Are the target settings within those programs under review or will they stay as they are now, which is year by year?

**Mr Stacey:** They are not under review as such. The national partnership agreement, originally signed, you will recall, in 2008, envisaged that after five years implementation plans would be renegotiated. That might impact on the targets, but they are not under review as such.

**Ms Campbell:** The targets for the national partnership are set for the life of the national partnership. Every two years we do run a competitive bids process where we negotiate specifically where those houses and refurbishments will be delivered.

**Senator MOORE:** My understanding is that that national partnership agreement is moving towards conclusion.

**Mr Stacey:** The national partnership agreement was signed in 2008, to conclude in 2018. So I am not sure it would be fair to say it is moving to a conclusion.

**Senator MOORE:** So it is a 10-year national partnership?

**Mr Stacey:** It is a 10-year national partnership agreement.

**Senator MOORE:** Isn't there a mid-partnership review?

**Mr Stacey:** Yes, and I referred to that in the previous answer.

**Senator MOORE:** I get tremendously confused by the various reviews we discuss. Was the review that you referred to, Mr Stacey, the mid-year review?

**Mr Stacey:** No, the review I was referring to was—

**Senator MOORE:** A mid-program review, not a mid-year review.

**Mr Stacey:** Exactly—a mid-term review that was required under the national partnership agreement after five years.

**Senator MOORE:** Has the programming and planning for that review started in anticipation of the five years? We have talked about it here before and this is quite a significant review of the process. We started it, we have had the milestones at two years where we reconsider and renegotiate with the states, but this mid one was where there was

going to be a general consideration of exactly what the learnings were and where we were going into the future. Who is doing that review?

**Mr Stacey:** I am sorry if I was misunderstood but that review has been completed. It was done by an independent consultant and the report has already been published.

**Senator MOORE:** It was done early?

**Mr Stacey:** It was done last year.

**Senator MOORE:** I remember discussing it in this program but I thought that was a preliminary review. So that was 'the' review?

**Ms Campbell:** That was one review and then there is another review in 2017.

**Ms Carroll:** Senator, the key is that at the end of the first five years there was a new set of implementation plans with the states, so the review was done in time to inform the next round of implementation plans.

**Senator MOORE:** So the review that we discussed here was 'the' review?

**Ms Carroll:** That was the mid-term review. Then another round of implementation plans are being negotiated with the states, and I am sure Ms Campbell can tell you where they are up to.

**Ms Campbell:** We have two jurisdictions that have new five-year plans in place. We have one jurisdiction with a one-year extension and we are still in the process of finalising arrangements with the remaining jurisdictions.

**Senator MOORE:** Is the time frame to those arrangements to be determined?

**Ms Campbell:** As soon as possible.

**Senator MOORE:** That is a common time frame here, I think. The other thing we talked about at length—and you would remember this, Minister—is tightening up the times in which these things were done, because over a period of time there was a degree of slippage, particularly with some jurisdictions. It was my understanding about the process of the review that it would try to ensure that these things were done in a more timely way. That was one of the recommendations of the review that we talked about, which I now know was the big one. You said two have been completed and one is very close but there are still two outstanding. What is the gap between them? When were the completed ones finalised?

**Mr Stacey:** All the implementation plans were originally negotiated for five years, so they all finished at the end of June 2013. We have already negotiated new implementation plans for the next five years with the Northern Territory and South Australia. We are still to settle implementation plans with the other jurisdictions in NPARIH for the balance of the five-year period. We take the point about time frames and making sure things get done as quickly as possible. The minister has agreed to an extension of time for Western Australia, to the end of this financial year, in order to allow negotiations to be concluded for its implementation plan. Ultimately we expect that to occur, if he agrees, for the other jurisdictions still requiring implementation plans, but it is our intention that by 1 July 2014 we have got five-year plans in for all jurisdictions.

**Senator MOORE:** So it could take a year before we start the second round of five-year plans, and the first round of five-year plans ended in mid-2013.

**Ms Campbell:** An extension of the first five-year plan to cover this financial year will allow us to continue to deliver the program.

**Mr Stacey:** I think the point is that, even though the implementation planned for the second five-year period has still not been settled, that has not stopped the rollout of the program, capital works and other reforms in the agreement from proceeding.

**Senator MOORE:** My last question—because I have dates and little things running around in my brain, so I am probably getting this all confused—is that, by the time you have the second lot of five-year plans completely agreed by July next year, will they then be five-year plans or four-year plans?

**Mr Stacey:** In effect, four years.

**Senator MOORE:** So there was no intention, with this extension, to extend the life of the agreement?

**Mr Stacey:** No, that would be a matter for government.

**Senator MOORE:** Mr Stacey, at some stage—and I put this through you, Minister—we might have to have a briefing so I can follow this. At the moment I have little arrows and time lines and things. So a briefing would be very useful.

[14:51]

**CHAIR:** That concludes this part of the program. However, as foreshadowed earlier, Senator McLucas has indicated she has one or two brief questions about an earlier part of the program and the minister has acceded to that.

**Senator McLUCAS:** Ms Carroll, we were talking about the Indigenous Advisory Council. You told me that 230 applications came in and that the department then offered up some names. Have I understood that correctly?

**Ms Carroll:** Yes, the department certainly briefed very early on the advisory council.

**Senator McLUCAS:** But also offered to the Prime Minister some extra names?

**Ms Carroll:** Yes, it would be normal practice to offer suggestions.

**Senator McLUCAS:** I think you told me that the selection process has not been completed yet?

**Ms Carroll:** I would not want to comment on whether it has been completed or otherwise. That is a matter for the government. But it is obviously in the process.

**Senator McLUCAS:** The Prime Minister is making these selections or Minister Scullion?

**Senator Scullion:** I know that I am not making the selections.

**Senator McLUCAS:** How many members will the council have?

**Ms Carroll:** The final numbers et cetera are a matter for the Prime Minister.

**Senator McLUCAS:** There was an article in *The Australian* on 11 September that indicated that there would be five seats and that Mr Shergold would take one of those seats. Is that right?

**Ms Carroll:** I would not want to speculate on the final numbers or who is on it.

**Senator McLUCAS:** So that was, possibly, inaccurate?

**Ms Carroll:** Possibly.

**Senator McLUCAS:** Has there been consultation with Indigenous people and organisations about the role and the membership of the council?

**Ms Carroll:** I know the advisory council was announced by the now government during the election process. I am aware of discussions between different bodies. We have had questions to the department about the scope et cetera. But the final decision on the terms of reference for the advisory council—the make-up and all of those things—is for the government and, in particular, the Prime Minister.

**Senator McLUCAS:** The terms of reference, you have indicated, have not been finalised. But has the Prime Minister sought advice from the department on potential terms of reference?

**Ms Carroll:** The department has provided advice on all issues relating to the advisory committee. That includes things like the terms of reference.

**Senator McLUCAS:** Has a decision been made about payment for members of the council? How will they be paid—through the Remuneration Tribunal?

**Ms Carroll:** It would be normal for the payments to be through the Remuneration Tribunal. But, again, we are moving to advice to government. The decision is not announced, so I am being just a little bit cautious. Until it is a final decision, it is all part of our advice to government.

**Senator McLUCAS:** I dare say the Prime Minister has met with Mr Mundine.

**Ms Carroll:** Yes.

**Senator McLUCAS:** I have also seen reference to ministers attending the meetings. Do we know which ministers yet?

**Ms Carroll:** That will be when all the final decisions are made about the operation of the committee. Certainly when I have been involved in advisory committees over successive governments, quite often ministers have attended and met with the committees and had conversations with advisory committees. That is quite normal practice.

**Senator McLUCAS:** Has the department established a secretariat as yet?

**Ms Carroll:** We have established a secretariat and are doing the work to support the council as it is finalised and announced and moves forward.

**Senator McLUCAS:** How many people are in the secretariat?

**Ms Croft:** There are currently three officers in the secretariat, supported by management above the three specific officers in the secretariat.

**Senator McLUCAS:** Minister, I have one last question about Indigenous cadets. When this week did you become aware of the issues related to the Indigenous cadet program?

**Senator Scullion:** When you asked me the question this morning.

**Senator McLUCAS:** Senator Peris now has some questions.

**CHAIR:** Senator McLucas, we have been indulgent on this because you asked to revisit this part of the portfolio area. I really do want to move on because the minister has a statement he wants to make.

**Senator Scullion:** I have a couple of contributions. In regard to the question on notice on the Aboriginal alcohol management plans that was asked by Senator Peris—and I have

already shared this with Senator Peris—a number of the communities indicated that they did not want to have that published at this stage. I am not aware of why, so on that basis I would not be able to provide the answers on notice, although I suspect that through the process of approval or otherwise they will be public in any event. But I cannot provide that at this time.

The other matter, as many of you would have noticed, is that there was an incident early this morning when Mr Mike Dillon, the chief executive officer of the ILC, either in response to Senator McLucas's question or in his opening remarks—I cannot recall—made some references to Shirley McPherson in her previous capacity as the chair of the Indigenous Land Corporation. She had been a chair of the Indigenous Land Corporation for several years. She was the chair of the Aboriginal Development Commission for a number of years. She has had a distinguished career. She is a qualified accountant. As a younger woman she was a great athlete. She has been a long-time member of the United Nations Permanent Forum on Indigenous Issues. She is a very distinguished Australian. In this place an officer referred to some of her contributions as 'paltry as a bandicoot's breakfast'. This is a very distinguished Aboriginal woman who has made a great contribution to public life. I will be writing to you, Chair, asking for an apology for those words which were said under the protection of parliamentary privilege. It is normal convention in this place, even for members of the committee, to be very cautious about naming individual people. I will be writing to you to ask that you request that the chairperson of the Indigenous Land Corporation asks for a full apology about the way in which this distinguished Australian was treated.

**CHAIR:** Thank you, Minister. That will conclude then—

**Senator McLUCAS:** We still have five or six minutes, which means that Senator Peris might be able to ask her questions.

**CHAIR:** Senator Peris, could you place these on notice?

**Senator PERIS:** Yes.

**CHAIR:** I have tried to accommodate everyone today. I know there are other engagements people have plans to get to and things of that nature.

**Senator McLUCAS:** We will put them on notice.

**CHAIR:** Thank you very much.

**Senator McLUCAS:** But, really, we have five minutes left; they could have been asked now.

**CHAIR:** I am just trying to accommodate some requests.

**Senator MOORE:** Could I just make a comment about the times. Minister, I just want to put on record that we gave you an early mark today but, as you would remember, this committee in previous years went from, on average, 8.30 to four o'clock. So I just put on notice, before we go for the discussion before the next round, that we will certainly be putting forward that we should extend the time. As you would well know, that was one of the things we worked hard to establish beforehand. So before we end I want to make people aware of that.

**CHAIR:** Thank you, Senator Moore. It will be a matter for the finance and public administration committee to determine. That concludes the supplementary budget estimates.

Thank you, senators; thank you, officers of the department; thank you, Hansard; and thank you, Minister.

**Committee adjourned at 14:55**



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

COMMUNITY AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

FRIDAY, 7 JUNE 2013

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

**Friday, 7 June 2013**

**Members in attendance:** Senators Fierravanti-Wells, Furner, McKenzie, Moore, Payne, Scullion, Siewert, Smith, Stephens.



## **CROSS-PORTFOLIO INDIGENOUS MATTERS**

### **In Attendance**

Senator Thistlethwaite, Parliamentary Secretary for Infrastructure and Transport, Parliamentary Secretary for Pacific Island Affairs and Parliamentary Secretary for Multicultural Affairs

### **Department of Education, Employment and Workplace Relations**

#### **Outcome 1—Early Childhood, Working Age and Indigenous Participation**

Ms Jennifer Taylor, Deputy Secretary, Early Childhood, Working Age and Indigenous Participation

#### **Outcome 2—Schools and Youth**

Mr Stephen Goodwin, Branch Manager, Evidence and Innovation, Schools and Youth

#### **Outcome 3—Employment**

Ms Jo Wood, Group Manager, Indigenous Economic Strategy

Ms Brenda Love, Branch Manager, Indigenous Economic Strategy

Ms Tania Rishniw, Branch Manager, Indigenous Economic Strategy

Ms Marsha Milliken, Group Manager, Remote Jobs and Community Programs Implementation

Ms Ingrid Kemp, Branch Manager, Remote Jobs and Community Programs Implementation

Mr Derek Stiller, Branch Manager, Job Services Australia, Employment

Mr Stuart Watson, Branch Manager, Job Services Australia, Employment

Ms Linda Laker, Branch Manager, Job Services Australia, Employment

### **Department of Health and Ageing**

#### **Whole of Portfolio**

Mr David Learmonth, Deputy Secretary

#### **Outcome 8**

Ms Samantha Palmer, First Assistant Secretary, Office of Aboriginal and Torres Strait Islander Health

Ms Alison Killen, Assistant Secretary, Program Management and Evaluation Branch

Mr Garry Fisk, Assistant Secretary, Capacity Development Branch

Dr Masha Somi, Assistant Secretary, OATSIH Support Branch

Mr Greg Lemmon, Acting Assistant Secretary, Operational Policy Branch

Ms Maria Jolly, Assistant Secretary, Strategic Policy Branch

Ms Julie Schneller, Assistant Secretary, Health Campaigns Branch, People, Capability and Communication Division

Mr Nathan Smyth, First Assistant Secretary, Population Health Division

Ms Colleen Krestensen, Assistant Secretary, Drug Strategy Branch

Mr Mark Booth, First Assistant Secretary, Primary and Ambulatory Care Division

Ms Meredith Taylor, Assistant Secretary, Rural and Regional Health Australia  
Ms Sue Campion, First Assistant Secretary, Mental Health and Drug Treatment Division  
Mr John Shevlin, Assistant Secretary, Substance Misuse and Indigenous Wellbeing Programs Branch  
Ms Penny Shakespeare, First Assistant Secretary, Health Workforce Division  
Ms Gay Santiago, Assistant Secretary, Health Workforce Capacity Branch  
Ms Janet Anderson, First Assistant Secretary, Acute Care Division  
Mr Charles Maskell-Knight, Principal Advisor, Dental Branch, Acute Care Division  
Ms Ann Smith, Assistant Secretary, Hospital Development Branch  
Ms Mary McDonald, First Assistant Secretary, Regulation Policy and Governance Division  
Ms Jennifer Chadwick, Principal Adviser  
Ms Tracey Duffy, Assistant Secretary, Office of Hearing Services  
Ms Cheryl Wilson, Assistant Secretary, Office of Hearing Services

**Department of Families, Housing, Community Services and Indigenous Affairs**

**Executive**

Mr Finn Pratt, Secretary  
Ms Liza Carroll, Deputy Secretary  
Mr Michael Dillon, Deputy Secretary  
Ms Felicity Hand, Deputy Secretary and Chief Operating Officer  
Ms Serena Wilson, Deputy Secretary  
Kirsty Gowans, General Counsel, Indigenous Business Australia

**Outcome 7**

Ms Caroline Edwards, Group Manager, Strategic Priorities and Remote Housing  
Ms Kate Gumley, Group Manager, Land, Employment and Economic Development  
Mr Steve Jennaway, Group Manager and Chief Finance Officer, Finance and Services  
Mr Evan Lewis, Group Manager, Disability and Carers  
Mr Michael Lye, Group Manager, Families  
Ms Cate McKenzie, Group Manager, Women, Children, Communities and Mental Health  
Ms Donna Moody, Group Manager, Operations Strategy and Performance  
Ms Janean Richards, Group Manager, Legal and Compliance  
Mr Brian Stacey, Group Manager, Indigenous Engagement and Remote Delivery  
Ms Kari Ahmer, Branch Manager, Stronger Futures in the Northern Territory  
Ms Sharon Bailey, Branch Manager, Ministerial, Parliamentary and Executive Support  
Ms Tracey Bell, Branch Manager, Communication and Media  
Mr Philip Brown, Branch Manager, Parental Payments and Family Research  
Ms Libby Bunyan, Acting Branch Manager, Land Programs  
Ms Belinda Campbell, Branch Manager, Indigenous Housing Delivery

Ms Joanna Carey, Acting Branch Manager, Public Law  
Ms Tracey Carroll, Acting Branch Manager, Cross Portfolio and Information Branch  
Mr Mark Coffey, Northern Territory State Manager  
Ms Lisa Croft, Branch Manager, Remote Service Delivery  
Mr Andrew Davitt, Branch Manager, Community Development and Purchasing  
Ms Mandy Doherty, Branch Manager, Reconciliation and Relationships  
Ms Jill Farrelly, Branch Manager, Mental Health  
Ms Liz Hefren-Webb, Branch Manager, Welfare Payments Reform, and Money Management  
Mr Matthew James, Branch Manager, Performance and Evaluation  
Ms Michelle Kinnane, Branch Manager, Indigenous Commonwealth State Relations Support  
Mr Andrew Lander, Branch Manager, Assurance and Compliance  
Ms Diana Lindenmayer, Acting Branch Manager, Community Development Employment Projects  
Mr John Litchfield, Acting Branch Manager, Land and Economic Development  
Ms Lynette MacLean, Branch Manager, People  
Mr Gavin Matthews, Indigenous Housing Programs  
Mr James McDonald, Branch Manager, Communications and Stakeholder Engagement  
Ms Marian Moss, Branch Manager, Commercial and Indigenous Law  
Ms Susan Parker, Deputy Branch Manager, Communication and Media  
Ms Karen Pickering, Branch Manager, Stronger Communities  
Mr Geoff Richardson, Branch Manager, Aboriginal and Torres Strait Islander Workforce Strategies  
Mr Robert Ryan, Branch Manager, Remote Priorities  
Dr Judy Schneider, Branch Manager, Research and Analysis  
Mr Kamlesh Sharma, Branch Manager, Financial Accounting  
Ms Fiona Smart, Branch Manager, Women's Safety and Family Violence  
Mr Pat Sowry, Executive Director, Remote Housing in the Northern Territory  
Ms Eliza Strapp, Acting Branch Manager, Family Support Program  
Ms Kim Vella, Branch Manager, Leadership Governance and Community Development

**Office of the Registrar of Indigenous Corporations**

Mr Anthony Beven, Registrar  
Mr Joe Mastrolembro, Deputy Registrar, Regulation and Registration

**Indigenous Land Corporation**

Mr Bruce Gemmell, Acting Chief Executive Officer

Ms Jodie Lindsay, Chief Operating Officer

Mr Garry Cook, Director, Business Employment and Training

**Indigenous Business Australia**

Mr Chris Fry, Chief Executive Officer

Mr Leo Bator, Chief Operating Officer

Mr Satish Kumar, Chief Financial Officer

Kirsty Gowans, General Counsel, Indigenous Business Australia

Mr Rajiv Viswanathan, General Manager, Equity and Investments

**Committee met at 08:02**

**CHAIR (Senator Moore):** I declare open this Senate Community Affairs Legislation Committee hearing on cross-portfolio Indigenous matters. Our committee is considering budget estimates on Indigenous matters across several portfolios. These have been grouped on the program into themes and issues and relate to the portfolios of Families, Housing, Community Services and Indigenous Affairs; Education, Employment and Workplace Relations; and Health and Ageing. The committee must report to the Senate on 25 June and has set Friday, 26 July as the date for the return of answers to questions on notice. Senators are reminded that any written questions on notice should be provided to the committee secretariat by the close of business on Friday, 14 June 2013.

Officers and senators are familiar with the rules of the Senate governing estimates. If you need assistance, the secretariat has copies of the rules. I particularly draw attention to the Senate order of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated into *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

- (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
- (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

[08:03]

**CHAIR:** I welcome Senator the Hon. Matt Thistlethwaite and officers of the portfolio departments. Mr Finn and Mr Dillon, the committee puts on record its appreciation for the preparation for this day. We all know that the only way it will work is if we have that preparation. Thank you. I know it takes more work. Senator Thistlethwaite, do you wish to make an opening statement?

**Senator Thistlethwaite:** No, thank you.

**CHAIR:** Mr Pratt, do you wish to make an opening statement?

**Mr Pratt:** No, thank you.

**CHAIR:** We will start today's proceedings with a discussion of general matters. We have a program, which has been bashed out with great pain. We will probably not stick to it completely, but we will try, and we will also work out how we can best get through it. Under general matters, I believe that we have questions from Senator Scullion and also from Senator Siewert. Other senators may come in, but they are the ones that I expect. Senator Scullion, do you wish to start?

**Senator SCULLION:** I do indeed. In general business, I have a couple of questions on the ILC that I would like you to answer. As you know, we had a number of questions with regard to the appointment of Mr Gemmell last time. Mr Pratt, I will table a letter from the

minister to the former Chair of the Indigenous Land Corporation, which references section 125 of the *Cabinet Handbook* and says, with regard to CEO appointments:

Significant appointments must be referred to the Prime Minister, Julia Gillard, seeking her or, at her discretion, Cabinet approval for the appointment.

The letter goes on to say:

Ministers are able to make acting appointments for up to three months without referring the matter to the Prime Minister.

This, in effect, says that Mr Gemmell's initial six-month appointment and second six-month appointment were required to be referred to the Prime Minister for approval. Did the Prime Minister approve Mr Gemmell's first term? I am directing a question to you, Mr Pratt, because I am assuming that you would like to answer it but, if somebody else wishes to, that is fine.

**Senator Thistlethwaite:** Can we have a copy of the letter please?

**Senator SCULLION:** I have tabled it.

**Ms Hand:** I can confirm that all *Cabinet Handbook* processes were followed and, in fact, in both instances the Parliamentary Secretary to the Prime Minister signed off the acting appointments. They were referred to the Prime Minister.

**Senator SCULLION:** So can you confirm that in the initial instance when the six-month appointment was made, the parliamentary secretary signed off on that? Would you be able to provide me with a copy of the letter under which that was signed, if that is the way it takes place? Or you can explain to me how the sign-off takes place.

**Ms Hand:** I am not sure I am allowed to do that because it is a cabinet process, but I will confirm that and get back to you.

**Senator SCULLION:** Given the nature of the process and it is also part of the *Cabinet Handbook*, I am not sure what question I can ask that would reveal whether or not that process took place. I am not interested in the details of anything within cabinet.

**Ms Hand:** The process took place; I can confirm that. In both cases, the minister referred it to the Prime Minister, and the Parliamentary Secretary to the Prime Minister signed off both acting periods.

**Senator Thistlethwaite:** We will take on notice whether we can provide that letter to you. We will inquire and check.

**Senator SCULLION:** Ms Hand, could you tell me who the parliamentary secretary who signed off on that was?

**Ms Hand:** I would have to take that on notice. One of my people here may come up to the table if they know the name, otherwise we will take that on notice.

**Senator SCULLION:** Prior to the second six-month appointment, what advice, if any, did the department provide in terms of the circumstances of Mr Gemmell prior to that? Were they aware, for example, that he was not going to take a break. He was, in fact, still working effectively for the ILC when he said he had resigned. Was cabinet aware of those matters when they provided the second appointment?

**Ms Hand:** I would have to take that on notice; I do not know.

**Senator SCULLION:** Perhaps Mr Pratt would be aware of whether you provided any information in regard to those particular circumstances to cabinet or to Ms Hand.

**CHAIR:** Senator, that is advice to cabinet and, as you know, we do not provide advice to cabinet in Senate estimates.

**Mr Pratt:** I do not know. I would have to check the letter that went to the Prime Minister on that.

**Senator SCULLION:** Thank you for that, Mr Pratt. In the same vein, you may not recall your answer to question on notice No. 349 about Mr Gemmell's appointment. The department advised that it was not government policy to disclose legal advice, and I accept that. What I am interested in is: was there any written legal advice on this matter or was it just verbal advice?

**Ms Hand:** We cannot disclose, as you say, the legal advice, but we did seek legal advice and there was written legal advice. The department provided advice to the ILC that this acting appointment was within the provisions of the ATSI Act.

**Senator SCULLION:** You were aware of the details around the request for the provision of legal advice?

**Ms Hand:** I am, Senator.

**Senator SCULLION:** Excellent. When you request any legal advice, you cast the environment about which the advice is required. Did you ask for the legal advice on the basis that Mr Gemmell would in fact continue to work for the ILC and retain his email, the ILC phone and the key to the office and would travel on ILC business and chair the ILC's corporate management meeting in Adelaide? Regarding the legal advice you received, was it on that basis—that those would be the circumstances and that he would not in fact be leaving the ILC, that he would be remaining in the ILC in all his operational sense? Was that the basis under which the legal advice was sought?

**Ms Hand:** As I think I said at the last Senate estimates in February, Mr Gemmell did take a period of two weeks leave and we sought advice as to whether it was possible for someone who had acted for a six-month period to act for a further six-month period, if that was required, and the legal advice that we got back was that that was possible.

**Senator SCULLION:** I certainly thought that we had established that there was quite a clear difference between what I understand, anyway, taking leave is—you go home, you go fishing—

**Mr Pratt:** I do not think Mr Gemmell—and you will need to confirm this with Mr Gemmell—actually took two weeks leave. He stopped at the end of his six-month appointment and then rejoined several weeks later. But that is a matter for Mr Gemmell to—

**Senator SCULLION:** I understand that, Mr Pratt. As to the notion that he stopped work or took leave, he did not; he stayed at the ILC; he continued to appear at work; he chaired meetings; he flew on ILC money. He stayed with the ILC. The question I am asking is: if you received legal advice—and that is history now; that is what happened—about whether or not this was lawful, I would have thought that you would have to provide the environment around that advice; that is, 'He's not going to leave. He's not actually leaving. He's remaining in the

employ of the ILC, not taking leave.' I just want to clarify: Ms Hand, you have just told me that—

**Mr Pratt:** My understanding is that he is stopped his employment with the ILC for a period of time. I am aware, as emerged at last estimates, that towards the end of that break he attended a meeting in Adelaide, from memory. He was not paid during that period, so his employment actually ceased and then he rejoined the ILC following a break. He was not paid during that period.

**Senator SCULLION:** Although he provided the same functionality as he would have as CEO during elements of that period—is that right, Mr Pratt?

**Mr Pratt:** That is not my understanding. My understanding is there was an acting CEO during that period and that, because he was going to be reappointed, he was invited to attend a meeting towards the end of his break, which he did.

**Senator SCULLION:** Without going over old ground too much, generally with the notion of taking a break certain elements would happen. If I were lawyer and, Mr Pratt, you were asking me advice about something, when you said, 'He'll be taking a break,' or 'He won't be working for two weeks or any part of that,' I would have thought it were absolutely imperative in the provision of that advice that you explain the exact circumstances: he is not being paid but he is attending things and he is flying places—not on his own money; the ILC paid for the plane flights and, no doubt, accommodation if that was required, and would continue to pay for his phone bill and things would continue to exist in that manner. I was simply asking whether or not that circumstance was provided to the lawyers who were going to provide you with that legal advice, because the legal advice clearly would not have been complete or in fact accurate if they had been provided with the complete advice that should have been provided.

**Mr Pratt:** Ultimately these are matters for the ILC Board. We were asked for advice as to whether or not it would be possible for Mr Gemmell to be reappointed after a break, and we provided that advice.

**Senator SCULLION:** Can I read from that? I want to be clear that you were unaware that, when he was taking a break, in fact he would be working? So he would be working within that rate, whatever part of it. So, when you provided the advice, you are telling me that you were unaware that those circumstances would exist, and you put the legal advice on the basis that—

**Mr Pratt:** I cannot be that definitive. I would have to check the extent of the information we got from the ILC Board in providing the advice. So I cannot answer that question. I cannot confirm your proposition.

**Senator SCULLION:** Can you take it on notice, Mr Pratt. Ms Hand, did you have an understanding, when you asked for the legal advice, of the circumstances of Mr Gemmell and his activities during this period of taking a break? Were you aware that that would be the case, or was it your understanding that it would be leave, as in the normal notion of leave—that he would not be attending work or any activities around the work—when you asked for that legal advice?

**Ms Hand:** Can I take that on notice? I cannot recall what the specific request from the ILC Board was. But, as I said, the advice we provided was to inform their decision to reappoint him, and it was within the provisions of the act.

**Senator SCULLION:** Were you aware, prior to the request for the legal advice, of the circumstances of Mr Gemmell actually remaining at work, or were you just simply told that he was taking two weeks break and, on that basis, you requested the information from the legal advice?

**Mr Pratt:** If I can comment on your premise: it is our understanding that Mr Gemmell actually ceased employment—that he did not go on leave. And that was the basis for the advice: that it was clear that the ILC Board wanted, for the reasons we ran through at last estimates, to reappoint Mr Gemmell while they were completing the selection process for a permanent CEO—that he was going to cease employment and then be reappointed, and could that be done under the ATSI act? So that was the basis of the advice we provided.

**Senator SCULLION:** I understand that but I am a lay person. Ceasing employment, taking leave—whatever; let us call it ceasing employment. Most people's notion of ceasing employment is not going to work. So they are the differences. I am just trying to work out whether you were aware. I can understand if someone says, 'He's ceasing employment,' and you say, 'Fine; let's seek advice on the basis that he's ceasing employment.' I just wanted to know if either Ms Hand or you were aware of the circumstances under which ceasing employment, in the context of the ILC Board, was or not?

**Mr Pratt:** I certainly was not, and we have undertaken on notice to determine whether or not we had information about what Mr Gemmell would be doing during the period after he had ceased employment before he was reappointed.

**Senator SCULLION:** Thank you, Mr Pratt, and thank you, Ms Hand. On general matters, that is it for me.

**CHAIR:** Is there anything in general for you, Senator Siewert?

**Senator SIEWERT:** You may need to direct me as to where best to ask this question. I have had concerns raised with me again around delivery of municipal services and the Commonwealth—a change in what they are paying for. In particular, in Leonora, the Katampul Aboriginal Corporation do not have title to the lands that they are currently occupying. That is because of an issue with the Aboriginal Lands Trust in Western Australia. That is still unresolved. They are caught up in the process that they do not have title to the reserve and they are not legally responsible for paying the rates. The shire council is trying to establish who does pay the rates, to enable them to deliver continuing basic municipal services to the residents of the reserve. At the moment, it looks like the Shire of Leonora are going to be withdrawing their services. Has anybody raised this with you?

**Mr Dillon:** This is a state matter. As far as I can understand your question, it is a matter for the state of Western Australia. They have responsibility for local government. We do provide funding for municipal services across the country, but I think the question will need to be more specific for us to answer it.

**Senator SIEWERT:** On what basis are you now providing support for municipal services?

**Ms Edwards:** Through FaHCSIA, an amount of funding in the order of \$40 million this current year is provided for the provision of basic municipal and essential services, through a variety of service providers, in some states, primarily directed at smaller communities. That complements the general state-managed ordinary local government services. That goes through a number of providers and a number of places, down to a number of communities. The one that you mentioned—I missed the actual name—does not ring a bell with us. As Mr Dillon says, our first assumption might be that it is not one which our funding goes through to. But, if you could provide the detail, we could certainly find out about it.

**Senator SIEWERT:** Okay. I am aware there has been some to-ing and fro-ing about who does get access to municipal services. Are you able to give me a list of the changes in the funding for the delivery of those services? I remember a couple of years ago there were some ongoing issues around who was getting funded and who was not in those changes. Are you able to provide me now with who is receiving services?

**Ms Edwards:** I will check I understand your question. Over a number of years, we have been talking with states and territories about the roles and responsibilities, and those are ongoing discussions that continue with the states and territories. In the meantime, in the current budget the government has just announced an extra year of funding under more or less the same arrangements that have been going on for some time, while those discussions continue. On that basis, there is not any very major change. There are bits and pieces from year to year, but we are not anticipating any very radical change at this point. That funding has now been extended for an additional year, in the context of continuing to provide services in predominantly the same footprint as previously.

**Mr Pratt:** Senator, is your question: where are we providing those services?

**Senator SIEWERT:** Yes.

**Mr Pratt:** It is in 340 communities, give or take, across a number of states.

**Senator SIEWERT:** Are you providing any to the Shire of Leonora, or communities in the Shire of Leonora? Let us be specific now to the Shire of Leonora.

**Ms Edwards:** We could take that on notice and come back to you with the details for that shire.

**Senator SIEWERT:** I understand, Mr Dillon, your comment about it being a Western Australian matter, but the problem is that it is not so clear-cut to communities, when you obviously do provide funding for municipal services. We have got a community that is facing not having services delivered because of, it looks like, not being able to resolve the issue around title. In the meantime, they do not get any services.

**Mr Dillon:** Just for the record, I should state the Commonwealth policy, which is that it is for states and territories to provide municipal services to their citizens, Indigenous or non-Indigenous. We then provide supplementary funding.

**Senator SIEWERT:** I understand that. This is a community that is facing rubbish building up because they cannot resolve some bureaucratic issues. They see other communities being able to access some relief to deal with that issue, and here we have a community that cannot access that. It appears that way. I am trying to see how that issue can be resolved so that they are not faced with rubbish building up and their not receiving services that other Australians expect. That is why I am asking.

**Ms Edwards:** We will take on the notice the details of the services we fund in that shire and also look into this issue. It is not ringing any bells with us and we are surprised about that. One, we will chase it up and, two, we would think Mr Dillon would be right that this is one that the state government has been providing and, if there is an issue, it is with them. But we will go and talk to them about that.

**Senator SIEWERT:** Okay. I should put on the record I am not having a go at the shire council at Leonora because they obviously need some way of being able to pay for these services and it seems like the community is stuck in the middle.

**Senator SCULLION:** I just want to ask a question in regard to a grant that I think came from the ABA. The grant was approved by the minister to fund a company Arrulka to organise the Mbantua festival in Alice Springs. Can you tell me how much grant was?

**Mr Dillon:** I should be able to tell you if I can get access to my note. I have so many briefs here. This is to Arrulka Business Corporation. There was an amount of \$841,000 approved in 2011-12 under section 64 of the act.

**Senator SCULLION:** Thanks very much, Mr Dillon, for confirming that. I understand Arrulka is a Sydney based private company owned by Neville Perkins. Is that right?

**Mr Dillon:** I am not aware of the ownership of Arrulka.

**Senator SCULLION:** So this Mbantua festival is a big cultural festival of the arts that has been put on in Alice Springs. This is significant amount of money. Did this go to some sort of a tender or assessment process?

**Mr Dillon:** I am extremely confident that the process would have been that an application would have been made under the guidelines for the ABA. That application would have been considered by the ABA advisory committee and they would have recommended this grant. The criteria for the grants are that this be in essence—I am not talking strictly legal terms—for the benefit of Aboriginal citizens of the Northern Territory and the committee would have taken the view that this cultural festival in Alice Springs would have been for the benefit of those people and probably for the benefit of the whole community. We could check the application and come back to you on that if there are any outstanding question.

**Senator SCULLION:** You could get back to me. Just in regard to the nature, I understand the process. You are right. This is for the benefit of Aboriginals in the Northern Territory and I guess the reason for my questioning is that there are plenty of Aboriginal organisations in the Northern Territory that could have conducted this. I was wondering why they perhaps came to the conclusion that a Sydney based company should provide that. You can take the issue on the competitive tender on notice.

**Mr Dillon:** I can clarify that right now. I hate taking things on notice when we do not need to. Basically, there would not have been a tender because this is an application process and the application would have come by Arrulka to the ABA.

**Senator SCULLION:** I had a bit of a squiz about their website. It is pretty informative. They described themselves as a professional services company specialising in Indigenous recruitment and retention, Indigenous engagement, diversity in workplace training, career mentoring and consultancy services including cultural advice. That is pretty blank on arts or event management of this size. Would that basic triage be taken into account when providing \$841,000?

**Ms Gumley:** It is usually the case that the community organisation from the Northern Territory puts their application forward. They will have partners in that if they choose that as part of their application. I think that is how the application would have gone forward. As Mr Dillon said, if you would like we can get some more details of the application, and see whether we could provide that today for you.

**Senator SCULLION:** I understand that did not happen in this case. It was a direct application for a grant by the organisation. There was no partner. That is not uncommon. I understand it can happen both ways. But clearly they have not done this before. It is not an \$841,000 festival—I will get to that at the moment. Normally, with the backgrounding of any funding of this nature if you are spending \$841,000 and building a house—I know we have a speckled history of having a bad analogy—you would perhaps ask if somebody had any experience in building a house. That would be a pretty fundamental thing for the expenditure in the process. Is there a triaging process that would say, 'Have these people built a house before—have they done an event before?' Who would look at those things? Would that be the board?

**Mr Dillon:** There are two sides to this issue, it seems to me. One is the festival itself and whether it is for the benefit of Aboriginal citizens in the Northern Territory.

**Senator SCULLION:** I have no problem with that.

**Mr Dillon:** It seems that it probably is. In terms of the proponent, Arrulka, in a sense the act says nothing about who gets funded to do this or why. But as a matter of first principle this seems to be an Aboriginal owned company. We support Aboriginal economic development. If you are going to be an entrepreneur or an innovator in the commercial world you are going to do new things—by definition. Otherwise, if we only do what we have ever done we are not going to make any progress in the Indigenous economic development space. It seems to me that for us to make a judgment here along the lines you are suggesting would really be saying to Aboriginal people—and I talking in principle, not in the specifics, it would be bad policy for us to do this.

**Senator SCULLION:** There is a very good Aboriginal company based in Sydney called Message Stick. It is well known to everyone. Michael McLeod is a great operator. Do you know what he does? He runs these events. He specialises in running festivals, arts events and conferencing events. Again, it is of concern to me that just because it is an Aboriginal company it is okay. I am making a point about an Aboriginal based company that specialises and has the suite of tools to succeed at this. If you can provide on notice any information from the board or from FaHCSIA about whether or not any of those things were taken into consideration I would appreciate it.

**Mr Dillon:** Certainly.

**Senator SCULLION:** The other issue is that last Wednesday night I was approached by somebody from the organisation. It was late and noisy and I was not able to get too much more information, except that he said to me that he was a representative of the organisation Mbantua—it was pretty interesting—and he said, 'The application was for \$2.1 million, or something, and the rotten minister only gave me \$841,000.' It was not in that context. There was no sleight against the minister. As usual he appeared immediately to be a rent seeker in saying, 'Nige, we would love to see you about some more money about this—because if it is

going to cost \$2.1 million.' If the application says that you would like to build this house and it is a \$2.1 million house and you say, 'No worries. Here's \$841,000. Perhaps you can leverage that against other things.' What would you do to ensure that they actually had the other leverage, because there is no point giving them half the money if they are not going to be able to achieve the outcome. What do you do in those circumstances, Mr Dillon? If the application says it is \$2 million and you give them \$800,000, is it then a matter of their coming back to you to show you where they have the other money, so that they can complete the task? How does that work?

**Mr Dillon:** All I can say is that there is a rigorous assessment process for all of these grants. It involves both the department looking at the application and then a discussion with the ABA advisory committee. Yes, there will be circumstances where an application is made for \$2.1 million and something less is given. In the process of making that judgment the committee, in recommending to the minister, will take into account whether or not they think it is feasible to do \$800,000 worth of festival. I actually do not have the information in front of me but I am happy to go and look at it.

**Senator SCULLION:** I appreciate that. I also understand there are circumstances where the application may be recommended for a particular amount of money—this is just generally—and the minister may decide that they think this amount of money or that particular contribution is too much and she may partially accept a recommendation and provide, for example, a different sum of money. Is that correct?

**Senator Thistlethwaite:** Are you suggesting—

**Senator SCULLION:** No, I am asking, because I think in quite a lot of cases the minister's discretion is such that she would say, 'We are happy to provide half the money'—quite reasonably. In some circumstances they can say this is a state matter and perhaps you should ask the Northern Territory government. That is quite a normal process and I am not suggesting any mischief. I was just wondering whether or not in this circumstance—and if you do not have the details you might find it out—the actual sum was a function of a ministerial decision or a function of the ABA board's decision in that regard. That would be very useful.

**Mr Dillon:** We do not normally reveal the advice to ministers. But my experience with the ABA—it is limited—is that by and large the minister accepts the recommendation of the committee, not partially but in full. That is my experience.

**Senator SCULLION:** If you could provide what information you can that would be very useful. But you say that this is a very rigorous process—absolutely rigorous—but quite clearly this is an organisation that has no experience in doing it. There is an Aboriginal organisation in the same city you have selected that has a great deal of experience in it. Representatives of Mbantua have indicated to me—officially or not—that only half the money is there and they are out there trying to seek the remainder of the money. I am still at a loss to find out exactly where they are going to find that money from, and, if they do not find the money, where the \$800,000 is going to and how it is going to be accounted for. Hence my questions. Could you provide on notice some sort of explanation to what I think is a reasonable set of questions about how that is going to work.

**Mr Dillon:** With respect, I think you misunderstand the process here. Like any grant process—I have some experience with the R&D grants in the Commonwealth—basically proponents come along and make an application for a grant. The Commonwealth does not say, 'That is a good idea, but we will actually give that grant to someone else who did not have the idea.' They decide whether or not to give the grant to the person who proposed it. That is the process that underpins this process here with the ABA.

**Senator SCULLION:** I appreciate that. Again, the point was just about the basic understanding that if you give them the money—even if they have never built a house before or never done an arts event before—\$2 million is what I found somewhat confounding. But in any event you have not cleared any of that up, but if you think you can provide something on notice that would be terrific.

**Mr Dillon:** I am happy to do what I can?

**CHAIR:** The amount that was given was not \$2 million, just for the record.

**Senator SCULLION:** No. I understand the original application, as it was put to me, was—

**Mr Pratt:** In general terms I am not sure we can absolutely accept the premise there. I think we need to go back and have a look, but given my experience with similar processes—not in this case—there is always an assessment made of the merits and the likelihood of the potential grantee being able to deliver what it is they are proposing to do. If they ask for \$2 million to do something and the result is that they get \$800,000 to do it, that is because there is an assessment that that will result in something of benefit or value. I agree with your suggestion about someone asking to build a \$2 million house and us saying, 'Here is \$800,000 to do that,' without their knowing they could get the rest of the money or that they could build something else for the \$800,000 we agreed to. We would not do that.

**Senator SCULLION:** Perhaps you can throw some light on that. I understand the issue of advice to the minister and I know what is prohibited, but I am sure you can find something that would help the committee to understand those circumstances a bit better.

**Mr Pratt:** We will investigate the details.

**Ms Gumley:** We will pull the application today and get the details for you.

**Senator SIEWERT:** Will there be an acquittal process on this?

**Ms Gumley:** Yes.

**Mr Dillon:** Absolutely.

**Senator SIEWERT:** And they will report against—

**Ms Gumley:** The outcomes. The other thing to bear in mind is that in any application that comes forward part of the application may be considered either by the department or by the committee not to have merit. So it may well be that part of the funding they sought was not within the terms and conditions that the funding is able to provide.

**Senator SCULLION:** I have a question for Mr Pratt. In 2009-10, the minister approved another ABA account which granted the Central Land Council approximately \$6 million to buy Huckitta Station in Central Australia and another \$4 million to purchase cattle with which to stock the station. That is unremarkable; it is the sort of thing they often do. I just wondered why funds for the Aboriginal Benefits Account were used to purchase the station and not the

ILC—because this is the main game for the ILC. They are absolute experts in this stuff. They know what to pay for a station. Was the ILC consulted on the purchase—about whether it was a commercially viable proposition? I am thinking about the interoperability. You have the ABA over here doing something which they can quite rightly do, but did they consult or talk to the ILC about whether it was a commercially viable proposition?

**CHAIR:** Mr Pratt, I suspect this question should not be to you. It should be on notice to begin with—that is several years ago. No officer would have the detail of that process with them. We have the question. Can we take that and any supplementary questions for further follow-up on notice?

**Mr Pratt:** Certainly I am not in a position to answer that question. It predates my time in FaHCSIA. I was looking down the table and I think it predates everyone else as well. So we will take that on notice. Quite often, in my experience, there is consultation across the various programs and agencies within the portfolio about how we might undertake a major initiative of that sort. But that is speculation on my part. We will look into it.

**Senator SCULLION:** The only reason I asked you the question is that you do have a great capacity for retention of the weirdest pieces of detail.

**Mr Pratt:** Thank you.

**Senator SCULLION:** In a more general sense, is there a formalised obligation for those sorts of things—an obligation to consult with the ILC? We break things up—you do these things and the ILC does these things. The ABA is sort of a bit on its own. You may also want to take this on notice, but is there any formalised obligation, in those sorts of circumstances—you are purchasing something—to seek advice? We have all this expertise in these silos. Is there any obligation that they seek advice on those things?

**Mr Dillon:** The answer is that there is no formal obligation, but it is certainly practice that, where possible, we try to make those connections. I am certainly aware of cases where large applications have come forward from the ILC to the ABA. Obviously you talk with the department and other agencies about whether it can be done there or you might go to the IBA or you might suggest that a foundation do the funding. The department will try and make the connections and get the best outcomes—if we see something early enough. Obviously, we will not, for every application—some might be for \$100,000 here or \$50,000 there—put in a significant effort to try and make connections. But, if it is a \$4 million or \$6 million grant, I think you will find that the department does use its best endeavours to try and get a rational outcome and to coordinate between agencies in the portfolio.

**CHAIR:** We will move on to Closing the Gap.

**Senator SIEWERT:** I will ask some general questions about the NIRA first and then go on to the latest report on Closing the Gap. The actual agreement was signed in 2008—is that correct?

**Mr Pratt:** I believe that is correct.

**Senator SIEWERT:** What is the overall process for when the agreement is renewed with the states?

**Mr Dillon:** To be honest, I do not personally know whether it is time limited. I can find that out for you very quickly though, Senator. Do you know, Matthew?

**Mr James:** As far as I am aware, NIRA does not have an end date on it. One thing to keep in mind of course is that one of the targets, the life expectancy target, has an end date of 2031.

**Senator SIEWERT:** I realise that. I was trying to find out whether there was a review process. I appreciate that we have just had a report on progress, but I am interested to look at whether there is a process of review of how it is being implemented, what the targets are—

**Mr James:** A year or so ago there was a review. There has been a process of review of all the national agreements, and that review was conducted through COAG processes. As a result of that review, the number of indicators in the NIRA was changed somewhat. We dropped some indicators, and tightened it up a little bit, and the results of that review I reported on the COAG website.

**Senator SIEWERT:** I could not find those, but I did—

**Mr James:** It is on the COAG website; it is not on the CRC website.

**Senator SIEWERT:** That will explain why one of the details in there says 2008 and another one says 2012—I presume that is why. In that case, when is it expected that there would be another review?

**Mr James:** I am not aware of any plans for another review in the way that the last review was done. We look at the NIRA constantly in the sense that, for example, there have been some announcements about some possible new targets. If those targets were agreed by the states and territories, the process would be that that would have to be agreed by COAG. Then we would change the NIRA to reflect that. Following that, we would—and there is a group that I chair called the NIRA Performance Information Management Group—go through and say that there is a target agreed, exactly how we would measure it each year and what the data sources are, and that sort of thing. Then in July each year those data specifications are provided and the data providers are required to provide the relevant data by December of that year.

**Senator SIEWERT:** Has consideration been given to including the social determinants of health and a more direct approach including the social determinants of health?

**Mr James:** Not that I am aware of in the NIRA. One of the things with the NIRA review was that we were trying to rationalise the number of indicators. So we have not discussed that in the context of the NIRA, that I am aware of.

**Senator SIEWERT:** I would like to go to specific questions around the latest report. Are the life expectancy figures per state determined across the whole of the state, or the territory?

**Mr James:** That is right.

**Senator SIEWERT:** Is it possible in the data that you collect to break it down to a more regional basis?

**Mr James:** One thing that will happen, and the ABS are looking at the possibility—and I was speaking to them last night and it is looking quite good—is that for the next set of Indigenous life expectancy estimates, the ABS will be able to publish them by remoteness area nationally—so remote, very remote, or it might be a combination of those. So that will happen.

In terms of going below substate for life expectancy estimates, the issue you have is that the small numbers mean that often it is not possible to report at that level just because of the

small number of people involved. To give an example, the ABS cannot produce reliable life expectancy estimates for the whole state of Victoria because the numbers are so small.

**Senator SIEWERT:** Okay.

**Mr James:** That is what restricts you at a local level from doing life expectancy estimates.

**Senator SIEWERT:** Because of their state-wide nature I am concerned that some of the figures may not be giving an accurate picture of what is happening in some of the regions. I have been provided with some figures for Alice Springs that somebody has collected, for example, which suggest that average age is down to 44 years. I am not suggesting that figure applies to the whole region, but it raises concerns about creating a false picture in some communities.

**Mr James:** With quite a number of the targets, you can split it down to a local level—such as the NAPLAN data or the targets based on the census. Health is a bit trickier—you end up using other indicators such as monitoring things like hospitalisation data down to the statistical local area. There is a range of proxies you can use. In the case of the NT, Indigenous life expectancy is significantly lower than any other jurisdiction. The issue there is that the NT is unique in that 80 per cent of the Indigenous population is in either remote or very remote areas. In that sense it affects the NT average, but you can of course get variation below that. You have to try and use other data at times to get a handle on that.

**Senator SIEWERT:** How confident are you that the other data you were referring to reflects the true picture?

**Mr James:** It depends what it is, but if you look at the census data, you can get a real picture from it. If you look at the targets by remoteness area, generally speaking what you find in remote and very remote areas Aboriginal outcomes are on average worse than in urban areas. You can see that very clearly. If you look at the NAPLAN results, there is a very big variation. You can see the same thing with, say, educational attainment—the Year 12 attainment is much lower in remote. Generally speaking, you can see a pattern in the data. It does not mean that the data is all perfect, but it is good enough to give you the story of relativities.

**Senator SIEWERT:** Is it possible when you do the overall reporting and the headline indicators that you can break it down into a little more detail? The snapshot talks about how things have improved in the states but it does not give a good picture of what is actually happening for Aboriginal communities.

**Mr James:** The reason it is reported for states is that each state has signed up for the targets and the targets in effect are agreed at the state level. There is some reporting by remoteness, and we have discussed this at estimates before. Even if at the national level you report the data by remoteness area—not necessarily for every state, because if you do that you are multiplying out a lot of indicators—but there is value in reporting by remoteness area for all of the targets where you can. As I mentioned before, it looks like from now on we should be able to do it for life expectancy by remoteness area.

**Senator SIEWERT:** To a certain extent I take your point, but it seems to me it is not giving an accurate picture of what is happening, for example, in the Kimberley. Western Australia is a big place and we already know there has been no change. Are things better in

the south west or the south than the north of the state? Are things better in the Pilbara? It would be good to have that in the snapshot as well.

**Mr James:** There are lots of other statistical reports around. Some states put out their own not exactly Closing the Gap reports but something similar. There are reports like the *Aboriginal and Torres Strait Islander Health Performance Framework Report*. In our own work, we will often break the data down to quite a small level. For example, the remote service delivery communities will often break the data down at that level. When you start splitting the data by geography, there are so many different permutations that you can have. The idea with the NIRA report is that it is meant to be an overall jurisdictional report. There are many other reports, including the OID reports. With the *Overcoming Indigenous Disadvantage* reports, for example, there are detailed tables on the web. There are a lot of reports, and so sometimes it can be difficult to navigate across all of them; but there are more detailed data available.

**Senator SIEWERT:** As I said, if we are doing a snapshot, it would be really useful for people to get a better snapshot of what is actually happening and to include that in an overall report.

**Senator SCULLION:** If I could just add to that: I would like to agree with the senator.

**Senator SIEWERT:** We would note that view!

**Senator SCULLION:** I understand there are different demographics and issues, but one of the most important ones is to inform us all of the issues around metropolitan, outer metropolitan, remote and very remote. That would really inform the process. This is not my suggestion exactly but it would be about access to services, which would seem to be the best one. We say, 'The further away you are from the centres, for example, the life expectancy may reduce.' In Alice Springs, life expectancy is 44, and in other places it is in fact higher. So there are some perversions; but, again, it informs us. This is just a commentary in support of the case.

**Mr James:** Can I agree that certainly at the national level, where we can report the results by remoteness, it is quite informative because you do see, as I mentioned before, quite a degree of variation and a degree of variation in change too. The relative rates of change vary as well. In fact, if you look at the latest census data, the fastest improvements since, say, year 12 attainment were in remote and very remote. That is coming from a much lower base, but there was a faster rate of improvement—so it is not uniform.

**Senator SIEWERT:** I will pick on my own state instead of the NT for a change. In WA, there was no change. Was there no change in the death rate? I have tried to look in the report for a bit more detail. It is reported as 'no change', but is it better in the south-west? Is it better in the Kimberley?

**Mr James:** What indicator are you talking about?

**Senator SIEWERT:** The Indigenous death toll—

**Mr James:** Life expectancy.

**Senator SIEWERT:** in Western Australia.

**Mr James:** As far as I am aware, I have never seen any estimates of substate Indigenous life expectancy for WA; but, as I said, you would have to look at proxy type indicators—hospitalisation data and things like that—within WA to get that split.

**Senator SIEWERT:** If I understand our earlier conversation correctly, you think you may be able to break it down a bit better with the new targets and new approach?

**Mr James:** I was saying that, on the life expectancy target, it looks like the initial step will be that we will be able to report it nationally by remoteness area.

**Senator SIEWERT:** I beg your pardon. So we still cannot break it down?

**Mr James:** Probably not. Again, part of the issue comes down to small numbers and how reliable the figures are, but that is where you end up using other sorts of data to get a sense of it. The Australian Institute of Health and Welfare can provide hospitalisation data by remoteness area. When you look at that and, more generally, at health outcomes for Indigenous people by remoteness area, on average they tend to be worse in remote areas, hospitalisation rates tend to be higher in remote areas, which is related to a range of things. So there are other ways in which you can get at the issue that you are raising, without necessarily having the direct life expectancy estimates themselves.

**Senator SIEWERT:** I understand that. My point is that if we are doing this, the Closing the Gap document—which I think is really important—it would be more useful to break it down. But we have had that discussion, so I will keep pursuing it into the future. In relation to the measures themselves, it shows that there has been an improvement in year 3 reading, virtually across all the states and Australia wide, but no improvement in numeracy.

**Mr James:** That is right.

**Senator SIEWERT:** What is the thinking on why we have seen reading improve but we have not seen numeracy improve? In fact, numeracy has gone backwards.

**Mr James:** I would love to be able to answer the question. I think I would have to defer that to DEEWR.

**Senator SIEWERT:** Surely you are discussing it. This must have been a flag indicator for you and for the states and territories that here we are seeing numeracy go down. I realise that there are issues for DEEWR but, in terms of Closing the Gap, what is the thinking collectively? Has it been put on the table? What action has been taken to address it?

**Mr James:** I am at a disadvantage because I do not personally get involved in a lot of those discussions. I would say, though, that if you look at the historical experience it seems that year 3 reading is something that is easier to effect than numeracy. The other point I would make is that the younger the children are the more likely you are to get an effect—partly because, if somebody is already in year 5, they have already had six years of education. In terms of education policy, there is the National School Improvement Plan and the like, but I really have to leave that to DEEWR. I am not personally involved in those discussions.

**Senator SIEWERT:** Has this been discussed at COAG?

**Mr James:** At the Working Group on Indigenous Reform, I know that education policy is discussed, as are the outcomes, how we are going and that sort of thing. It is discussed regularly there.

**Senator SIEWERT:** I should hope education is discussed there. The specific question I am asking is: has the issue around the fact that numeracy is not improving and in fact has gone backwards been discussed?

**Mr James:** That was particularly evident in this particular report. I would have to defer to others in terms of what the Working Group on Indigenous Reform agenda is. I know in previous WIGR meetings Indigenous education has definitely been a big discussion item.

**Mr Dillon:** I would just reinforce the point about the school improvement plan, the Gonski proposals. One of the policy drivers for the substantial support that the government has put into schools with Indigenous students is the sort of data that you are raising here. So that is at a very high level. To go to the specifics about policies on numeracy versus policies on reading, we would have to defer to DEEWR.

**Senator SIEWERT:** I appreciate the comments you have just made about Gonski and the big picture reform. I realise that you are already trying to put in place improvements. I am trying to find out if there has been any thinking as to why there is this disparity. I know in some states it has gone up and then gone down again. In my home state of Western Australia reading averages have improved but they seem to have gone down over the last couple of years. I am trying to find out whether there has been any thinking on why we are getting improvements in reading but not in numeracy.

I understand your comments around more money being put in through Gonski. But, if we are putting more money into programs that are not working for numeracy, has why we are not getting that improvement in numeracy been looked at when it looks like we are in other areas? That is the question I am asking.

**Mr Dillon:** As we have both said, I think we should ask DEEWR this question, because it is really squarely in their policy remit.

**Mr James:** We obviously talk about—

**Senator SIEWERT:** I will have one more try. I understand that, but surely you are not just leaving it to DEEWR? Surely the working group is following this up. That is what I want to know—is it? Is it following up that specific issue?

**Mr James:** I think it will, yes. I do not set the agenda for the Working Group on Indigenous Reform, but it seems a fairly pertinent thing to look at. We are now a few years into the process, so we can now start looking back.

**Mr Dillon:** Senator, I will be a little bit more positive than my colleague. We do have these targets under constant monitoring at a range of levels and across the whole of the Commonwealth. We have just gone through a quite major process to refresh our approach to the whole Close the Gap strategy and we are very focused on each of the targets and each of the policy drivers under it. This is under constant discussion. I just wanted to give you that assurance.

**Ms Edwards:** Senator, this report, obviously, has only just been released. I can assure you that it and its contents, and, I feel very confident, the issues you raise, will be on the agenda for the next WGIR meeting.

**Senator SIEWERT:** Thank you. In terms of the early childhood targets, which are positive, what are the actual measures that are used for the early childhood education?

**Mr James:** Do you mean the target?

**Senator SIEWERT:** The target, yes.

**Mr James:** There are two main sets of figures reported. There is enrolment, which the target is based on. On that, 91 per cent of Indigenous kids in the year before full-time schooling were enrolled in preschool in 2011. That is the latest figure in my report. The other measure that is provided is attendance. That figure is not attendance as a percentage of the enrolled population of Indigenous kids but as a percentage of all Indigenous kids in the year before schooling. It is the percentage of them that are attending preschool at least one hour a week. That figure is 82 per cent. Both of those figures are provided in the report. As my colleague has just noted, the government has announced an intention for a new target. The CRC itself in its report recommended that a new target be developed. They said in this report: 'In 2011, we're almost there with the target. The end point of the target is 2013. We're just about there. We need to continue the momentum. It's worth considering developing a new target.' The government at least has announced its intention to have such a target.

**Senator SIEWERT:** Does that include measuring school readiness as they go into year 1?

**Mr James:** On school readiness, there is a measure called the Australian Early Development Index. There was a recent paper that we funded put out by CAEPR. It looked at—and I think this was the first time that this had been done—AEDI scores for those Indigenous kids who did, and who did not, attend preschool. It found that, controlling for other factors—and it is not a surprising result, in a way, but it is a good result—on average, Indigenous kids who attended preschool had better AEDI scores than other Indigenous kids. We have 2009 data and 2012 data from the AEDI. You can use that data, in a sense, to look at not only whether children are actually attending preschool but whether it is affecting their school readiness or not. There is an improvement from 2009 to 2012 in the AEDI scores. One of the fastest improvements, albeit from not the best base, was in the Northern Territory.

**Senator SIEWERT:** Will that be included into the future—school readiness as a measure for early childhood education?

**Mr James:** With regard to the new target, that has to be agreed with the states and territories and the like, but it is possible that AEDI data could potentially be used as a supplementary indicator. That all has to be worked through.

**Ms Edwards:** Senator, regarding development of the new target, the Australian government has just announced its intention to work with the states and territories in the context of the new national partnership on early childhood education and school readiness. School readiness is—at least to me, and I am not an education expert—clearly a key element of what we want children to attend preschool and preschool programs for. So certainly that is our intention. We have really made fantastic progress. We are going to achieve the target on ensuring access to early childhood education. The next step is to ensure that kids actually go and that they get the best possible outcomes from it. The detail of exactly what it will be and how it will be measured of course needs to be negotiated with the states and territories, having regard to the views of other stakeholders.

**Senator SIEWERT:** Thank you. My next questions I will start with here and carry them on to the health discussion. I am particularly interested in the issue around hearing and children missing out at school because of hearing impairments.

**Ms Edwards:** I think we do need to leave hearing for the health session.

**Senator SIEWERT:** I did not want to actually have a discussion around hearing; what I am interested in is whether there are any other early learning programs that can supplement early childhood education through the child needing some early intervention and where we go if we find that some kids are missing out in terms of the indicators for school readiness.

**Ms Edwards:** I think I understand. There is no question that having access to early childhood education is a step; getting kids to go is another important step; making sure the curriculum is right is important—but also you are absolutely right: making sure kids can hear what is going on, that they have had breakfast before they go and all that stuff must be part of it; hence the building blocks spread across.

**Senator SIEWERT:** I want to address hearing later; what I am interested in here is that we have kids turning up to preschool but they may need catch-up. We can deal with the hearing issue later; it is the catch-up that is needed and what is shown by evidence around special early intervention programs. Will you be looking at how we can pick that up in the indicators?

**Ms Edwards:** I could not indicate in detail, though, obviously, we are looking at the next target of getting kids to go, but all of these measures are about getting good outcomes for those kids and making sure they get a rich education from early childhood. Catching kids up and making sure they can hear at preschool will inevitably be a part of getting those outcomes. So one step at a time, but, yes, we are very aware of those issues, and they have to be part of the overall strategy.

**Mr Dillon:** The national partnership that is being negotiated will obviously include the funding and the policy drivers that will, in a sense, assist the states to do the right thing in each of their preschools, because they actually run the preschools.

**Senator SCULLION:** I have a quick supplementary question, with regard to early learning. I understand that the proposal is to move the Closing the Gap indicator from the access to early learning to a new one for disability. First of all, does that mean that there will not be the space where we consider early learning? You are obviously very aware, Ms Edwards, of how important that is. I do not say we are 'abandoning' it—I do not want to be seen to criticise—but what will remain in that space? For example, we currently have a range of what I consider first-class indicators and they are not about bricks or how many people are attending; they are the AEDI score. The Australian Early Development Index is precisely an index. We have it, though, sadly, only 30 per cent of Indigenous children are a part of that, and that is a matter that everybody is, I think, pursuing. Because it is such a specific thing across the board, are you looking at those as an additional target, if you like, or something in that space?

**Ms Edwards:** Just to be clear, you mentioned the disability target. The government has recently announced the intention for two new targets: one we have just been discussing with Senator Siewert, about the next step from the current early childhood education target of access, which is to be met this year. That will go to attendance at preschool and preschool programs, with the ultimate outcome being for kids to be more ready for school and so on. The issues you raise will definitely be part of the discussions around that, as we have canvassed, and the data that Mr James can help you with, including what you refer to. The

disability target proposal is entirely separate. It goes to making sure that Indigenous Australians with disability can really make the most out of the National Disability Insurance Scheme. It is a separate target.

**Senator SCULLION:** With regard to attendance or whatever the new measures are going to be, would that remain as a particular Closing the Gap measure that we would report on in the same way as the previous measure?

**Ms Edwards:** The access?

**Senator SCULLION:** Whatever it is going to be around early childhood—yes, the access.

**Ms Edwards:** The access will be this year, and we want to continue that access, and the new target will be about attendance.

**Senator SCULLION:** So it will be another target that we report on?

**Ms Edwards:** An additional target.

**Senator SCULLION:** Or you could say that the disability one is the additional target, if you like.

**Ms Edwards:** There are two additional targets, but one builds on the original early childhood target.

**Mr James:** So the intention would be that, once those targets were agreed, they would be reported in the same way that the other targets are.

**Ms Edwards:** Correct.

**Senator SIEWERT:** You said that the target goes down to one hour a week?

**Ms Edwards:** It has to do with the technical way in which it is counted, on which we may need to defer to DEEWR, unless Mr James can help.

**Mr James:** I do know that it is in the appendix of the CRC report, but, as to whether I can find it instantly—

**Senator SIEWERT:** I am a bit confused about how the one hour counts. We know one hour of employment a week means you are counted as employed, and we know that is completely meaningless.

**Ms Edwards:** I confess to not really understanding how the current calculations are made. I can assure you that we will be looking forward to a target about attendance which is meaningful and which builds on outcomes. The detail of that will be negotiated with states and territories and other stakeholders. But the detail of how the current calculations work we would have to let DEEWR explain to you.

**Mr James:** In terms of that detail, I have the ABS publication *Concepts, sources and methods* for the new collection—

**Senator SIEWERT:** Funnily enough, I do not have that with me!

**Mr James:** I do not always take it everywhere, just today. There are, as I said, some details in the CRC report. There is a minimum hour issue, even with the enrolment figures, because, as you can imagine, if somebody is enrolled but they never attend at all—

**Senator SIEWERT:** And that is why I am asking the question around—

**Mr James:** So there is a minimum provision, even in the attendance data. I will try and find it.

**Senator SIEWERT:** Around Stronger Futures, what progress has been made in rolling out the funding of the 10-year program?

**Mr Pratt:** Excellent progress.

**Senator SIEWERT:** Right. Let's talk about that excellent progress.

**Mr Dillon:** I think we provided, in an answer to a question on notice, that information to the committee.

**Senator SIEWERT:** Is there any update on that?

**Mr Dillon:** I think it was figures from the end of March, so I do not think there will be a—

**Senator SIEWERT:** I asked in estimates on Tuesday, I think, what progress has been made in terms your negotiations with the Northern Territory government around the new referral process for income management. Could we explore that a little bit further? Is this the appropriate place to explore that a little bit further in terms of where the negotiations are up to?

**Mr Dillon:** We will get the officers to the table. I think we can talk about that.

**Ms Edwards:** Senator, is the question about referrals to income management through the current Alcohol and Other Drugs Tribunal and what is proposed?

**Senator SIEWERT:** Yes.

**Ms Edwards:** As you are aware, the Northern Territory government has announced its proposal to disband the current Alcohol and Other Drugs Tribunal, we think from July. There are currently about 20 people who have income management referrals from that tribunal. Those referrals will stay in place until they lapse, but obviously, if the tribunal no longer exists, those people will cease being on income management in that way. The Northern Territory government has—

**Senator SIEWERT:** Sorry; can we just go back to that. So they have been referred under that process.

**Ms Edwards:** Yes.

**Senator SIEWERT:** Those 20 will cease to be referred—

**Ms Edwards:** There is a notice in place for a certain period. At the conclusion of that period—

**Senator SIEWERT:** Okay, at the conclusion of the period, not—

**Ms Edwards:** Not when the tribunal is disbanded—correct.

**Senator SIEWERT:** I misunderstood what you said. How long have they been referred for?

**Ms Edwards:** I think there are a variety of periods.

**Mr Lye:** Senator, there are a variety of periods. We are expecting that there will be around 20 at the time at which the current tribunal ceases.

**Senator SIEWERT:** There are 20 now?

**Ms Edwards:** There are 20 in place and there are no more referrals being made, as we understand it. They are for varying periods—say, three or six months and that type of thing—and when that period concludes they cease to be income managed under that measure.

**Senator SIEWERT:** Where are you up to with your negotiations over the future processes?

**Ms Edwards:** You would be aware that the Northern Territory government has announced and brought forward a draft bill for management treatment and a tribunal to go with that, and there has been correspondence by the relevant Northern Territory minister asking for a referral power to that body to make referrals for income management. I think their public material actually announces that there must be a referral to income management in certain circumstances for people who come before that tribunal, which is yet to be established. That matter is being considered by government, although we would have to say we are really keen to have a discussion about how income management could be involved in a more comprehensive approach to alcohol responses across the Northern Territory. Obviously, it is a very important measure and one which can really help people stabilise their circumstances, particularly in the context of drug and alcohol addiction. It is one that we think primarily needs to be considered as part of a comprehensive plan so that income management would be an element that an appropriate body might use to refer, but in addition that there would be supply measures and other demand measures, harm minimisation, given that alcohol issues in the Northern Territory and elsewhere are very multifaceted. We are hoping to have a discussion about how income management can fit into an overall plan.

**Senator SIEWERT:** Beyond the referral process that you are talking about for the new process, when you talk about how it features in a broader sense I am struggling to see what you mean. I understand issues around demand and supply et cetera, but I am struggling to see where you are going with how it would fit into a broader process beyond what is already there.

**Ms Edwards:** I think what we are talking about, from an alcohol policy point of view, is the range of measures that might apply in the Northern Territory to assist people. It is not about income; it is about placing it within the broader context.

**Senator SIEWERT:** Okay, I take your point. There is a broader alcohol management plan to which you are saying income management is a part?

**Ms Edwards:** There are the restrictions that have been continuing under Stronger Futures. We have a penalties and enforcement regime. We want to have flexible responses to major events such as big football carnivals. We want effective licensing and compliance, including making sure that business models are right for the community. We want limits on trading hours and the range of products where appropriate. We want mechanisms to ensure that people who are subject to prohibition orders are not able to access alcohol. We want the alcohol management process, which is obviously a key focus of Stronger Futures, to be very meaningful to drive local solutions. Of course, we need respectful signage. Income management could be part of that whole plan.

In the context of rehabilitation, obviously more rehabilitation facilities is a key element, although we need to know more about the Northern Territory's plan for rehabilitation given that there are various issues there. We also need community based programs like the safe and

sober program, which is funded under Stronger Futures in Alice Springs. We want broadened collaborative approaches across regions so that Alice Springs, for example, would be seen as a whole town—the camps, the visitors, the residents and the town proper—and the same with Borroloola and other places. We want programs to help vulnerable people such as pregnant women and we want education and community action on it. The whole of that plan is what we are trying to engage the Northern Territory government about and income management is important but just one element in there.

**Senator SIEWERT:** Thank you, I understand where you are coming from now. Presumably, the 20 who have been referred to income management were not being income managed or were they income managed in the past?

**Mr Lye:** We would have to take it on notice. We do not have the information here.

**Senator SIEWERT:** That would be appreciated. You may not be able to tell me this but I am interested in finding out the number of people who have been before the tribunal who are already income managed?

**Ms Edwards:** Obviously, it is possible that people who might have been income managed already will come before the tribunal and will still have the order given. It is a higher rate of income management under the current arrangements than most people would have otherwise. I do not know whether we could actually get that data. It is possible that the Northern Territory would hold it, but that is not necessarily the case. Perhaps Mr Lye could take on notice to find out whether it is possible.

**Senator SIEWERT:** Obviously, what I am trying to find out is whether income management has been effective. In looking at the number of people who have gone before the tribunal for income management, has it been effective for what you are trying to achieve?

**Ms Edwards:** Obviously, one of the disappointments for us is that it has been a very short period in which the tribunal referrals have occurred. To judge the difference between income managing people at a higher rate—which is comparable, if not exactly the same, to the child protection type ones—compared to the 50 per cent rate, it would be unlikely that we would have enough data in any event to see what impact the difference might have.

**Senator SIEWERT:** I understand the point that you are making. What I am trying to ascertain is, if the people who are already being income managed are appearing before the tribunal, is the income management having an effect on their behaviour? That is what you are trying to achieve. I have my doubts, as you know, but it would be good to see if you are collecting the information so that we could establish it or not.

**Ms Edwards:** Mr Lye may have all sorts of discussions with you about the general question, but I think the small group we are talking about here are people who may have been income managed—but we are not sure if they were or not—and also would be at the very hard edge of the people with the most difficult alcohol issues. It may not be a great way to judge the impact of income management across a broader group. It is an important question, but I am not sure we could actually prosecute it through this sort of information.

**Senator SIEWERT:** If you could look at what information you have, that would be appreciated.

**CHAIR:** In view of the fact that the next session on health is taking us through to lunch, we probably should take the break early and then have the health session run through. We will

take a 10-minute break now and then we will go into the health where I know a number of senators have issues.

**Proceedings suspended from 09:27 to 09:42**

**CHAIR:** We will now reconvene. We are going into health issues and Senator Siewert is leading off. Senator Fierravanti-Wells has questions, and others may come in on individual issues. I will hand to Senator Siewert, and I believe we are going to try to go down the list.

**Senator SIEWERT:** I particularly want to follow-up on the national partnership agreement. First off, I want to find out where things are up to with the negotiations with the states.

**Ms Killen:** As you know, the Prime Minister announced the Commonwealth's intention to seek a renewal of the NPA in late April. Since then Minister Snowden has written to his state and territory colleagues, and we are working through the process for putting a new NPA in place. We have drafted a revised NPA taking into account the themes coming out of the review of the NPA. That has been circulated to our colleagues in state and territory governments. We have had two lots of conversations about that. We have had formal comments back from all of the states and territories on that draft. We have gone through a process of incorporating changes, and a revised document is now with states and territories.

I am having a multilateral conversation with all of the states this afternoon. I hope that we will be able to go through and resolve the comments. As you would appreciate, when you have eight jurisdictions providing comments on a document, some might say they want more of X and some might say they want less of X, so some of that conversation needs to be a multilateral conversation. I do not think there were significant issues raised on the draft. I would anticipate that we would have formal comment back from states within a week. That would, all going well, mean that we could proceed to providing advice to ministers.

**Senator FIERRAVANTI-WELLS:** There have only been discussions at this point; there have been no commitments?

**Ms Killen:** No, not by states.

**Senator SIEWERT:** When you said you expect that you could be signing off on it soon, is that how—

**Ms Killen:** There is a process map for negotiating with MPs on the federal financial framework website. The process is that, once you have been through the officials level process, it is then elevated to first ministers. We would be providing advice to our minister to provide advice to the Prime Minister about whether to make a formal offer. That process is then done from the Prime Minister to first ministers.

**Senator SIEWERT:** Do you have an anticipated timeframe for when that is likely to happen?

**Ms Killen:** That will depend on the comments coming back in the next week. I would hope that it would be very soon.

**Senator SIEWERT:** Are we talking about before the election?

**Ms Killen:** I would hope that we would be in a position to be providing advice by the end of this month.

**Senator SIEWERT:** In terms of responses you have had back from the states, I noted a comment by the minister this week which indicated that Western Australia had not been involved or participated. Could you explain that, please?

**Ms Killen:** There are a number of components to the process. It is led by the Prime Minister and cabinet. When you get to the point where you have a draft document, that is sent out by our Department of the Prime Minister and Cabinet to state and territory first ministers' departments. We then provide a copy to health departments. We had line agency discussions prior to sending out that first draft. Following sending out that draft, we had bilateral discussions with every state and territory except WA, which did not choose to take up the offer of a bilateral conversation. However, WA has provided us with feedback through the formal channels from their premier's department to our Department of the Prime Minister and Cabinet.

**Senator SIEWERT:** Has that correspondence to the Prime Minister—

**Ms Killen:** This is at officials level at the moment.

**Senator SIEWERT:** I will come back to the bilateral discussions in a minute. In terms of the response from the Premier of WA, was that to PM&C?

**Ms Killen:** It is not yet from the Premier. This first part of the process is done at officials level. It is from the premier's department to our department, the Department of the Prime Minister and Cabinet.

**Senator SIEWERT:** I beg your pardon. So it is from the premier's department to you?

**Ms Killen:** Yes.

**Senator SIEWERT:** Has that indicated a positive willingness to further engage?

**Ms Killen:** It has provided feedback on the draft document. It was not required that they say, 'Yes, we want to sign,' or 'No, we don't want to sign.' It was their comments on the document as an appropriate document for the agreement.

**Senator SIEWERT:** Does that mean that WA is now at the same level of engagement, having responded as the other states did, or does WA still have further to go?

**Ms Killen:** Now that they have provided the formal feedback, in formal terms they are at the same place as every other jurisdiction—yes.

**Senator SIEWERT:** In terms of the bilateral discussions, was WA the only state that did not enter into those bilateral discussions? Was a reason given?

**Ms Killen:** Yes. They declined the invitation. They did not give a reason.

**Senator SIEWERT:** Okay. But it is fair to say that they are now engaged.

**Ms Killen:** Yes. My advice yesterday was that they had agreed to participate in the multilateral conversation this afternoon.

**Senator SIEWERT:** Thank you. Did every other state participate in the other levels of discussions?

**Ms Killen:** Yes.

**Senator SIEWERT:** Even though WA was not involved in the bilateral discussions, from what I understand from what you have just said, they will still be—providing everything proceeded from here—able to sign on when everybody else does.

**Ms Killen:** That bilateral conversation was not required. That was an offer from us to provide an early opportunity to talk through any issues or answer any questions that they might have about the agreement. It was not a required part of the process. It was something that all of the other jurisdictions chose to participate in and it was certainly a very useful process for us in terms of understanding the issues that were likely to come back in the formal feedback and starting to think about how we could respond to those. It also helped states understand where we were coming from. But it was not a necessary part of the formal process.

**Senator SIEWERT:** Okay. There was comment in the media that Victoria was the only state so far engaged and it was implied that it was ready to sign. What is the proper position?

**Ms Killen:** I am hesitant about reporting the conversations that I have had with states, given that these are the positions of the officials and that they are going through processes with their governments in parallel to agree on their approach with their governments. It is important that I not quote word for word what state officials may have said. But, that said, certainly the Victorian government has allocated additional funds in their budget process and the informal conversation is that, providing they are happy with the terms of the agreement, they are keen to pursue a further agreement.

**Senator SIEWERT:** Okay. So that speculation refers to the fact that they have already allocated funding, whereas other states have not visibly done that yet. Is that correct?

**Ms Killen:** Yes, that is right.

**Senator SIEWERT:** When you say that they have allocated additional funds, do you mean on top of what they were already contributing under the previous agreement or have they just renewed—

**Ms Killen:** No, they are looking at an increase over and above what they have had over the last four years.

**Senator SIEWERT:** Is that what you are expecting from the other states—an additional allocation on top of their previous—

**Ms Killen:** We are seeking for states to at least continue their commitment at a level that is commensurate with their current commitment.

**Senator SIEWERT:** The Commonwealth has committed \$777 million.

**Ms Killen:** Yes.

**Senator SIEWERT:** Fascinating. Is that just because 777 looked good?

**Ms Killen:** No, that is because that was the estimate.

**Senator SIEWERT:** Because it is over a different funding period this time, how does that compare to—

**Ms Killen:** It is important to recognise that it does not compare directly with the \$805 million for the first four years.

**Senator SIEWERT:** That is why I am asking.

**Ms Killen:** There are a number of reasons for that. It relates in part to the budget process. The \$805.5 million was the beginning of that new money. We went through that formal budget process and new policy process, during which we have to go through an enormous

amount of detail to cost every single aspect of what we are doing. We work out the cost to the department in terms of our administration of it and we go through a lot of effort to estimate the flow-on cost to the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme. The \$777 million does not include the continuing departmental commitment or the flow-on cost to the MBS and the PBS. It includes the specific activities that we will be doing under the NPA. There will be continued flow-on costs to the MBS and the PBS. A very, very conservative estimate is another \$215 million over the next three years, so that brings it to \$992 million. That still does not include the cost to the department. And the estimate of the cost to the MBS and the PBS is very conservative.

**Senator SIEWERT:** The \$215 million is MBS and PBS flow-on costs.

**Ms Killen:** Yes. There are a number of activities within the Indigenous chronic disease package that contribute to increasing Aboriginal and Torres Strait Islander people's access to those programs.

**Senator SIEWERT:** That was included last time.

**Ms Killen:** Yes.

**Senator SIEWERT:** What was that last time?

**Ms Killen:** Over the four years?

**Senator SIEWERT:** Yes.

**Ms Killen:** About \$162 million for the MBS.

**Senator SIEWERT:** Why was it included last time and treated differently this time?

**Ms Killen:** It was included the first time because that is the way that we always cost our measures. Where it is clear that there is a flow-on cost and that there will be increased use of those programs as a result of the activities under whatever the new measure is, we always obviously need to include that in the total cost to government of implementing the measure. That is why it was put in there. In going forward, it is not new money; it is ongoing money that was allocated. We did not go through such a formal costing process. The MBS and the PBS in a sense are now more business as usual. Because it is not a new costing process, we have not had to calculate the cost of this to the government. It was simply advising of it and making it public. We did not go through that very formal process. When I say that it is very conservative estimate, that is why.

**Senator SIEWERT:** What did the states commit to last time in terms of the funding that they put in? Did that include MBS and PBS amounts? Did you take that out separately then as well? Do you see where I am—

**Ms Killen:** No, I am sorry. I do not understand the question.

**Senator SIEWERT:** When you were negotiating with the states and they were contributing their funding, on what basis was that negotiated?

**Ms Killen:** The amounts were proposed by states. That is my understanding. I was not involved in those ones. But the amounts were proposed by each state government based on what they thought was sensible to do in their jurisdiction, given their knowledge. They have slightly different systems and they know where the opportunities to do more or to fill gaps were.

**Senator SIEWERT:** On what basis now are you negotiating with that states? You expect them to contribute more.

**Ms Killen:** This is somewhat different from most agreements. There are no transfer payments. It is all Commonwealth funding and state funding.

**Senator SIEWERT:** Yes. Are the states expected to put in the same that they contributed last time?

**Ms Killen:** That is what we will be seeking, yes.

**Senator SIEWERT:** Is it the same as they put in before plus indexation?

**Ms Killen:** What we have asked for is for them to look at including funding that is commensurate with what they put in previously, looking mostly at the final year of their commitment. But we have not specified anything around indexation or anything. We have not gone to that level of detail.

**Senator SIEWERT:** Just so I am clear, in three years time they could be putting in the same as they are putting in now, which would in effect be a decrease.

**Ms Killen:** It could happen that way. But at this stage, we have put out a principle. I am not as across state and territory government processes as I am across the Commonwealth ones, but ours are indexed automatically. It would be rare not to index a program, but I cannot comment on how the states and territories manage their budgets.

**Senator SIEWERT:** Okay.

**Senator FIERRAVANTI-WELLS:** You said that there was \$215 million for departmental—

**Ms Killen:** No. I said that that was a very conservative estimate of the flow-on costs to the MBS and the PBS.

**Senator FIERRAVANTI-WELLS:** Okay. If I understood what you said before, Ms Killen, there is not a component for department of health costs factored into that \$777 million. Is that correct?

**Ms Killen:** The \$777 million does not include departmental costs, no.

**Senator FIERRAVANTI-WELLS:** And are they coming out of any of the budget expense? Yesterday evening I was provided with an updated budget reporting element schedule—

**Ms Killen:** No. Those are administered costs, so they do not include our departmental funding.

**Senator FIERRAVANTI-WELLS:** Okay; I was just trying to see if some of these figures match up, and when I looked at 54, 53, 53 and 54 in Stronger Futures under Northern Territory health, they do come up to 218, so I was just trying to be a little bit creative there! So, will any moneys in any of those five areas go towards the NPA?

**Ms Killen:** Yes. If you look at BRE 726, which is the Aboriginal and Torres Strait Islander Chronic Disease Fund: when the flexible funds were created in 2011 most of the individual measures from within the Indigenous Chronic Disease package were consolidated into that one—most, but not all. And some additional activities were also consolidated into it. So, this is not a direct correlation.

**Senator FIERRAVANTI-WELLS:** No, it is not a direct correlation. But are you saying to me that the bulk of that money will come out of this fund?

**Ms Killen:** Yes.

**Senator FIERRAVANTI-WELLS:** So, over the forward estimates, if you look along that line—\$245 million, \$222 million, \$232 million, \$241 million—whilst that comes up to well over \$800 million, that includes that \$777 million. Do I understand it correctly? Is that where the money is going to come from?

**Ms Killen:** No, there is some funding in the \$777 million that is not in this line.

**Senator FIERRAVANTI-WELLS:** But the bulk of it comes out of this fund?

**Ms Killen:** Yes.

**Senator FIERRAVANTI-WELLS:** As will the departmental—

**Ms Killen:** No.

**Senator FIERRAVANTI-WELLS:** They will come out of a separate—

**Ms Killen:** This is all administered funding.

**Senator FIERRAVANTI-WELLS:** Is it still \$777 million? Is that still the figure that the Commonwealth is committed to?

**Ms Killen:** That is the estimated amount, yes.

**Senator FIERRAVANTI-WELLS:** I appreciate the comments you made earlier about the implementation process and the process you are going through with the states. Are there any significant changes from the last plan?

**Ms Killen:** It looks quite different when you look at it, and that is because the template has changed. We have made quite a few changes to the performance monitoring framework—not to change what we are doing necessarily, but—

**Senator FIERRAVANTI-WELLS:** So, the programs themselves are not necessarily going to change.

**Ms Killen:** No.

**Senator FIERRAVANTI-WELLS:** It is just some other factors.

**Ms Killen:** It does not have a significant impact, no. It is an improvement to provide a better line of sight from outcomes to outputs to benchmarks et cetera.

**Senator FIERRAVANTI-WELLS:** So, going back over that \$777 million: what is the breakdown of that amount over the forward estimates?

**Ms Killen:** I do not have that, and at this point that would not be available. It is currently a matter for advice with the minister.

**Senator FIERRAVANTI-WELLS:** So, in other words, do you have to go through your consultation processes to then decide how that is going to be broken up over the forward estimates?

**Ms Killen:** At the moment our proposal is that we would go forward with very much what we are doing at the moment, and certainly the funding allows for the continuation of the programs that are currently being implemented, with some small growth in some of them. But we will be going through a process of consultation. We have been going through a process of

review as we are getting further input from evaluation. So, that will inform whether we want to make some minor changes or not.

**Senator SIEWERT:** I have a general finance question. In terms of the money that has been allocated to health under Stronger Futures, there is a range of those measures that were subject to reaching agreements with the Northern Territory. On the health side of things, has that progressed?

**Mr Lemmon:** Sorry, Senator—would you mind repeating the last part of that question?

**Senator SIEWERT:** I understand that at least some of the expenditure under the health components of Stronger Futures were subject to reaching agreement on implementation plans and agreements with the Northern Territory government. Have those processes been completed?

**Ms Palmer:** The implementation plan for health was signed in the Northern Territory on 25 March, and our minister countersigned it on 15 April this year.

**Senator SIEWERT:** What component of the funds was contingent on reaching that agreement?

**Ms Palmer:** We have made a partial payment already this year as a result of having signed that agreement.

**Senator SIEWERT:** That does not quite answer my question in that, as of the end of December, some of the health money had been expended, as I understand it.

**Ms Palmer:** Yes.

**Senator SIEWERT:** So, what was dependent on the agreement and what was not? I am trying to find out how much behind some programs are because the agreement for the 2012-13 funding was not actually reached until March. That is not an accusation against you—

**Ms Palmer:** No, I understand.

**Senator SIEWERT:** It is just a fact that it was not. So, that is nine months worth of funding that in fact had not been delivered, looking at the financials. So, what is the process? What component is now behind? What component is on target?

**Ms Palmer:** In a very general sense, there are some things that were slower to start, and we have been talking to the Northern Territory about whether they are able to catch up with those, even though we had a slower start. In some areas—I think around dental and hearing—they were hopeful of catching up, and in other areas they were still working on how they were going to be able to catch up, and I will have to check on the detail. In some areas they were actually progressing on these activities and not waiting for the implementation plan to be signed. Could we take some of that detail on notice and see if we can get back to you before the end of the session today?

**Senator SIEWERT:** If you could, that would be appreciated. What I would like to know is, under the health components: the breakdown of the programs, and what the funding has been for each of those as far as possible. The gross figures I have do not give any indication of that or any indication of what is going to be on target and what is not.

**Ms Palmer:** I can tell you that we have talked to Treasury about moving some of the funding from this year to next year—

**Senator SIEWERT:** You are pre-empting my next question.

**Ms Palmer:** where it was at risk. And we did that in consultation with the Northern Territory government, so we could be clear about the areas where they were behind, so that we could move the money rather than actually finding out later and then losing it to consolidated revenue. So, we have been having ongoing conversations with Treasury about that.

**Senator SIEWERT:** You say 'some of the funding'. Can I be really clear about which funding? And does that mean that some will go back? When you talk about 'some funding', is it all of the funding that is a component of the health budget—

**Ms Palmer:** It depends what it is, because they have different targets they have to achieve for different parts of the program, and for some parts they have already achieved those targets, so there was not any need to transfer the money to next year, because we were going to have full payment. But for others they were a little bit behind. So, we will have to come back to you on that, but it is not the case for all of them that they are behind. Some have already achieved their targets.

**Senator SIEWERT:** Are you confident, whether it is spent this year or put into next year, that all the money under Stronger Futures that has been allocated for health for this financial year will get spent, regardless of whether it is in this financial year or next financial year?

**Ms Palmer:** I cannot be completely confident, because it still requires the Northern Territory to provide advice to us that they have actually achieved the targets and proved they have achieved the targets before we can make the full payment. At this stage they have given us advice about where they expect to be, and we have given them opportunities to indicate where they cannot be so we can move money. But it still requires them to prove that they have achieved the targets—to provide the data to show they have achieved the targets—in order to get the payments.

**Senator SIEWERT:** Which targets are we talking about?

**Mr Lemmon:** Under the agreement there are certainly a large number of targets that are detailed here, and that information is public.

**Ms Palmer:** We will have a good look—I know the officers will be watching—and we will be able to get the specific targets and try to come back to you before 12:00.

**Senator SIEWERT:** If you could, that would be appreciated, and then I can follow up if I need to. Thank you. Was the funding that flows to community based health organisations held up as part of signing the agreement with the Northern Territory government?

**Ms Palmer:** I know of one case where we actually transferred funding directly to an Aboriginal community health organisation because of the delay in signing the implementation plan. So, we took it out of the transfer to the Northern Territory to go, and we actually transferred it directly. So, I do know of one case where we made arrangements so there was not an implication for that Aboriginal community controlled health organisation. But at a more general level I would have to check. We do not have that level of detail with us.

**Senator SIEWERT:** Okay, then perhaps you could take that on notice too: if payments to community controlled health organisations were delayed because of the delay in the signing of the agreement. That would be appreciated. And I will take this opportunity to ask Mr Pratt

a question on notice: against all the Stronger Futures funding, is it possible to take on notice whether the agreements and all of those components have now been finalised with the Northern Territory government?

**Mr Pratt:** Yes, certainly we now have signed the nine implementation plans.

**Senator FIERRAVANTI-WELLS:** I have some questions on Aboriginal and Torres Strait Islander health services. I am asking these questions on behalf of someone else, but can you advise me of when the National Aboriginal and Torres Strait Islander Health Plan is expected to be finalised?

**Ms Palmer:** We are developing the plan at the moment. It is in what I could probably describe as its final stages of development. I cannot give you an indication of exactly when it is likely to be finalised, because it is still in that final development and consideration process. We are working as hard as we can to get it done as quickly as we can.

**Senator FIERRAVANTI-WELLS:** I think it was announced back on 3 November 2011.

**Ms Palmer:** Yes.

**Senator FIERRAVANTI-WELLS:** That is quite some time.

**Ms Palmer:** It replaces the strategic framework, which does not expire until 31 December this year.

**Senator FIERRAVANTI-WELLS:** Do you anticipate release of the draft plan prior to the election?

**Ms Palmer:** I cannot commit the government, but we are working as hard as we can to get it done as quickly as we can.

**Senator FIERRAVANTI-WELLS:** I have a question on the primary health care funding review. What is the current status of the primary health care funding review?

**Ms Palmer:** We are still in the consultation stage in the early parts of this process. We are engaging across the country with Aboriginal and community control health organisations to discuss the idea of the review and to get early input into the review. Once we have all of that information then we will move to the next stage, which is the modelling stage.

**Senator FIERRAVANTI-WELLS:** I notice that the submission date has been extended from 27 April to 3 June. What was the reason for that?

**Ms Palmer:** It took us slightly longer to get the consultation paper completed and up on the website, and we wanted to give the sector enough time to consider it. We have also been responding to feedback from the sector and recognising that this is an incredibly important thing for them, and we do not want to rush it.

**Senator FIERRAVANTI-WELLS:** At this stage do you have a preferred funding model or are you open minded on that?

**Ms Palmer:** I would not say we have a preferred funding model at this time. We certainly have models that do things better than other funding models, but I think it is fair to say that Aboriginal community controlled health organisations are complex, and that it is important to recognise that we might end up with something that is a blend of different models rather than a single model.

**Senator FIERRAVANTI-WELLS:** At this stage what do you perceive to be the most effective and efficient funding delivery model?

**Ms Palmer:** It is too early to say because we are still in that consultation. Also, we have not done the modelling, which is the stage that comes next.

**Senator FIERRAVANTI-WELLS:** When do you anticipate that the review will be completed?

**Ms Palmer:** We are thinking that this is quite a long-term project. It is an incredibly important project which we need to do in partnership with the sector. So we are thinking that it is actually more like a two-to-three-year project. Whatever we put to government will have implications. If government decides on it then there would be an incredibly important transition process that would need to be worked through.

**Senator FIERRAVANTI-WELLS:** My Smyth has come to the table so I can ask him my questions on the—

**CHAIR:** We are happy to go to smoking. I just checked with Senator Siewert and we may as well knock this one off.

**Senator FIERRAVANTI-WELLS:** What is the status of this program, Mr Smyth?

**Mr Smyth:** The status of the project is that as of 15 February this year we have 179 workers that have been recruited throughout the project. We certainly hope that we will have lifestyle teams and tackling-smoking teams across all 57 regions and the ACT operational by the end of this month.

**Senator FIERRAVANTI-WELLS:** The money has come out of which of the BREs.

**Mr Smyth:** It comes out of A1, which I think is BRE 726, from memory.

**Senator FIERRAVANTI-WELLS:** The flexible fund?

**Mr Smyth:** That is right.

**Senator FIERRAVANTI-WELLS:** When will this program be evaluated?

**Mr Smyth:** There is some work going on at the moment from the Menzies School of Health Research, which is looking at 40 of the areas. So there is a bit of an ongoing kind of evaluation program that is looking at some of the aspects of it and looking at best practice—what is working—so that can be transferred across the other regions. KPMG have also been engaged to undertake a review, and I think that is due at the end of next financial year.

**Senator FIERRAVANTI-WELLS:** With a formal evaluation criteria?

**Ms Krestensen:** KPMG is undertaking the monitoring and evaluation of the tackling Indigenous smoking measure as part of the chronic disease measure. So it is part of the broader evaluation framework around the broader chronic disease package.

**Senator FIERRAVANTI-WELLS:** How will success or failure be measured?

**Ms Krestensen:** A commitment was made when the tackling smoking measure was considered through the COAG Closing the Gap National Partnership Agreement to try and reduce—halve—the smoking rates. A commitment was made to try and reduce the smoking rates from 44 per cent in 2009 down to half of that—22 per cent—by 2018. So I guess that is the critical figure that will be looked at over the longer term. No interim targets were set but there will be some information emerging through the regular six-yearly surveys of Aboriginal

and Torres Strait Islander health, which will be reporting on a range of things, including Indigenous smoking, next year. So we will be watching with interest to see—

**Senator FIERRAVANTI-WELLS:** So that will give us some indication of how many people have successfully quit smoking.

**Mr Smyth:** We may have some headline figures later this year or early next year from the Indigenous component of the Australian Health Survey.

**Senator FIERRAVANTI-WELLS:** So at this time it is too early to effectively see how many people may have quit smoking as a result of this program.

**Mr Smyth:** That is right—or not taken it up.

**Senator FIERRAVANTI-WELLS:** That is even better.

**Mr Smyth:** That is one of the key things, as well.

**Senator SCULLION:** I have a quick supplementary question in that area, if I could. In relation to the smoking program—do not worry about the number of the question on notice—I provided a question on notice. It was in regard to the sorts of questions that we just heard from Senator Fierravanti-Wells. It was in relation to how many people had stopped smoking and how it was all going.

You said:

Anecdotal evidence in the form of stories about individuals and organisations suggest that a positive change in attitude and behaviour is occurring.

That is heartening, but for a \$100 million spend you would usually have, in this place anyway, some sort of objective and objective evidence that we would seek from that—often a KPI of some form. Do you have any particular KPI about what sort of target this would seek to do meet?

**Mr Smyth:** As Ms Krestensen said, the target is the COAG target that has been set to halve the rate of adult Indigenous smoking by 2018. That is to bring that figure down to 22 per cent. That is the target. As you know, tobacco is a highly addictive product and it takes time, multiple quit attempts often with people. In the Indigenous context I think the emphasis around role models and particular local solutions are going to take time to develop and be implemented and reach a mature state.

**Senator SCULLION:** I accept all those things. My questions really goes to how are we able to track that?

**Mr Smyth:** I think we are able to track that through the surveys that are being undertaken and we should, as I said, get some headline figures later this year or earlier next year from the Indigenous component of the Australian survey.

**Senator SCULLION:** It has been running for a while now. Do you have any indications in terms of evidence about whether you are on trend between here and the COAG target date, because it is a target and a date—half by 2018?

**Mr Smyth:** I would have to wait for those statistics to be tabled.

**Ms Killen:** If I could add something, for the whole of the package there was a monitoring and evaluation framework developed. As part of that we did a lot of thinking through the time frames in which you expect to see change. When you look through that the types of things

that we expected to see in the first four years did not include changes to smoking rates. That was, as Mr Smyth said, in part because it takes time to achieve change. It is a graduated implementation framework. These teams have been implemented over time with the final tranche only being implemented now. So we would not expect to see at a national level much change this early, but we would expect to see it happening in the intermediate term.

What we will be doing as part of the overall monitoring and evaluation of this effort is now revisiting that, thinking about how we can better monitor in particular things such as smoking rates, noting that we cannot compete with a national survey—that is a very expensive undertaking. But we will certainly be looking at how we can improve our monitoring of aspects of the package—in particular, that really strong investment in prevention.

**Ms Palmer:** We also have a national KPI for smoking status to be recorded by our Aboriginal Community Controlled Health Organisations. That will be able to be reported from July 2013. So, because they have to report that in the NKPIs, which have been agreed by COAG, it drives our ACCHOs to be actually focusing on this area as part of their practice in their clinics.

**Senator SCULLION:** Will the first time they report be in 2013?

**Ms Palmer:** It will be reported from July 2013.

**Ms Killen:** What that will show us is whether we are getting a change over time in the proportion of people within the population that is cared for by that service changing.

**Senator SCULLION:** What will be the frequency that reporting?

**Dr Somi:** The national key performance indicators will be reported six monthly.

**Senator SCULLION:** I would hope that that would give us some understanding. I understand the cost of a national survey. My concern, I guess, is that the frequency is very wide. It is supposed to inform us about how this is going and whether or not a \$100 million investment has done anything. It would be useful to have a higher frequency of points under which we can indicate how those programs are going, so hopefully that will inform us in the future.

**CHAIR:** What is the frequency of those reports?

**Senator SCULLION:** Six months.

**Dr Somi:** The data will be collected every six months. Once AIHW has done an assessment of the data quality for each of the indicators we will start reporting them six monthly.

**CHAIR:** Six monthly—it seems quite a tight timeframe to me.

**Senator SCULLION:** Thank you very much, Mr Smyth. I don't think you are able to provide any further than that.

**Senator McKENZIE:** To follow up some of the discussion this morning, do the preventative strategies for the anti-smoking program include an in-schools component?

**Mr Smyth:** Tobacco workers do go into schools to provide education and awareness. They are integrated within the local community and work at all levels. They do go into schools.

**Senator McKENZIE:** How does their work differ from that of a skilled health educator in those communities in schools?

**Mr Smyth:** These workers particularly focus on smoking and they look at what is working across different areas and its applicability to the local context. Rather than having a broad overview they are looking at targeted specific measures that might be relevant to the local community. They can adapt materials etcetera.

**CHAIR:** Are there any more questions on smoking? We will now turn to the wider area of mental health, and one of the key issues here is suicide.

**Senator FIERRAVANTI-WELLS:** Can I start with BRE 189? That is the specific one that deals with spending on Aboriginal mental health. Ms Campion, if you could take me through that?

**Ms Campion:** It is in outcome 8 which relates to Indigenous health and that is the government's Social and Emotional Wellbeing program.

**Senator FIERRAVANTI-WELLS:** Are the sub-programs to that?

**Ms Campion:** There is a number of elements to the program. One component provides funding to the 90 Aboriginal community controlled health organisations across Australia for 160 mental health, social and emotional wellbeing counsellor positions.

**Senator FIERRAVANTI-WELLS:** Is that one sub-program?

**Ms Campion:** It is an element of the program.

**Senator FIERRAVANTI-WELLS:** If you could break down 8.1 precisely and also those figures over the forward estimates, if you can.

**Ms Campion:** I only have 2012-13 figures here.

**Senator FIERRAVANTI-WELLS:** If you can take the rest on notice.

**Ms Campion:** The total allocation to the BRE in 2012-13 is \$43.6 million. The total funding for those 160 counsellor positions is \$18.4 million in 2012-13. We also provide funding nationally for eight link-up services that are located at in all jurisdictions other than the ACT and Tasmania. Funding for those services in 2012-13 is \$12.4 million. The funding also supports nine workforce support units across Australia—there is one in Queensland, two in New South Wales, one in Victoria, one in Tasmania, one in South Australia, two in Western Australia and one in the Northern Territory—and funding in 2012-13 is \$5.2 million. We also provide funding to nine Indigenous registered training organisations—there are two in New South Wales and Western Australia, and one each in the ACT, Victoria, South Australia, Tasmania and Queensland. That funding in 2012-13 is \$3.6 million. We also provide funding to the two peak stolen generations organisations, the National Sorry Day Committee and the National Stolen Generations Alliance. They get \$0.3 million each in 2012-13.

**Senator FIERRAVANTI-WELLS:** That is \$0.6 million.

**Ms Campion:** Yes. There are also some one-off projects that relate to the enhancement and support of the program. They include reviewing the counselling model, workforce training and development models and the Aboriginal mental health first aid policy and principles. Those are the major elements of the program. You are probably also aware that we

are in the process of renewing the social and emotional wellbeing framework and there is some activity related to that under there.

**Senator FIERRAVANTI-WELLS:** And that is replicated presumably over the forward estimates, continuation of those various components?

**Ms Campion:** Core components, yes.

**Senator FIERRAVANTI-WELLS:** And there might be some one-offs in those. We have had discussions on the suicide prevention money and I will not traverse where I am sure Senator Siewert will traverse. I am interested in where the money is coming from. Does it come out of one of those—

**Ms Campion:** The suicide funding comes out of outcome 11, which is mental health.

**Senator FIERRAVANTI-WELLS:** Can we have a look at 11, then. Could you take me through which ones of those have an Indigenous component?

**Ms Campion:** The Indigenous suicide funding comes out of two components. One is the National Suicide Prevention Program. That is actually BRE 040 and it is marked 'in-confidence' in the table you were provided in the question on notice. That is because funding was being allocated in the budget.

**Senator FIERRAVANTI-WELLS:** It is the first in-confidence, is it?

**Ms Campion:** The first in-confidence under BRE 038 is the Suicide Prevention Program. It is BRE 040. That is our broader suicide prevention program but there is funding for Indigenous specific initiatives within that, including the new funding that was announced to implement the Aboriginal and Torres Strait Islander suicide prevention strategy post-budget.

**Senator FIERRAVANTI-WELLS:** You cannot give me an approximate—

**Ms Campion:** I have got the funding here.

**Senator FIERRAVANTI-WELLS:** So why is it being put in-confidence?

**Ms Campion:** It was at that time, which is prebudget.

**Senator FIERRAVANTI-WELLS:** Could you give me those figures? Can you fill in those five little boxes for me?

**Mr Mackay:** To start with, the new funding that was allocated in the most recent budget is \$17.8 million—

**Senator FIERRAVANTI-WELLS:** No, have you got it in front of you?

**Mr Mackay:** Total for NSPP. I have totals over six years—

**Senator FIERRAVANTI-WELLS:** 2012-13?

**Mr Mackay:** That is 25.4; 2013-14, 27.7; 2014-15, 30.0; 2015-16, 31.1; and 2016-17, 32.7.

**Senator FIERRAVANTI-WELLS:** Within that suicide prevention, can you now tell me the Indigenous component?

**Mr Mackay:** To start with the new funding to support the strategy, and this is included in the total of 25.4, there is no new funding for that in 2012-13. In 2013-14 it is 1.9, in 2014-15 it is 4.0, in 2015-16 it is 5.1 and in 2016-17 it is 6.3. So there is that one there in confidence. Are there any others?

**Ms Campion:** As you would be aware, there is some funding for community based projects under the Taking Action to Tackle Suicide initiative.

**Senator FIERRAVANTI-WELLS:** Not indexed.

**Ms Campion:** Not indexed.

**Senator FIERRAVANTI-WELLS:** And what is the Indigenous component?

**Ms Campion:** There was \$6 million over four years, starting in 2011-12.

**Mr Mackay:** It is \$1.5 million for each year.

**Senator FIERRAVANTI-WELLS:** So 2012-13 is \$1.5 million and there is \$1.5 million, finishing, in 2014-15.

**Senator SIEWERT:** Is that specifically for Aboriginal and Torres Strait Islanders?

**Mr Mackay:** That is right. That is the money that we spoke about last time that had been quarantined from that package.

**Senator FIERRAVANTI-WELLS:** And is there anything else in that?

**Ms Campion:** Within BRE 040 there is not money specifically other than the new money for the Indigenous suicide prevention strategy. There is no other money specifically targeted to Indigenous people, but we do have a number of projects that are focusing on Indigenous people, so some of the funding is going to some projects. Mr Mackay can give you those figures.

**Mr Mackay:** These are figures for 2011-12 and 2012-13 which represent funding that was committed from the national suicide prevention program. In 2011-12, it was \$4.8 million and in 2012-13 it was \$4.6 million which in 2012-13 represents just over 18 per cent of NSSP spending on Aboriginal and Torres Strait Islander projects.

**Senator FIERRAVANTI-WELLS:** In that mental health money, it is those two that are the ones that have an Indigenous component.

**Ms Campion:** We should probably mention also in mental health More Options, Better Outcomes which is our access to allied psychological services program. We have some money specifically focused on Aboriginal and Torres Strait Islander peoples in that program too.

**Senator FIERRAVANTI-WELLS:** Could you give me the figures there?

**Mr Mackay:** I do not know that I have the breakdown over the five years but it was money allocated in the 2011-12 budget and it was \$36.5 million over five years. I do not have the breakdown for each year.

**Senator FIERRAVANTI-WELLS:** And that would be a portion in each of those.

**Mr Mackay:** That is right.

**Ms Campion:** I think I have the breakdown here. In 2011-12, it was \$2.9 million; in 2013 it was \$4.6 million; in 2013-14 is \$8.2 million in 2014-15 is \$10.1 million; and 2015-16 is \$10.6 million. Just for completeness, the mobile outreach service plus initiative, which is part of Stronger Futures, provides services to Aboriginal children and their families in the Northern Territory that experience trauma associated with any form of child abuse. It is a counselling program.

**Senator FIERRAVANTI-WELLS:** Is that 6.31?

**Ms Campion:** It is under outcome 8.

**Senator FIERRAVANTI-WELLS:** Yes I am going to carry that with me.

**Ms Campion:** I think it must be part of the Stronger Futures BRE. We would need to just check that. It may well be under that 7.7.5. I just need to check with my OATSIH colleagues. We will clarify that for you. We can give you the breakdown of that funding at the same time.

**Senator SIEWERT:** I go to the suicide prevention strategy. Could I explore in a bit more detail the allocation of the funding of \$7.8 million and how that is going to be spent and the process? That is the money that has been allocated specifically, as I understand it, to implement the strategy.

**Mr Mackay:** It is to implement some key recommendations of the strategy. The strategy has six broad action areas with a number of actions under each. We are not suggesting that \$17.8 million would be sufficient to action every single recommendation.

**Senator SIEWERT:** I did not assume that. I understood that it is an overarching strategy.

**Mr Mackay:** Indeed, and the hope is very much that the strategy will provide guidance to governments at all levels, community groups and so on, in addressing the issue, as well as providing some guidance for Commonwealth activity. As I mentioned in answer to a previous question, the funding commences in 2013-14. So we are in the process of planning for how the funding will be allocated and spent. We anticipate two key areas of focus for the funding which go to the core recommendations of the strategy. The first two identify a way to support community level projects with a stronger evidence base of successful activity in this area from other areas around the country. One of the things the consultation process found in developing the strategy was that people often felt that, while they may be doing things effectively in their community, they were not as well connected as they would like to understanding how other people were tackling similar issues. That is one area of focus for the funding. The other would be to support the development of both local community activities—we use the term 'networks' in broader suicide prevention activity—and supporting communities to develop their own action plans. The guidelines that will govern the allocation of the funding we are still developing and we will be engaging with the sector and with state governments in finalising the design of those guidelines.

**Senator SIEWERT:** When you say 'the sector', who do you mean?

**Mr Mackay:** We will start on 17 or 18 June. I am going to meet with the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Advisory Group and that will be our first engagement with them on this new funding. We will seek their advice on broader consultation and broader engagement. We would expect to work very closely with that group in developing the guidelines.

**Senator SIEWERT:** And community level projects are community driven projects that are talking about reconnection with culture? I understand that when you are talking about community projects, it is not outsiders coming in to do community projects; this is community developed, community owned and driven projects.

**Mr Mackay:** Indeed. I think we spoke at a previous estimates about some of the funding principles that had been developed by the advisory group which oversaw the development of

the strategy. They very much went to precisely those issues and I think you can see in the action areas of the strategy as well a strong reflection of that as a guiding principle.

**Senator SIEWERT:** You said there were two key areas.

**Mr Mackay:** The national level would be a mechanism to share best practice and evidence of success in those community projects.

**Senator SIEWERT:** That is a component of the community level projects, is it?

**Mr Mackay:** No, that would be separate.

**Senator SIEWERT:** So how do you share the networking and the knowledge and things is one component?

**Mr Mackay:** That is right.

**Senator SIEWERT:** And the second component is—

**Mr Mackay:** Is community level work and of that we think there is some work in developing those community level activities but also helping communities to develop their own action plans.

**Senator SIEWERT:** Right. So you are capacity building, in a way, to support development of the—

**Mr Mackay:** That is right. Action area 5 of the strategy goes to building the evidence base and disseminating information. That we think is more national level work. I suppose action areas 1 through to 4 around building strengths and capacity in communities, strengths and resilience in individuals and families, targeted suicide prevention services and coordinated approaches to prevention—we would expect to see community level activities in some or all of those areas.

**Senator SIEWERT:** How is the funding going to be divided between national and community? For the community part, how is it going to be divided between developing the action plans and the actual activities? What is the process?

**Mr Mackay:** I think it is too early to give you a definitive number or proportion of funding that would go to any of those individual parts. Obviously we would hope to see the majority of funding going to those things that will have the most direct impact in communities. One of the things that we will need to consult on and explore in the development of the guidelines is the scope and remit of that national support activity. But, without being more definitive on specific numbers, the majority of funding will be targeted at community level, community led activities.

**Senator SIEWERT:** That \$17.8 million over four years across Australia is not a lot of money. This is about empowering communities to take action et cetera. Once that process in place—the planning and the action planning part of it—obviously the \$17.8 million is not going to be enough to fund an extensive amount of activities in communities. Therefore, regarding all the other money that we have been talking about, particularly with Senator Fierravanti-Wells, is there going to be a much stronger tie between those activities and what the community are saying they need? In other words, all the other funding that is available will not be offered here. I am not saying it is not doing good stuff but, now that we have got this strategy, we want that funding to be tied into the strategy.

**Mr Mackay:** The \$17.8 million that we have been talking about, as Ms Campion mentioned, has been added to the appropriation for the National Suicide Prevention Program, which is being evaluated this financial year. I think we may have discussed at a previous hearing that the government has agreed to extend existing NSPP projects for a further 12 months to allow for consideration of that evaluation report. That will also now allow for consideration of the strategy in designing future phases of the NSPP to take account of precisely that point and that we now have an additional guide to investment across the program, not just on this additional level.

**Senator SIEWERT:** Who is included in that process?

**Ms Campion:** It is the Aboriginal and Torres Strait Islander Mental Health and Suicide Advisory Committee.

**Senator SIEWERT:** That is the committee you are talking to on 17 and 18 June? I just wanted to double check.

**Mr Mackay:** Yes.

**Ms Campion:** That is a ministerial committee. There was a mental health advisory group and a suicide group, but we have combined them. It is co-chaired by Professor Pat Dudgeon and Dr Tom Calma.

**Senator SIEWERT:** That is the committee you will be talking to about the guidelines on 17 and 18 June?

**Mr Mackay:** That is right. We would also expect to engage with the Australian Suicide Prevention Advisory Council—

**Senator SIEWERT:** As part of that process?

**Mr Mackay:** Yes, and also as part of the redevelopment of the NSPP, which we need to take account of.

**Senator SIEWERT:** How soon can we expect to see the guidelines completed and out there so that we can start work?

**Mr Mackay:** Until we have spoken to the group, I would be hesitant about committing to an exact date. But the funding is available from the 2013-14 financial year and we would want to give people as much time as possible to engage with the process, consider the guidelines, apply and start delivering activities within that year.

**Senator SIEWERT:** Do you foresee going with a competitive grant application process?

**Mr MacKay:** I expect that that will be the case for at least the community activities. One of the things on which we will need to take the group's advice is whether we take that approach for all of the activities that we are seeking to fund. But, yes, that would be my starting position, and we will take the group's advice on their views.

**Senator SIEWERT:** What ongoing role would the advisory committee have? Who signs off on the guidelines, and who manages the process from there? Does the department manage the process?

**Mr MacKay:** That is right. The guidelines will be provided to government for consideration and approval.

**Senator SIEWERT:** Can I take a step back from there? Will the advisory committee get to sign off on them before they go to the minister?

**Mr MacKay:** We need to be careful about the level of detail that we go to in developing guidelines in the event that it is going to be an open and competitive process so that people who might be part of the advisory group do not inadvertently preclude themselves from participating in the activities. So it may not be a formal sign-off of the final guidelines, but certainly we will engage with them and seek their advice. The guidelines will be provided to government for approval, and the department will then manage the process around an invitation to apply assessment of applications and management of funding agreements.

On similar activities, including the \$6 million that was quarantined out of the Taking Action to Tackle Suicide package, we have appointed a technical adviser to provide specific advice to the department in managing those assessment processes. In the case of the \$6 million, it was a member of the advisory group who participated as our technical adviser, and I would imagine that we would take a similar approach.

**Ms Champion:** Senator, if I could also mention that a couple of other important groups which we need to consult with will obviously be FaHCSIA and our FaHCSIA colleagues because they are also working in the suicide area, and also our state and territory counterparts because, again, they have activities that they are funding. This goes to your issue about the \$17.8 million not being enough to cover the country. We need to make sure that the Commonwealth funding is targeted to where it can be used to best effect and not duplicate what states are doing. So there will be a couple of other important consultation elements to developing those guidelines.

**Senator SIEWERT:** I take your point. That is all the questions I have on the strategy process.

**CHAIR:** Senator Furner has some suicide questions.

**Senator SIEWERT:** Okay, but I do have more money suicide questions but not directly on the strategy.

**Senator FURNER:** I have a couple of questions around the strategy. Firstly, in respect to the action plans, I imagine that is going to be a case by case arrangement developed around the particular needs of the communities. It is not plan that will be rolled out—

**Mr MacKay:** That is right. I think now all state governments have their own suicide prevention strategies which link back to the National Suicide Prevention Strategy and are complementary to what has been identified in developing the Aboriginal and Torres Strait Islander Suicide Prevention Strategy. So, while both the national and jurisdictional level strategies will provide a guide, it will absolutely be the case that community plans will respond to and take account of the individual needs of communities and their circumstances.

**Senator FURNER:** In terms of the ATSI Suicide Prevention Strategy that was released earlier this year, what degree of it identified substance abuse as a major contributor towards suicide?

**Mr MacKay:** At least one of the action areas goes specifically to that point. That is action area 3, targeted suicide prevention services, which includes providing targeted services to individuals and families that are at a high level of risk, including among others, those with

histories of alcohol and drug abuse or of domestic violence, a prior history of attempted self-harm and people in or discharged from custody.

**Senator FURNER:** Thank you, Chair.

**CHAIR:** Senator Siewert, back to your money questions.

**Senator SIEWERT:** Can you tell me where we are up to with funding for the Kimberley? If I understand correctly, the funding for some of the positions up there is going to drop, come July—is that right?

**Mr Mackay:** There is a position under the StandBy program in Derby which we are funding jointly with the Western Australian Mental Health Commission until the end of this financial year—

**Senator SIEWERT:** That is the StandBy position in DEEWR?

**Mr Mackay:** An additional position—so it is not the only one, but there is an additional one that we are jointly funding with the commission. We are regularly in contact with the commission and I am anticipating that part of that will go to whether there is a need for that position to be extended.

**Senator SIEWERT:** So you are in discussions with the commission?

**Mr Mackay:** That is right.

**Senator SIEWERT:** How soon will you resolve that?

**Mr Mackay:** In the event that there is a need to continue the position, then before the end of the financial year so that there is continuity in the funding.

**Senator SIEWERT:** So that is in the next 23 days?

**Mr Mackay:** That is right.

**Senator SIEWERT:** Is that the only position the Commonwealth funds in the Kimberley that is in that position? Are there any other positions in the Kimberley that the Commonwealth funds that are about to run out?

**Mr Mackay:** No. The other positions under StandBy, and also under other NSPP projects, have been offered the 12-month extension that I referred to earlier. In some cases, the technical negotiation of a new funding agreement to cover the 2013-14 financial year has not yet been concluded, but all of the projects that receive funding under NSPP were communicated with some months ago to give them that assurance of a further 12 months of funding. That includes the broader funding to the StandBy service in the Kimberley, which includes two FTE for the west and east Kimberley StandBy services.

**Senator SIEWERT:** So two FTE for both, west and east?

**Mr Mackay:** That is right: two in the west and two in the east.

**Senator SIEWERT:** In other words, if the ongoing negotiations—which I hope are successful, for Derby—are successful, they will continue to keep the five?

**Mr Mackay:** That is right. It would be a total of five, assuming the Derby position continues to be funded.

**Senator SIEWERT:** Who hosts that Derby position at the moment?

**Mr Mackay:** I would have to take on notice which organisation it is.

**Senator SIEWERT:** Maybe you could take on notice the organisations that do receive the funding for those positions at the moment.

**Mr Mackay:** Certainly.

**Senator SIEWERT:** Actually, could you tell me now, or do you not have it there?

**Mr Mackay:** I do not have it in front of me.

**Senator SIEWERT:** Then could you take that on notice. You say that you are currently negotiating to see if that is needed. Certainly it has been put to me that that position is needed. What are the criteria that you will use to determine whether you should continue to fund that position?

**Mr Mackay:** We will rely on reports that we have had from the StandBy service that we fund about the level of demand that they are experiencing and the impact that might have on their workforce, as well as advice from the commission about other activities that they have in the area. One of the things that the Western Australian commission and we have been discussing quite a lot over the last 12 months has been ways to better coordinate services to ensure that, as Ms Campion referred to earlier, they are complementary and not either duplicative or leaving gaps. So it will be partly information that we receive from our service provider and partly the views of the commission about what else they may be supporting in that area.

**Senator SIEWERT:** Will you let the service know before the end of June?

**Mr Mackay:** Yes.

**Senator SIEWERT:** I have another question, and I know what the instant response will be, but bear with me; I know I will get told to go somewhere else, but I will keep trying. Bear with me. Are you aware of the call line that was funded for the ALS in New South Wales around the Custody Notification Service?

It was a 24-hour advice phone line provided by Aboriginal legal services in New South Wales that provided for people in custody being able to make phone calls. I understand that that funding has ceased. It was an Attorney-General's program, so I think you might tell me to ask this elsewhere. They make the point that the reason for the reduction in the number of deaths in custody in New South Wales and the ACT since that process started has been because people in custody could seek assistance. Are you aware of that phone line? Has anybody raised it with you? Have you been involved in any review of it?

**CHAIR:** Is that under mental health or a general one for the department?

**Senator SIEWERT:** It is general but a lot of this is related to mental health.

**CHAIR:** I know. I want to see if anyone is here from the mental health area.

**Senator SIEWERT:** I do not know where else to ask this.

**Ms Campion:** From the health department perspective, we are not aware of it and we have not had anyone raise it with us. I am not sure if it might have been raised with Attorney-General's or other parts of the Commonwealth.

**Senator SIEWERT:** Thank you. Where should I ask about Communities for Children, particularly in Aboriginal communities?

**Mr Pratt:** It is a FaHCSIA program. Perhaps Tuesday might have been a good day for that.

**Senator SIEWERT:** I am particularly interested in regard to Aboriginal communities.

**Mr Pratt:** We can try to pick it up later this afternoon. I will check whether the people are still here. No, we did have someone here who is an expert on Communities for Children who has gone back.

**CHAIR:** We will put it on notice.

**Senator SIEWERT:** Okay. The reason I ask is that it is connected with other questions I have on petrol sniffing. That is why it has only just occurred to me that I should have asked it earlier.

**Ms Campion:** If I could clarify the funding for the Mobile Outreach Service Plus program. There is a small component in BRE 775—and I will need to get the breakdown for you—which is money that the Commonwealth will be using to evaluate the service and to do training and development activities for the workforce. But the majority of the funding is actually through funding to the Northern Territory government to run the service. That is not in the BRE table.

**Senator FIERRAVANTI-WELLS:** Thank you.

**CHAIR:** We will now move to issues around renal services.

**Senator SIEWERT:** On the money that was committed for the additional accommodation for dialysis in Central Australia—and you will be aware that I asked about this last time—we know that we have lost \$3 million already. Where are we up to with the expenditure of the \$10 million?

**Ms Palmer:** The minister engaged with Finance and we have \$9 million, which is due to be spent this year, and we have \$1 million next year. We had the \$9 million moved into next year. We will not lose that \$10 million as a result of the Northern Territory government deciding not to accept the funding for that project which is really good.

**Senator SIEWERT:** I cannot tell you how much that pleases me.

**Ms Palmer:** It pleases us too.

**Senator SIEWERT:** What is it going to be spent on and how is progress being made with the Northern Territory government?

**Ms Palmer:** I can tell you that in April the minister announced some projects where we found some underspend in other programs for this financial year. So we could actually progress some renal and primary infrastructure activities this year, so we could keep moving.

**Senator SIEWERT:** Sorry to interrupt the flow. You said you found some underspend. Where—

**Ms Palmer:** Where from?

**Senator SIEWERT:** Where is it from and, also, how does that relate to the \$10 million?

**Ms Palmer:** It does not relate to the \$10 million at all. The underspend was activity that we were not able to complete in the Indigenous Chronic Disease Package. We took that money and applied it to some primary care and renal infrastructure projects so that we could keep moving.

**Senator SIEWERT:** Sorry; I did not compute where the \$2.4 million came from.

**Ms Palmer:** It came from the ICDP. The minister announced around \$2.4 million worth of projects. I might let Mr Fisk respond.

**Mr Fisk:** What the minister has announced, in fact, is in principle approval of \$3.865 million in projects. Some of those projects, while they are given in principle approval, are subject to the Northern Territory government providing recurrent funding.

**Senator SIEWERT:** This is the problem with the other \$10 million. We keep coming up against this, don't we? This is the problem, as I understand it, that has holding up the \$10 million, which we will come back to.

**Ms Palmer:** Yes.

**Senator SIEWERT:** The original \$13 million was promised in 2011.

**Ms Palmer:** Over three years, yes.

**Senator SIEWERT:** But it has not been spent. None of it has been spent yet. I am not having a go; I am frustrated because it is taking so long to roll this out. We hear announcements and everybody gets really pleased, and then we find out years down the track that it has not been spent. We have lost \$3 million already. I am not saying that the \$3 million, or nearly \$4 million, that you have just talked about is not great, but it is money that—

**Ms Palmer:** What we are disappointed about, I think, is that, following the Central Australia Renal Study, we took up the recommendation about the need for patient accommodation, and that was what that money was for. Now, recognising there are needs, we have tried to find other ways to provide infrastructure to the community to support patients, when really the study was very clear about the need for that accommodation for the patients.

**Senator SIEWERT:** Yes.

**Ms Palmer:** So we are quite frustrated too, but, in the short term, we have tried to find other things that we can use funding for to make a difference on the ground.

**Senator SIEWERT:** That is where I want to see the funding spent, too, but my concern now is that here is another program dealing with the holes, and it is reliant on the NT again.

**Ms Palmer:** Not all of it is. Some of the funding which was announced actually does not rely on the NT government at all and is proceeding right away. So that is good.

**Senator SIEWERT:** Let's go to the one—sorry; I took us off in another direction—that is reliant on the NT. I want to know how much that is, and then I will go to the others, if that is okay.

**Mr Fisk:** It was a total of \$980,000. They were for a project at Lajamanu, which was \$280,000, and one at Santa Teresa, which was \$700,000. They were based on discussions that we had had with a provider in the Northern Territory who suggested that they would be able to have more luck with the NT government than we were able to. That is probably what we were looking at, in that they were able to convince the NT government that recurrent funding would be cost neutral to them and that they could provide the funds for those two centres to enable services to be provided. Unfortunately, that has not turned out to be the case.

**Senator SIEWERT:** So I can be clear: that is for the two additional chairs at Lajamanu?

**Ms Palmer:** Yes.

**Senator SIEWERT:** That is where the NT has not come good with the recurrent funding?

**Ms Palmer:** That is right.

**Mr Fisk:** In both Lajamanu and Santa Teresa.

**Senator SIEWERT:** At Santa Teresa, it was for nurses accommodation?

**Ms Palmer:** Yes.

**CHAIR:** Mr Fisk, are the chairs there?

**Mr Fisk:** There are some chairs in Lajamanu. It was about expanding the services.

**CHAIR:** But the two have not got there?

**Mr Fisk:** That is right.

**Senator SIEWERT:** How much were you expecting the NT to supply for the recurrent funding? That is for the operation of it, isn't it?

**Ms Palmer:** Yes. What had been put to us was that the alternative service provider, Purple House, could take patients who are currently getting dialysis at Alice Springs and allow them to return home.

**Senator SIEWERT:** Yes, we have talked about returning to country a lot.

**Ms Palmer:** They were assuming that that was cost neutral, because if those patients were not getting services in those locations they could get them closer to home, and that would not require the Northern Territory to pay any more money than they were currently paying. When I spoke to the officials about this they were quite appreciative of the fact that we were trying to be creative and find different ways to do it that did not add to the costs for them, so it was a very productive conversation and they are very keen to work with us in this area. But the way in which they buy their dialysis services means that when patients move to different locations it does not actually cost them any less. So it was not able to be cost neutral. The costs that Purple House were going to charge were going to be more than the cost they paid to dialyse those patients where they currently are.

**Senator SIEWERT:** I suppose it then depends on how they account for other costs too.

**Ms Palmer:** Correct.

**Senator SIEWERT:** Can we go through each project. What is now going to happen with those two chairs?

**Ms Palmer:** When the Northern Territory minister wrote back to Minister Snowdon late last year it was very clear that the Northern Territory will not be engaging in any projects where there is more funding required from them, so there is nowhere to go with this at the moment. That was an attempt for a cost neutral solution, and because it is not cost neutral we cannot go any further with those until they change their policy in this area.

**Senator SIEWERT:** What about Santa Teresa?

**Mr Fisk:** Santa Teresa is the same—the same issue.

**Senator SIEWERT:** What was the NT supposed to be putting in there?

**Mr Fisk:** Again it was recurrent funding for the dialysis nurse, the renal nurse, to work there.

**Senator SIEWERT:** How much were you putting in?

**Mr Fisk:** Santa Teresa was around \$700,000.

**Senator SIEWERT:** And that was for the nurse?

**Mr Fisk:** It would have been the nurse's accommodation and for the chair and everything else.

**Senator SIEWERT:** How much, therefore, would the Northern Territory government need to put in for the nurse?

**Mr Fisk:** We do not have a figure on how much the nurse's costs are.

**Senator SIEWERT:** I will try to find that some other way. So those are the projects that were subject to NT agreement. That is just shy of about—

**Mr Fisk:** It is \$980,000 in total for the two.

**Senator SIEWERT:** When the minister announced this a bit over a month ago, were you aware at that time you had not completed negotiations with the NT government?

**Ms Palmer:** Yes.

**Senator SIEWERT:** Had you started negotiations with the NT government when he made the announcement?

**Ms Palmer:** I think there had been lower level officials discussions, and also discussions involving the provider Purple House. We had indicated that they had had discussions at lower levels in the NTG about it but not at senior enough levels, it would seem.

**Senator SIEWERT:** The \$3.865 million is more than what the minister announced in April—not that that is bad; I do not mind him committing more money.

**Mr Fisk:** That is correct. The minister has since announced two other projects.

**Senator SIEWERT:** What are they?

**Mr Fisk:** There is \$750,000 for staff accommodation in Ampilatwatja and also \$750,000 for staff accommodation at Utopia.

**Senator SIEWERT:** Do they require NT additional funding?

**Mr Fisk:** No, they do not.

**Senator SIEWERT:** So why—

**Mr Fisk:** This is to allow for additional primary health care services to be provided in those communities, which will then provide better health in those communities, therefore hopefully reducing the number of clients needing dialysis.

**Senator SIEWERT:** Why can we build and pay for accommodation for primary health care and not dialysis?

**Ms Palmer:** Because the Northern Territory government needs to operate the accommodation, whereas the staff accommodation is managed by the AMSs. The Northern Territory government were objecting to the costs of running the accommodation for patients.

**Senator SIEWERT:** The Alice Springs and Tennant Creek—

**Ms Palmer:** In Alice Springs.

**Senator SIEWERT:** But the AMSs will absorb the cost of running the staff accommodation—is that correct? How much is that?

**Mr Fisk:** It is not so much the states. Yes, they will. They will have additional funding put into their budgets if there are any additional costs in running those facilities, but it gives them the ability to bring in additional staff.

**Senator SIEWERT:** Do not get me wrong: I am not complaining about the need for staff accommodation. I have been in communities. I know the desperate situation. My question is: AMSs are absorbing it or are they being provided with additional funding to run them?

**Mr Fisk:** In principle, they have already got the funding. They cannot actually get the staff in because they do not have the accommodation now. It is going to allow them to utilise the budget they already have.

**Senator SIEWERT:** The actual staff—for managing it? I totally get why we need accommodation. I am trying to work out the difference between the NT not providing funding for on-costs for one set of accommodation and not needing to deal with that for another set. What you are saying is that AMSs already have the funding in their budget to help support staff accommodation; they just did not have any accommodation in which to support those staff?

**Ms Palmer:** I would like to check with my colleague for a second.

**Mr Fisk:** I think the answer is that the state and territory governments are responsible for renal service provision, not the Commonwealth. The Commonwealth is trying to provide the capital infrastructure that would enable renal staff to be brought into some of those communities but, unfortunately, the NT government has not been able to come up with the funding to put the nurses into those communities. In other communities we are talking about, that is primary health care service provision and that is why the funding is available to the AMSs. There is going to be no extra drain on the AMSs; it will just expand the number of staff they have available for those communities.

**Senator SIEWERT:** I understand the point you are making. I have been working on this issue for a very significant period of time, and that is a fraction of the time people in the territories and states have been working on it. For years we have been hearing the same thing. There are promises of chairs and then they disappear because of this dispute. It has been ongoing and it has not been resolved. That is what I get frustrated about and that is what they get frustrated about. Here is another announcement that is going to go out the window because of this dispute between the Territory and the Commonwealth. That is what I am trying to get to the bottom of. The commitments that were made by the minister, with all goodwill—I am not disputing that—are not worth the paper they are written on because the NT is not going to commit funding and the Commonwealth now will not commit the funding.

**Ms Palmer:** It is a state and territory responsibility to run dialysis service delivery.

**Senator SIEWERT:** I think if I hear that one more time, I am going to scream.

**CHAIR:** We will not test that, Senator!

**Senator Thistlethwaite:** That is a fact that cannot be escaped in this situation.

**Senator SIEWERT:** Go and tell the people who are not able to access dialysis.

**Senator Thistlethwaite:** I understand the outcome on the ground is not desirable, but, in terms of the funding perspective, the Commonwealth has done all it can to assist in trying to fund these services. If the Northern Territory government will not accept the funding—

**Senator SIEWERT:** Personally, I reckon that one chair rather than two chairs—

**Senator Thistlethwaite:** It is the paradox of Federation, unfortunately.

**Senator SIEWERT:** I think that, instead of people dying from end-stage kidney disease, maybe the Commonwealth should think about funding one chair and looking at how they could accommodate a nurse or something, because that would at least treat patients, whereas at the moment nobody is treated. Sorry, after that I will move on. It is terribly frustrating for the people working in this area and the people who actually need the dialysis.

**Ms Palmer:** One of the announcements that Mr Fisk has not got to in the list was for an additional chair in one of the mobile renal units, so we are—

**Senator SIEWERT:** This is the purple truck?

**Ms Palmer:** Yes. We are working to provide more chairs. We have offered Western Australia and South Australia more renal buses so people can have their service delivery. As you know, South Australia accepted funding and have been operating a renal bus since last year. We have offered further funding for that and we have also offered a bus to the Northern Territory, and they have not accepted that funding.

**Senator SIEWERT:** Which funding are the buses being offered out of?

**Ms Palmer:** We have \$15,000 for a new chair in the mobile renal unit.

**Senator SIEWERT:** That is in the purple truck?

**Ms Palmer:** Yes. That was announced in April. That is proceeding.

**Senator SIEWERT:** The Territory does not have to provide any of that?

**Ms Palmer:** No, it doesn't have to provide anything else for that.

**Senator SIEWERT:** The purple bus is not just servicing the NT, though, is it?

**Mr Lemmon:** It does cross over into APY Lands and also into WA.

**Senator SIEWERT:** That is what I thought. Thank you. Okay, so that is \$15,000. That is part of the 2.4?

**Ms Palmer:** Yes, that is correct.

**Senator SIEWERT:** That was part of the 2.4 that was announced in April. The additional funding that the territory does not have to contribute to—

**Ms Palmer:** No, it does not have too.

**Senator SIEWERT:** Is that for the primary healthcare accommodation?

**Mr Lemmon:** That is correct.

**Senator SIEWERT:** Okay, thank you. Does that now account for—because I have not added it up in my head—the \$3.865 million funding?

**Mr Fisk:** I think we have covered that off. There was the \$15,000 for the extra chair in the purple bus.

**Senator SIEWERT:** Yes.

**Mr Fisk:** There is \$540,000 for staff accommodation at Ntaria.

**Senator SIEWERT:** Yes.

**Mr Fisk:** There is \$750,000 for staff accommodation in Tennant Creek.

**Senator SIEWERT:** Yes.

**Mr Fisk:** And there is \$80,000 for a male outreach clinic at Santa Teresa.

**Senator SIEWERT:** But that is general health.

**Mr Fisk:** It is not renal specific, no.

**Senator SIEWERT:** That is at Santa Teresa. That is all out of that \$3.865 million?

**Mr Fisk:** That is correct.

**Senator SIEWERT:** So for the money now that the NT is not taking up, which is the two chairs in Lajamanu and Santa Teresa, what is happening with that money?

**Mr Fisk:** At the moment we are trying to put together a package of other projects that the minister might consider to use the funds for.

**Senator SIEWERT:** Will that be dialysis?

**Mr Fisk:** Again, dialysis is going to be dependent on state or territory governments providing the funding for the recurrent. But what we are trying to do is come up at least with projects that provide additional resources into those communities where kidney disease is a real problem to try to improve the situation as much as we can through primary health care services.

**Ms Palmer:** Minister Snowdon wrote very recently to his counterparts in South Australia and WA about it. Whilst we had very clear advice from the officials that they will not be providing recurrent funding, the minister has written specifically. He wrote to the South Australian health minister about funding available for a renal nurse and visitor accommodation at Ernabella; and he has written to WA about converting an old clinic building in Kiwirrkurra WA for accommodation for renal nurses, accommodation and equipment at Warmun, and a respite bus at Warburton. We have made that offer through WACS, it has been rejected at official level and the minister has just written specifically about those funding options to the WA health minister. So we are still trying to progress options.

**Senator SIEWERT:** Thank you. How much money are you asking WA to contribute?

**Ms Palmer:** We do not generally ask them to contribute; we tell them that we will provide funding for those activities if they will provide funding to put those nurses in. It is very difficult for us, Senator, because every state has a different way that they provide dialysis and they pay their staff differently. So it is hard for us to identify. So we say we will put it up and it becomes their service delivery and their costs associated with how they run it.

**Senator SIEWERT:** I understand what you just said. I would still like to know, then, if it is not a money value, what WA would be expected to contribute for Kiwirrkurra and Warburton.

**Ms Palmer:** Can we take that on notice and have an attempt to estimate what that might be.

**Senator SIEWERT:** Yes. It is a nurse for—

**Ms Palmer:** We wanted to suggest that we convert an old clinic building in Kiwirrkurra.

**Senator SIEWERT:** Which is the proposal that has been around for a while.

**Ms Palmer:** Yes, for a while. Accommodation and equipment at Warmun and a respite bus at Warburton.

**Senator SIEWERT:** It is the bus at Warburton, okay.

**Ms Palmer:** Yes.

**Senator SIEWERT:** So, when you were referring earlier to the renal buses, that was the bus you were talking about?

**Ms Palmer:** Yes.

**Senator SIEWERT:** And we have already discussed the bus that you have already spoken to South Australia about.

**Ms Palmer:** Yes, and the Northern Territory government were offered a bus last April.

**Senator SIEWERT:** That additional funding that you were just talking about—was that out of the \$3.8 million?

**Mr Fisk:** No.

**Senator SIEWERT:** So we are now talking about the \$10 million?

**Mr Fisk:** I probably just should clarify something from my colleague's earlier statement about the funding. Some of the announcements the minister is making out of this funding, whilst we are talking about it being funding from the Indigenous Chronic Disease Package, at that stage we did not have the approval of the \$10 million being made available back to the department. So some of these projects will not take place this financial year; they will be next financial year. But, to ensure we could go ahead and make sure that we had some funding, we identified some funding in the Indigenous Chronic Disease Package that we could possibly use, just in case the \$10 million was not provided back. I just wanted to clarify that all of this is going to be out of the \$10 million.

**Ms Palmer:** It is quite complicated because it is an SPP payment. It is sitting in a Treasury account to be paid to the Northern Territory government. Obviously these projects which we are talking about are not state government projects. Whilst we have got permission to move the money into next year, we still have to go through approvals on how that money can be spent and getting it put back into the department so that we can use it in this way.

**Senator SIEWERT:** Sorry; my head is about to explode in terms of tracking which funding is now—

**Ms Palmer:** What I can guarantee is that we are making every effort to identify funding that we can apply in this area.

**Senator SIEWERT:** At one stage just then I thought we had \$3.865 million plus \$10 million.

**Mr Fisk:** No. That is what I was just trying to clarify.

**Senator SIEWERT:** And now we do not. Now we are back to it coming out of the \$10 million. So what is happening to the other money that was identified out of the ICDP?

**Mr Fisk:** If the funding is returned to the department to be able to use for these projects, then the ICDP has a number of other projects that it is now lining up to use those funds for which are strictly about chronic disease.

**Ms Palmer:** And it is a flexible fund, so we do have some flexibility.

**Senator SIEWERT:** The problem is that some of the projects that you have identified are not strictly dialysis, for a start. I understand that they help general health, but we need more

money into dialysis. Also, the projects that you have outlined here are still dependent on the NT.

**Ms Palmer:** Not all of them.

**Mr Fisk:** The two projects that I spoke about earlier certainly are dependent on the NT, but not the others.

**Senator SIEWERT:** The only ones that are not dependent on the NT are the primary healthcare ones, which are not directly addressing dialysis.

**Mr Fisk:** Not directly addressing, no.

**Senator SIEWERT:** So we are back to square one. As I said, I do not want anyone thinking I do not think primary health care is important. I know it is, but it is not treating dialysis.

**Ms Palmer:** No, but the Central Australian Renal Study actually made a very big point about the importance of primary care and the importance of prevention, and we know from the work we are doing in that prevention that we can actually work with patients to avoid them needing to go on to dialysis.

**Senator SIEWERT:** I totally get that and I totally support that, but we also know there are a hell of a lot of people out there that need dialysis now and that are not going to benefit—even if they are not quite at that stage where they need dialysis—from that primary healthcare work. So we have still got the stand-off position between the state and the Territory and the Commonwealth over how we are going to spend that \$10 million. The government must have known that when they announced these new projects, if you could not get them to commit the money to supporting the recurrent cost of the accommodation. They must have known that.

**Ms Palmer:** We had very good advice that it was cost neutral.

**Senator SIEWERT:** You did not from WA—the buses and the Kiwirrkurra and the Warburton programs. Did you think that was as well?

**Ms Palmer:** Can you repeat the question.

**Senator SIEWERT:** For the projects for Kiwirrkurra and Warburton, which are WA government projects—the bus—did you have a clearer—

**Ms Palmer:** That was offered. I do not know that they were announced. They were not part of that announcement, so sorry for my confusion.

**Senator SIEWERT:** What is the process from here? It is great that you still have it, but I am not that hopeful that it is going to get spent on dialysis, at this stage.

**Ms Palmer:** We await the response from the ministers in WA and South Australia to Minister Snowden's letter. We continue to think about how we can progress this issue. We are continuing to work with the Northern Territory government around renal demand modelling. We are trying to keep relationships good, going forward.

**Senator FIERRAVANTI-WELLS:** I have patiently sat while Senator Siewert has traversed everything that I wanted to ask. I just have a couple of things to follow on. One is in relation to the \$10 million. Which one of these four funds is it? Is it going to go back into the Aboriginal and Torres Strait Islander chronic disease flexible fund? Is that where it originally came from?

**Ms Palmer:** The \$10 million is still sitting with Treasury.

**Senator FIERRAVANTI-WELLS:** I appreciate that, but where did it originally come from?

**Ms Palmer:** It came from the OATSIH base. It was in the primary care BRE.

**Senator FIERRAVANTI-WELLS:** The primary healthcare BRE—187. It came out of 187—

**Ms Palmer:** Yes.

**Senator FIERRAVANTI-WELLS:** and now it is sitting in Treasury. So if it comes back it will come back to 187.

**Ms Palmer:** I would expect so, but it depends on what is agreed. There is a process to be agreed in terms of what the funding will be spent, I expect, before we will get it back into our accounts.

**Senator FIERRAVANTI-WELLS:** So that is going to be very dependent on what happens.

**Ms Palmer:** Yes.

**Senator FIERRAVANTI-WELLS:** Thanks. The rest of the questions were covered by Senator Siewert.

**CHAIR:** I know that Senator Siewert has some questions on notice.

**Senator SIEWERT:** I appreciate that this will take a larger answer, but could you provide an update on initiatives that have been announced. There have been other announcements made around end-stage kidney disease and providing chairs around the rest of Australia. Could you provide us with an update about where the implementation of those programs are up to. Over the previous two budgets I think—or two years ago—there was funding provided for accommodation, for example, in Western Australia and for the provision of additional chairs. Perhaps you could take that on—

**Mr Lemmon:** We could probably provide you with an update now on some of those projects, if you could bear with us for just a moment.

**Senator SIEWERT:** I am hoping for a bit better news on some of these projects.

**Ms Palmer:** We might take it on notice.

**Senator SIEWERT:** I thought it might be a bit complicated. That is why I was asking that you take it on notice. I would appreciate an update against those projects.

**Ms Palmer:** I can tell you about something else. I recall some years ago your talking with Ms Powell about funding for the Purple House. We have a three-year funding agreement for \$5 million, which went from 2012-13 to 2014-15. That has continued. We provide that funding to the NT for them to pass on, in full, to Purple House. So that is continuing.

**Senator SIEWERT:** Are they continuing to pass it on in full?

**Ms Palmer:** Yes. I have spoken to officials about this, and, yes, I can confirm that that is the case.

**Senator FIERRAVANTI-WELLS:** I have one last question. In the target group for dialysis services—Ms Palmer you may have provided answers in the past; please direct me if you have—what is the breakdown of the age groups that the \$10 million was targeting?

**Ms Palmer:** The \$10 million was for accommodation for patients receiving dialysis.

**Senator FIERRAVANTI-WELLS:** Yes, but what is the age range of the patients?

**Ms Palmer:** It would be the age range of the patients receiving dialysis in Alice Springs. I would have to take the specific—

**Senator FIERRAVANTI-WELLS:** Can you take that on notice, please.

**Ms Palmer:** Yes.

**CHAIR:** There was no particular focus, to your knowledge?

**Ms Palmer:** No. There is no specific targeting of age. It is based on the need for dialysis and accommodation.

**Senator FIERRAVANTI-WELLS:** Can you just give me a basic range of ages, if you don't mind, on notice.

**Senator SIEWERT:** While you are taking things on notice around Alice Springs, could you also give us the waiting lists and the demand being placed on Alice Springs at the moment in terms of renal patients. If there is any other regional data, do you have any up-to-date figures on what waiting lists are and what demands there are on the services?

**Ms Palmer:** Because those services are run by the Northern Territory, we would have to ask them.

**Senator SIEWERT:** You do not have the current figure?

**Ms Palmer:** No, we do not.

**CHAIR:** Could we get a letter of that kind through to the minister? I am thinking of the years of discussion in this committee about it. That was the focus of what started everything. We could get some information from the NT government on the current situation.

**Ms Palmer:** Yes, certainly.

**Senator SIEWERT:** I did start addressing some of these issues around alcohol management in the other estimates. What discussions are you having with the Northern Territory government around the Mandatory Alcohol Treatment Bill?

**Ms Edwards:** The bill was released and we have been having a look at it. We have ongoing discussions with Northern Territory officials about alcohol policy on a whole range of fronts. To my knowledge we have not had a specific session on this although we are keen to engage with them about how it is proposed to go forward. There has been engagement between Minister Lambley and the Minister for Health, in relation to the proposed use of the facility next to the Royal Darwin Hospital. As we mentioned before we have been having discussions about the income management issues and correspondence, some discussions about issues about the RDH and then generally ongoing quite intense discussions with us about the implementation plan under Stronger Futures and various other items.

**Senator SIEWERT:** Do I understand from your comment earlier that you had not seen the bill until it was released generally?

**Ms Edwards:** No. I personally had discussions over time with officials of the Northern Territory government. To my knowledge, we did not see the bill before it was released.

**Senator SIEWERT:** Have you done any analysis of how effective you think that process will be in addressing issues around alcohol related harm and how it would integrate with your programs?

**Ms Edwards:** We have had an initial look at the material, both the bill—in relation to mandatory treatment—and also the announced policies about the proposed alcohol protection orders, which are akin to what we used to call prohibition orders, an order that a person is not permitted to consume alcohol. We do not have all the detail we need about how either of those policies might be implemented but we have got some key areas of concern that we would like to continue to talk to them about so we can make an assessment.

As I mentioned earlier today, probably our key interest is to ensure how rehabilitation is worked out and how courts deal with people with alcohol issues. Alcohol related offences need to be considered and viewed within a range of issues. Having supply and demand and harm minimisation measures together that interact is fundamental. We want to know how the rehabilitation processes fit in with the broader scheme.

Minister Macklin has written to the Chief Minister proposing the whole of Alice Springs wide alcohol management plan to cover all those issues. We speak to them generally about the alcohol management planning process in communities and so on but, fundamentally, we think rehabilitation, while fundamental as a service, needs to be in a comprehensive system.

We also have some issues we want to work through with them about how this might be implemented to assess its effectiveness. Probably the key thing—other than as I have mentioned—is the proposal that income management be considered more broadly. As to rehabilitation facilities: yes, of course we think more rehabilitation facilities are a good idea, although as I mentioned earlier we are also keen to see the continuation of community based treatment as well, as an additional part of it. But if residential rehabilitation is to be the primary response then we have some concerns about how that would cater for what we know are the numbers of people who go into protective custody a lot, as evidenced by the numbers of people who were on the banned drinkers register previously. Even if that is just an indication, it is thousands of people as opposed to hundreds. How would they cater for that?

Also we are aware that experts and commentators raise questions about the whole concept of mandatory rehabilitation as opposed to people entering as a part of a managed plan or voluntarily. There are suggestions that that treatment is not as effective. We have seen estimates that really you can only expect 10 to 20 per cent of people who enter residential treatment to come out with a resolution to their alcohol issues. We are worried about that. Again, the basis is: if you have a residential treatment facility, that needs to be one of many elements of an alcohol strategy.

We are also concerned to find out more about how it is going to be implemented. Of course we are concerned that the mandatory treatment response and the alcohol protection orders will increase the engagement between people with alcohol problems—who we do expect to be predominantly Aboriginal people—and the justice system. So, for example, the alcohol protection orders are a terrific idea if you can make an order which prevents someone from accessing alcohol. We know that that does have a big impact on helping the person but also

on reducing antisocial behaviour and crime. But without an enforcement procedure that actually prevents them from accessing alcohol, we are worried that the only enforcement would be contact with police, which obviously puts a greater stress on police resources and the work that they do but also increases the contact with the justice system. Obviously we are concerned about the impact that that might have.

I think that is a summary of our general concerns. As I say, those are general issues we want to take up and discuss with the Northern Territory government, and we could not come to a conclusive position until we have really talked to them about how it is meant to be implemented. But the bottom line is that we support more rehabilitation as part of a comprehensive plan and are very keen to work with the Northern Territory government across the whole gamut of issues which I raised earlier.

**Senator SIEWERT:** How has the process of engagement with the Northern Territory government been going, and when do you next expect to be talking about all the issues that you have just outlined?

**Ms Edwards:** The relationships with officials are positive. We talk to them very frequently. For example, the negotiations on the implementation plan, which were led by Mr Ryan, have led to very good relationships. We talk to them frequently, perhaps a couple of times a week, about all the things that are happening there. We would expect this discussion to continue through those avenues. To my knowledge, primarily the discussions between governments have been through correspondence.

**Senator SIEWERT:** And you do not have a process or a time line for when you are formally engaging with them again?

**Ms Edwards:** On these issues?

**Senator SIEWERT:** Yes.

**Ms Edwards:** I imagine that in the next couple of weeks we will be saying: 'Can we have a chat to you about how this is supposed to happen? Can we be kept informed?' But there is not a formal process.

**Senator SIEWERT:** How do you plan to deal with the issues that Mr Gooda has raised around this possibly conflicting with our human rights obligations? How does that get taken into your process, or is it completely separate?

**Ms Edwards:** It is not something that I can comment on; it is outside my area of expertise. At this point we are interested in some of the same issues that commentators like Mr Gooda have talked about, in terms of the engagement with the justice system and so on. We really want to understand how that is going to work and make sure we minimise harm to people and avoid unanticipated consequences. But, as to the impact that the legislation, if it is passed, and the policy, when implemented, might have, I am not sure I could comment.

**Senator SIEWERT:** I was not necessarily asking for your opinion or comment on what he has said; it was more about how the process operates. The Human Rights Commission have obviously made some comments. Mr Gooda has been quoted in the media but I also asked him at estimates last week, and he made some comments which indicated some possible concerns over conflicts with our human rights obligations. I am asking about how they get taken on board in the process where you engage with the Northern Territory government. If I understood what you have just said correctly, it is a separate process.

**Ms Edwards:** That is right.

**Senator SIEWERT:** That is what I wanted to clear up. Thank you. I have one more question—you briefly touched on it—about access to the facility at the Royal Darwin Hospital. Is that something that you—not you but the Commonwealth—have to give permission for them to use?

**Ms Edwards:** As I understand it, my colleagues may be able to provide the detail on this, but yes, it is.

**Ms Smith:** The facility was designed as a short-term patient accommodation facility for the Royal Darwin Hospital. It reached practical completion in September of last year under the Health and Hospitals Fund. For the Northern Territory to use that facility for another purpose, it would need to make a submission, and we have sought to have it provide us with a submission. The Health and Hospitals Fund board would need to consider that submission and see if it meets the criteria for that Health and Hospitals Fund round.

**Senator SIEWERT:** Thank you. How many people would it accommodate?

**Ms Smith:** Fifty people. There are 50 two-bedroom units and they are designed to accommodate one patient and a carer in each, in terms of the short-term accommodation.

**Senator SIEWERT:** So there are 50—sorry.

**Ms Smith:** There are 50 units, with two beds in each unit.

**Senator SIEWERT:** So it could accommodate 100.

**Ms Smith:** It could accommodate 100. As short-term accommodation, it was designed for 50 patients.

**Senator SIEWERT:** Fifty plus carers.

**Ms Smith:** Yes.

**Senator SIEWERT:** Okay, thank you. Have the NT applied to use it yet?

**Ms Smith:** Not formally to the Health and Hospitals Fund board, no.

**Senator SIEWERT:** If they did, presumably it would need to be modified for the purposes to which they want to put it.

**Ms Smith:** Yes. I have met with department officials from the Northern Territory and they have considered what they might need to do to adapt it for use for a different purpose.

**Senator SIEWERT:** If it were used for another purpose, what would happen to the people that it was originally planned to support?

**Ms Smith:** We have not provided funding for any other facility. I imagine the circumstances would be as they are today, and that would be a need not met.

**Senator SIEWERT:** It does not have patients in there at the moment?

**Ms Smith:** No. It reached completion late last year, but it has not actually operated as a short-term patient accommodation facility as yet.

**Senator SIEWERT:** Why is that?

**Ms Smith:** That would be a matter for the Northern Territory government.

**Senator SIEWERT:** Okay. You paid for it.

**Ms Smith:** That is right. We provided the funding to construct the facility, which was properly and appropriately done. It reached completion and effectively is ready to operate. It is up to the state or territory when they put it into action. Ordinarily we would expect it would have been in action now, but it has not operated as a facility for short-term patient accommodation as yet.

**Senator SIEWERT:** Have you pursued with them why it has not been? We are now six or eight months down the track since September last year.

**Ms Smith:** Yes. I think the policy that you are currently discussing has meant that they would like to use it for a different purpose and, as such, have not commenced it. The other comment made to us by the Northern Territory government is that they did not have the funds for the recurrent funding to operate it as a short-term patient accommodation facility.

**Senator SIEWERT:** Did they make the commitment for recurrent funding when you put the money in to build it?

**Ms Smith:** Certainly, when the application was first put in. That is a requirement for any application that needs recurrent funding.

**Senator SIEWERT:** That is what I presumed, since we have just had this long conversation about not providing dialysis money.

**Ms Smith:** Yes, that would absolutely have been required in the application.

**Senator SIEWERT:** So they are no longer meeting that requirement.

**Ms Smith:** That is the Northern Territory government's advice.

**Senator SIEWERT:** Thank you. I really want to get to petrol sniffing. I have other alcohol questions, but I will put them on notice around the update of the management plan.

**CHAIR:** At this stage we have to let the people from the dental program and the hearing program know that we will not get to them in our allocated time. I apologise for bringing you here; we have not reached your questions, so they will have to go on notice. I see you, and all I can do is apologise.

**Senator SIEWERT:** I do, too, because I really wanted to get to hearing. Petrol? Can we start with the storage facility in Darwin, please? I understand that the completion date has been moved back again.

**Ms Campion:** Unfortunately, it has. There have been a number of issues in relation to having that facility up and running at that site. I might ask Mr Shevlin to provide you with an update and the reasons for the more recent delays.

**Mr Shevlin:** We are currently working with the preferred provider of the storage facility in Darwin. I am in a position to name it: we are working with Vopak Terminal Darwin. What we have been progressing with them for a number of months has been what is called a front-end engineering design work. The solution we have identified is the relocation of an existing tank, the physical movement of that, from one point at the terminal into the Darwin fuel terminal site, and then the conversion of that tank to make it fit for purpose to hold low-aromatic fuel.

We received the completed front-end engineering design work from them last Friday, and we are now reviewing that. That is a critical component because it will then give us the total cost for the construction work. Whilst that front-end engineering design work has been

progressed we have been working through terms and conditions with Vopak for that construction agreement, and we would expect that, pending acceptance and confirmation of the front-end engineering design work, it represents value for money and is fit for purpose. We have engaged an independent engineering consultant to confirm that for us. We would hope that we would have a funding agreement in place for the construction works within the next month.

Based on the estimates that have come in for that work, we would expect that the converted tank will be completed before the end of this calendar year.

**Senator SIEWERT:** I have sat through a number of estimates now where I have been told that the deadline is six months time. How firm is that six months? This was promised two budgets ago.

**Mr Shevlin:** It is very firm. We have an end-use agreement with Shell Australia to be using that tank by the end of this calendar year. It is one 6.5 million-litre tank. I add that in addition to the Darwin storage facility the intent is that there will also be secondary facilities in Cape York and the gulf region of Queensland. We have identified sites and facilities in both Weipa and around the Mount Isa area. On both of those sites we have completed those feed studies which have been independently reviewed. We are expecting to be able to commence that construction work, but we have been tying it to the Darwin solution because until that is in place we do not have the means to transport the fuel to the other sites.

**Senator SIEWERT:** Is the area around Mount Isa how you intend to supply fuel into Urandangi?

**Mr Shevlin:** It would be, yes.

**Senator SIEWERT:** Lake Nash already has it. Why can you not use that provider to provide fuel to Urandangi?

**Mr Shevlin:** At the moment it is a voluntary rollout of low aromatic fuel, and the proprietor of the Urandangi facility has declined to stock low aromatic fuel at the moment.

**Senator SIEWERT:** You do not actually need to supply fuel into Mount Isa to supply Urandangi, do you?

**Mr Shevlin:** No, we could do it through the existing distribution network.

**Senator SIEWERT:** But they still will not agree?

**Mr Shevlin:** That is correct.

**Senator SIEWERT:** I will come to that issue in a minute. In terms of Weipa and Mount Isa, you are taking over existing tanks. Is that a correct understanding?

**Mr Shevlin:** That is correct for Weipa. It is an existing tank which is having some minor modifications done to it. In Mount Isa, the proposal has been to have a new underground tank constructed. That work, again, has been independently reviewed. We are just finalising those arrangements.

**Senator SIEWERT:** Was that an additional budget allocation? How is that being funded?

**Mr Shevlin:** It is being funded under the 2010-11 budget.

**Senator SIEWERT:** So the money that was provided for the Darwin facility—

**Ms Campion:** The money was to support the rollout to the northern parts of Australia. It was not specifically—

**Senator SIEWERT:** That counts as part of that money.

**Ms Campion:** Yes.

**Senator SIEWERT:** Can I go now to the issue of where we are up to with moving on with a mandatory process. I have been updated from the workshop that was held in Alice Springs about three weeks ago. I will acknowledge that you invited me; I could not go because I was in the Kimberley, but one of my staff members went. I have a number of questions that flow out of that process. In terms of working with the states and territories—and particularly the Northern Territory—around where they are up to in dealing with this under their own processes, have you written to each of the states to find out where they are up to in their intent to introduce their own legislation?

**Ms Campion:** The minister has previously written to the states. I cannot recall when he most recently—

**Senator SIEWERT:** That was prior to the introduction of the legislation, however.

**Ms Campion:** I cannot recall whether he has written since then, but he is taking an item to the Standing Council on Health—which is the health ministers' forum.

**Senator SIEWERT:** When is that?

**Ms Campion:** It is next week. He will be talking to them at that point about how we can ensure there is complementarity between the Commonwealth legislation and state and territory activities related to petrol sniffing with a view to getting Commonwealth and state officials to work more closely on how Commonwealth and state activities align in that area. That will be the formal commencement of that process, building on previous interactions that he has had with ministers over the years, including the correspondence from last year.

**Senator SIEWERT:** My understanding was that, if the states and territories did not do something by the beginning of July, they would start the process of using their powers under the legislation. How does that align with that commitment?

**Mr Shevlin:** I should probably correct that understanding. No time frame has been set for the actual implementation. What the act requires is for extensive consultation to be undertaken before a declaration can be made by the minister. What we are currently developing is a series of guidelines that will inform the process by which those consultations would occur and will indicate the trigger points at which we would say that we have sought to negotiate to a point at which there seems to be no willingness to proceed with voluntary rollout. We would then approach the minister with documented evidence and invite him to make a declaration under the act.

**Senator SIEWERT:** I understand that. What I am keen to know is when you intend to start the formal consultation process.

**Ms Campion:** The formal consultation process with the jurisdictions?

**Senator SIEWERT:** Yes.

**Ms Campion:** I think it probably in essence commenced a while ago when the minister started his interactions with state ministers.

**Senator SIEWERT:** I mean the formal process under the act, because you cannot class that as under the act.

**Ms Campion:** No, that is true. That will be a decision for the minister, but we do need these other things in place. We need to be transparent about how the process will work, what a trigger will be for that process to commence, how the consultation process will occur and what sort of evidence the minister would be considering. So we actually need—

**Senator SIEWERT:** What is the time frame for that?

**Ms Campion:** As Mr Shevlin said, we are working on those guidelines now. We will need to go through a process of consultation to make sure that the people who are likely to be affected understand them and have the opportunity to shape how those guidelines will work. I do not have an exact time frame on those, but they are in train at the moment.

**Senator SIEWERT:** You said there is a meeting next week of the standing committee. What will be discussed at that standing committee?

**Ms Campion:** The minister has provided a paper which outlines the provisions of the act and how it will complement or will work with state and territory legislation, should it exist. It also points out the provision in the act that requires him to be satisfied that the states and territories have not enacted legislation or are unlikely to do so within a reasonable period. We will invite them to start working with us on a process to, as I said, ensure that there is complementarity in how we operate the Commonwealth legislation with state and territory legislation.

**Senator SIEWERT:** I understand there is an intention to give retailers a period of grace in which to switch over to Opal. For those who have been long-term refusers to switch over, I would say that they have had a hell of a long period of grace. How do you intend to deal with some of those?

**Ms Campion:** That will be a decision for the minister as to when he wishes to use the provisions available to him in the act. I am not sure if it was mentioned at the forum or if you are aware, but two of the sites that had previously been refusing—

**Senator SIEWERT:** At Ti Tree? I understand.

**Ms Campion:** We now have 130 sites receiving low-aromatic fuel, which includes two that were previously on our consistently refusing list. So we are making some progress through the voluntary scheme.

**Senator SIEWERT:** It is questionable when they actually made that decision and when the act came into place.

**Ms Campion:** True, but they have done it voluntarily.

**Senator SIEWERT:** Yes, I acknowledge that.

**Ms Campion:** Decisions around when to utilise the provisions in the act will be for the minister to make.

**Senator SIEWERT:** I will place my further questions on notice.

**CHAIR:** I thank all the officers from the health portfolio. We appreciate your time. You know there will be many questions on notice.

**Proceedings suspended from 12:03 to 12:40**

**Indigenous Land Corporation**

**CHAIR:** The committee will reconvene.

**Senator SCULLION:** Mr Gemmell, welcome. We only just recently received a letter—literally in the last few seconds—regarding some of the issues that were being discussed at the previous set of estimates. My apologies for being delayed a moment. Thank you for your replies to the questions on notice. I will make a couple of observations, having gone through them. Apart from them being late, a number of the answers appear to be very brief—I do not understand why—and much more stilted and less helpful than they usually are. For some of them, I will have to come back with a series of other questions on notice saying that there was another, quite obvious part of the question and asking that part again. That is not usually the case with someone of your experience. I am not sure whether the change in wind is for any particular reason. Is there any explanation you can offer for that?

**Mr Gemmell:** I apologise. We did try to answer those questions and we went through quite an extensive consultation process on those.

**Senator SCULLION:** I appreciate there were a number of questions. It was not so much the timeliness—you did get the answers to me in time; it was just that quite a few of them did not appear to actually answer the questions.

**Mr Gemmell:** You raised one immediately, we put it and we answered the question. I do not really have a good excuse. In some cases we were advised that it was not appropriate to provide information that went to personal employment issues. As you draw these things up, you take advice on what is appropriate to do and not to do, and we try to draw them up in light of that. I apologise. We certainly did try to answer the questions. We may have lost our path along the way.

**Senator SCULLION:** Who would assist you in the provision of advice? Who would you seek advice from in terms of the answers to questions asked of the ILC?

**Mr Gemmell:** There are a whole bunch of people that we talk to internally, and it goes through a whole set of clearance processes once we do our draft.

**Senator SCULLION:** Who would be part of that clearance process?

**Mr Gemmell:** Standard stuff—it goes through the department and the minister's office. It will go to any other agency that we may be referring to or have an association with. They all review and look at it and, on occasions, have comments about it.

**Senator SCULLION:** So it will go through, as a standard thing, the department or the minister's office. Just to get it clear, you would provide the answers that you thought were the right answers; do they then go to the department or to the minister's office for some sort of a clearance process? To your knowledge, do they go to the department and then to the minister's office? Is that how it works?

**Mr Pratt:** I can help there. Yes. Once the agency has produced a response, the response comes to the department where it is subject to a quality control process and then is provided to the minister.

**Senator SCULLION:** So the quality control process would not alter any of the content, being on the nature of its quality?

**Mr Pratt:** Unless we saw something which was factually incorrect, I cannot imagine that we would change a response from an independent agency.

**Senator SCULLION:** Would it then, Mr Pratt—for my clarity—go from the department to the committee? Or would it perhaps go through the minister's office after the process? Is that right?

**Mr Pratt:** Yes, all responses go through the minister's office.

**Senator SCULLION:** Are they subject to quality control as well?

**Mr Pratt:** On occasion, the minister's office may make suggestions about what is in the responses, which we will then discuss with them.

**Senator SCULLION:** I can understand that being the case in general, as it would be, but in terms of an independent body we are asking the independent body for answers that pertain to the independent body. I understand that we are always very interested in quality control, but, in terms of the actual nature of the answer and the provision of particular information, would it be the case that information may be removed either by the department or by the minister?

**Mr Pratt:** It would always be the agency that ultimately determines the response that goes in. Keep in mind that agencies are answering questions on behalf of ministers in estimates and, also, the practice that operates within the FaHCSIA portfolio is consistent with the practice that I have been involved with for the last 30 years in this business.

**Senator SCULLION:** Thank you for that, Mr Pratt. Mr Gemmell, by observation perhaps you should not take all the blame in terms of how those things play out, from my perspective. There would be others who no doubt would question the use of having access to the original answers. No doubt you would protest, and possibly rightly, Mr Pratt. But I can tell you that it would be far more useful to parliament and to this committee to have the answers that would have been originally provided by the agency, particularly in this regard. At least I understand that they have been triaged, if you like, and checked for quality by both the department and the minister's office. I will not ask Mr Gemmell my next question as I do not think it is appropriate. Is there any chance of being able to get access through your organisation to the original draft to ensure that quality control is the only issue that has been checked?

**Mr Pratt:** I would have to take that on notice, but I can again assure you that the department does not do editorial work on the answers of the portfolio agencies.

**Senator SCULLION:** I hope I was not suggesting editorial work. I was very conscious of your term 'quality', but the—

**Mr Pratt:** Okay. Can I explain quality then—

**Senator SCULLION:** Since you brought up the editorial I will perhaps ask a question on it, but if it is inappropriate I am sure you can take me to the senator. I am not sure about the propriety of requesting information from the minister, because I am not sure about the minister's quality control or editorial. Is that something we would usually seek, or is it something that is prohibited by the committee?

**CHAIR:** It is a long-standing practice, as you well know, that these questions go out through the department and we have the department coordinating the responses to the Senate

committee. I do not know how long that has been the process, but certainly for at least 10 years that I am aware of.

**Senator SCULLION:** I appreciate that. This is the first time I have been able to get an understanding of the process. I was not aware, for example, that there was a possibility that the minister's office would check the answers to the questions for quality, or for whatever other reason, before providing them to the committee. I was simply unaware of that.

**CHAIR:** The answers come through the minister's office. That is all I know about the process.

**Senator SCULLION:** Mr Pratt, if you can take that on notice, and if you have the capacity to be able to ask Mr Gemmell to provide you with the original set of questions it might be useful to see the issues around quality control. The committee is always interested about the processes around the parliamentary committees. If you could take that on notice I would appreciate it.

**Mr Pratt:** Certainly. When I talk about quality control I am talking about things like formatting, typos and that sort of thing. Can I reinforce again that our practices have not changed over many years.

**CHAIR:** That is the practice across all government departments, I would think. It is not just your department, Mr Pratt.

**Mr Pratt:** Correct.

**Senator SCULLION:** My final comment on that would be that I understand the department's role in it but I did not understand that the minister's office had a separate role in that. Whilst I understand that it comes from the minister's office I did not understand the process that the minister's office was capable across government of having the last say, if you like, over the questions. But in any event if you could take that on notice.

**Senator Thistlethwaite:** I am happy to take that on notice, but I anticipate the role of the minister's office would be one of ensuring that any information that is supplied meets the guidelines that are published with respect to freedom of information requests, and ensuring that any information that is being made public is done so in accordance with those guidelines. That would not be something that is peculiar to this portfolio. That is a standard practice across the whole of government.

**Senator SCULLION:** I understand that. The difference, as you would be well aware, between FOI requests and requests from the committee is that with FOI requests they are able to deny things. They can use the defence that for FOI there is a whole range of reasons they can provide to an FOI applicant, including that it is too onerous. But that reason is not available for not providing it to a committee. So there is a whole suite of differences, but I do not want to get caught up on that. Thank you for that, Mr Gemmell.

Going to the makeup of the board and some issues around appointments. You would be aware that section 191X of the ATSI Act states:

... the Minister must ensure that at least 2 ordinary members of the Board have experience in business or financial management.

Since the inception of the ILC, from both sides of politics they have appointed such people as David Baffsky, Kevin Driscoll, Lawrie Willett and Penny Morris, all of whom have national

and in some cases international recognition, having tremendous experience in business or financial management.

Perusing the board's CVs in last years annual report, only David Baffsky fits that criteria, in any measure. Could you please advise if that is the case? Given my reading of the act, which is quite clear, does the fact that we have only one and not two people who are ordinary members of the board put us or the minister in breach of the act?

**Mr Gemmell:** I cannot help you at all on the question of board appointments. That is not something the administration of ILC would be involved in or engaged in in any way.

**Senator SCULLION:** Are you able to assist in that, Mr Pratt?

**Mr Pratt:** I will call upon the relevant people who handle board appointments.

**Ms Hand:** My understanding is, no, that it is not in breach of the act. As you may be aware there is a mix of skills, backgrounds and experience on all the board of our portfolio bodies, including the ILC. Mr Trust, Dr Casey and a number of other people on the board bring commercial experience to the board.

**Senator SCULLION:** The act states 'at least 2 ordinary members of the Board'. So they are a particular type of member. Not the chair or some other sort of member. You can understand why it is specifically like that. It is strict liability. They said we wanted two 'ordinary' board members. It specifically says that in the act. It is not our choice. If we wanted to change the act we would. The act says 'must ... have experience in business or financial management'. The sort of luminaries we have had there before has led to both institutions, certainly the ILC, being held in such great regard around the country. It still does to a degree. It is okay to say that you have some other members of the board, but that is not what the act actually says.

**Ms Hand:** Forgive me if what I said before implied that it is okay. What I was saying is that there is a mix of skill and experience on the board and my understanding is that the current composition is completely in accordance with the act. I do not have to hand the CVs of all the board members. We can take it on notice and come back to you with the details.

**Senator SCULLION:** Perhaps that is something you can do this afternoon. I have just picked up last years year book and gone through it and found the CV of every board member. They list the ordinary members, and the act says that two of the board members will have the business and financial management aspect. If you can point to those two members in the yearbook, good luck. I have been through it and that is why I am asking the question. If you can provide that to me this afternoon, or some other explanation, that would be useful.

**Ms Hand:** We will try to do so.

**Senator SCULLION:** While you are still at the table, Ms Hand—these are all anecdotal things—somebody came up to me the other day and said that they had actually been approached about becoming an ILC board member. No doubt these are the normal and unremarkable things of life. At the moment I am not sure how best I find out, but which members' terms are due to expire? Is there some sort of rolling process?

**Ms Hand:** There are three ILC positions that are due to expire this year. One is for Mr Baffsky, one is for Mr Jeffries and the other is Ian Trust.

**Senator SCULLION:** Is there a particular time of the year?

**Ms Hand:** It is 19 October 2013.

**Senator SCULLION:** One of the things we could look for potentially in that change—you are losing Baffsky anyway, which is a great tragedy—

**Mr Pratt:** Senator, we do not have any knowledge that Mr Baffsky is going.

**Senator SCULLION:** I just asked what positions were expiring. I thought you said Baffsky.

**Ms Hand:** They are expiring but that does not mean they cannot be reappointed.

**Mr Pratt:** From my knowledge, Mr Baffsky has been a member for quite some time.

**CHAIR:** Is there a limitation on the number of terms?

**Mr Pratt:** No, there is no limitation.

**Senator SCULLION:** Thanks for that.

**Ms Hand:** Just a general point to your question, Madam Chair. The better practice both in the private sector and as espoused by the ANAO in best practice guides is for no more than two terms, but it does not prohibit someone from being appointed for another term. It depends again on the mix of skills, experience, board renewal and all those sorts of things.

**Senator SCULLION:** I wonder who might deal with appointments. I was to ask some questions in regard to some media reports that Mr Dillon has been recommended for appointment as the new CEO of the Indigenous Land Corporation. Who would I put those questions to? Is that a separate appointment thing?

**Mr Pratt:** That is ultimately a matter for the ILC board. My understanding is that the process is still underway and that there has not been any recommendation as yet.

**Senator SCULLION:** It would have been terrific to ask Mr Dillon because he would have been able to best answer my questions. He is not at the table at the moment. As you would be aware, a number of documents under FOI have shown that Mr Dillon has received emails over some period of time regarding the whole suite of issues associated with the removal of the previous CEO. I was going to ask Mr Dillon some questions in that regard. Who would I put those to?

**CHAIR:** You did not prepare me that you were going to be asking questions of this nature and I am thinking through the process in terms of the probity of talking about someone's appointment when the person is one of the people who have come as witnesses. I do not think there is anything that precludes it. I am uncomfortable with it—

**Senator SCULLION:** That is why I am asking whether perhaps somebody here—

**Mr Pratt:** Perhaps I can try and deal with these issues in the first instance.

**CHAIR:** Can you keep it as general as possible.

**Mr Pratt:** I am very uncomfortable with the idea that Mr Dillon would be asked about things which are of a personal nature, including any selection processes he might be involved with—

**Senator SCULLION:** As I ask the questions, I hope you will become more comfortable about it because it is simply about the process. It is about whether or not, for example, on the particular role you played, it is reasonable to have provided the board with information associated with those matters. Basically the documents, as you would be aware, released

under FOI show that Mr Dillon directly sent emails about the matter of the previous ILC chairperson and faxed ministerial staff as early as November 2011 and at least by 2 July 2012. Given that role, I was interested in—and I am assuming Mr Dillon's appointment would have been through a process—the role you played in that and your knowledge of and interest in Mr Galvin's removal as the ILC CEO and whether that information was provided to the ILC or whoever was making the appointment, as you say the ILC board was, or not.

**Mr Pratt:** Are you talking about the selection process for the CEO—

**Senator SCULLION:** No, we are talking about the process for Mr Dillon's appointment to the board. You said it was made by the ILC. I really have no understanding about how that is made.

**CHAIR:** Can I just get some facts here. I apologise, Mr Pratt; I did not have time to get this information before. Who makes the appointments to the board? Who has delegation to the board?

**Mr Pratt:** The ILC board ultimately will recommend to the government who the CEO should be, and the government will consider that. That is the conventional process. But, ultimately, it is the ILC board that determines who will be the CEO.

**CHAIR:** On the issue around which applicant is being considered for that position, is that public knowledge or is that something that—

**Mr Pratt:** No, it is not public knowledge. As I understand it, the process is still underway, so it should not be public knowledge.

**CHAIR:** Senator Scullion, I am very uncomfortable talking about a process of appointment which has not been concluded and talking about an individual who is involved in that process in the Senate estimates arena.

**Senator SCULLION:** Can I just talk about the first part?

**CHAIR:** Okay.

**Senator SCULLION:** This has been reported in the media quite extensively. It was reported in the media; it has not been denied. This is not something that has been mentioned in some little newspaper somewhere. This was a report in the standard media. Given the circumstances under which the previous ILC chairperson did not resign but was sacked and in light of not only them being discharged but that there did not appear to be anything wrong with what they were doing—in fact, the chairperson herself has said what a wonderful job David Galvin has done—

**CHAIR:** We have had this discussion. The process is now in place. There is a process in place about appointment of the new CEO; is that right? The ILC board is engaged in doing that?

**Mr Pratt:** That is correct.

**CHAIR:** Senator, you can ask questions about the process but I am going to watch it really carefully because this committee has no role in the determinations of the ILC for their CEO. For us to act as a quasi selection committee, which this could degenerate into, is not something the Senate estimates committee is designed to do. Go ahead and ask process questions, but I will pull you up—

**Senator SCULLION:** Indeed. Thanks, Madam Chair. First of all, there is no alternative. I do not know of any alternative person, so this is not going to have an impact on any selection process. But it is well within the rights of this committee, I think to look at—

**CHAIR:** The process.

**Senator SCULLION:** the process. This is all about the process. As I said, it is going to be difficult—and I understand the sensitivity of it—for other people to provide answers to these questions. Perhaps I could give you the questions and then you could within your capacity, Mr Pratt, provide those answers that you believe you can to the committee. What I would like to know is whether or not there was a declaration of Mr Dillon's role or his knowledge of or interest in Mr Galvin's removal from CEO to the ILC board when it was considering his appointment. It is quite a simple prospect.

**Mr Pratt:** There is a premise there that I am not sure is a factual one. Mr Dillon may have seen emails about what occurred when Mr Galvin was removed, but his interest, to the best of my knowledge, was quite peripheral. His interest was because he is the head of our Indigenous cluster. The area of the department that handled the department's interaction with the ILC, about what was an ILC matter, not the department's matter—we do, of course, provide support to our portfolio agencies—was our corporate cluster. So Mr Dillon had very little to do with that process, to the very best of my knowledge. So I think the premise there is faulty.

**Senator SCULLION:** There was really no premise to the question. Part of this comes from an FOI application under which the answer said: 'This is all too big and too hard. Because it's too big and too hard, we've made a decision we're not providing the voluminous emails that may have taken place.' This was an opportunity to ask you about this. Until you explained that to me, I had no knowledge of those things. It is in the public interest to ensure that we can put aside those things or validate them one way or the other.

**Senator Thistlethwaite:** Senator, could I point out, if this is the response to the FOI request, that it says that you have the opportunity to revise your request, so it was not a complete denial of access to the information. As far as I am aware, it was an opportunity to revise the request. You are now beginning to ask Mr Pratt questions regarding his opinion of knowledge of affairs that relate to Mr Dillon. I think it is unfair to put Mr Pratt in that position—to ask him questions regarding his opinion of the views of Mr Dillon regarding emails.

**Senator SCULLION:** I am sorry; perhaps you misunderstood me, Senator. First of all, Mr Pratt offered that opinion—I did not ask for it. The second thing is that I was trying to get around this difficult circumstance by asking if Mr Pratt could provide, perhaps on notice, what information he can provide to me on those matters. I have dealt with Mr Pratt before. He understands the sensitivity of the issue. He suggested that this perhaps was on the periphery. You would understand from the response and the FOI, that, whilst we have an opportunity to go and make something more specific, Mr Pratt could provide information and expedite these things for me. This is about: what were the emails that were particularly concerned? Of course, when you say that, they will say that there are far too many, because many of them may have had a periphery nature. How you make that tighter, I do not know. I was simply giving the secretary an opportunity to deal with this as he saw fit—because you do not know what you do not know—and to provide us with some information in that regard.

**CHAIR:** Senator, what are the questions you want answered? If you go through the questions that you want answered and put them on notice, we will go from there. That is as far as I am prepared to go.

**Senator SCULLION:** Indeed. Mr Pratt, I was just wondering whether or not a declaration of any knowledge or interest was provided to the ILC as part of this process?

**CHAIR:** To the ILC Board?

**Senator SCULLION:** Indeed—to the ILC Board, who is making the appointment.

**CHAIR:** Yes. I would think that would be a question for the board.

**Mr Pratt:** Not to my knowledge. I do not believe it was necessary, but we will take that on notice.

**Senator SCULLION:** The next question is: on 21 May 2012, was Mr Dillon in receipt of legal advice from the ILC Chairperson relating to the removal of the CEO, Mr Galvin?

**Mr Pratt:** I will have to take that on notice.

**Senator SCULLION:** Thank you. It would be useful—as I mentioned in part of my earlier consideration—if you could simply provide the emails that were sent to Mr Dillon and his replies relating to that. I think that that would put aside any particular question around that matter. I would appreciate it if you could deal with that in the way that you always have.

**CHAIR:** That is on notice and any interaction will be through that process. Is that the end of that issue?

**Senator SCULLION:** It is, indeed. Mr Gemmell, last time we discussed—and previous questions just touched on it—your appointment and processes around that appointment. In response to a question on notice about how you arrived at the expectation that you would be appointed as CEO for a further six months, you indicated that you had been given this advice by the ILC. Can you recall when you were given that advice?

**Mr Gemmell:** Not specifically, not off the top of my head. I can give you the broad parameters of it. It was some weeks before my term was due to expire. To explain the background, the chair well knew that I had taken on the job for six months. I always indicated that was pretty much all I really wanted to offer.

**Senator SCULLION:** And that is all that is allowed for in the ATSI Act as well.

**Mr Gemmell:** I was aware of that. It was clear that, if they wanted me to stay on for a bit longer, one of the barriers to that would be whether I would agree with it. Hence the chair saw fit to ask me, 'Well, if we want to, will you?' I thought about it for quite some time before I responded, and sadly said yes.

**Senator SCULLION:** Perhaps you could provide a date, around the week, on notice.

**Mr Gemmell:** I will do my best.

**Senator SCULLION:** You are confirming that the individual in the ILC who was in fact the chairperson of the ILC gave you that advice?

**Mr Gemmell:** Spoke to me about the possibility of that, the process that might have to be followed for that and, particularly in my case, whether I was prepared to take a further appointment.

**Senator SCULLION:** Can you recall if you tendered your resignation? Was there a requirement that you tender your resignation at the end of the term?

**Mr Gemmell:** No. I would not have had to tender my resignation at the end of the term. I would have just expired—unfortunate choice of words. The way it worked—I can explain why it was done this way if you wish—is that I actually submitted a letter of resignation and formally resigned from a particular date.

**Senator SCULLION:** Perhaps, on notice, the date of that letter would be useful.

**Mr Gemmell:** Certainly, that is a proper letter.

**Senator SCULLION:** You were the CEO at the time. Can you recall if any of the board members requested legal advice on the matter, whether they needed legal advice about that or not?

**Mr Gemmell:** Subsequent to this conversation we are talking about, the matter had to be considered by the ILC board. I am aware that one board member did seek some internal legal advice surrounding that.

**Senator SCULLION:** Who would provide the internal advice?

**Mr Gemmell:** Within ILC we have a general counsel, who is the normal one you would turn to in the first instance for any advice. The general counsel may provide that advice. The general counsel may decide it is best to go external to get it—whatever. The general counsel would be the first person you would turn to.

**Senator SCULLION:** I know you are not going to provide me with any of the advice, and that is fair enough. Did the general counsel provide that advice to the board?

**Mr Gemmell:** No.

**Senator SCULLION:** A board member asked for the advice.

**Mr Gemmell:** A board member asked; the board did not ask. A board member wanted this, and we had a long and rich debate about the difference between a board asking for legal advice, which is quite proper, and individual members of the board seeking legal advice and whether indeed the administration that I look after has to respond to all of those requests. The protocol that has been struck is that, if an individual board member wants legal advice, he raises the matter with the board, and if the board so agrees then the advice is obtained.

**Senator SCULLION:** So the discussion of the board was around whether or not they should actually accept the legal advice from legal counsel. Obviously, a board member did not go off on his own and say, 'Listen, can we get some advice?' So it was part of a board discussion, 'We think we should have some legal advice.'

**Mr Gemmell:** No, the board member asked quite separately for the legal advice.

**Senator SCULLION:** And the board decided that that advice would not be provided?

**Mr Gemmell:** No. Some members of the board were not comfortable with that being provided, and there was a subsequent discussion amongst the board about appropriate protocols for members seeking legal advice, and I summarise: if the member wants it, they raise it with the board; if the board agrees, then that advice is obtained. If it is just an individual member, then is not necessarily done that way.

**Senator SCULLION:** Are you aware of the board having any other legal advice from the department? I am not seeking the content of the advice.

**Mr Gemmell:** Senator, I am aware of the answers to the questions you have. I am aware the department had legal advice on the issue, and that was the basis on which the chair spoke to me and so on. So it was based on the legal advice to the department. I am not aware of any other legal advice, particularly in the circumstances that apply to me, that may have been obtained in relation to it.

**Senator SCULLION:** No problem. Thanks, Mr Gemmell. Did someone approve your travel expenditure and those sorts of things over that period of time that you were absent, travelling? Does somebody normally have that role? It may well be that a CEO does not require that.

**Mr Gemmell:** I am not quite sure I understand your question.

**Senator SCULLION:** You were no longer employed at the ILC for that period of time, right?

**Mr Gemmell:** In that two-week period?

**Senator SCULLION:** But you still travelled—we will not go into that again. I just wondered: who at the ILC approved your travel expenditure while you were no longer employed there?

**Mr Gemmell:** It was the then acting CEO.

**Senator SCULLION:** Did the board members know of that arrangement? Did they know that you were not employed there and you were being approved travel and those sorts of things? Do you think they were aware of it?

**Mr Gemmell:** Well, they certainly were aware that I was not employed. I do not see any particular reason to think they were aware that I was going to travel and attend a corporate management meeting.

**Senator SCULLION:** All right. Thanks very much for that, Mr Gemmell. I appreciate that. I have questions on the NCIE and other issues that I will put on notice, given the time. I now have some questions for IBA.

#### **Indigenous Business Australia**

[13:18]

**CHAIR:** Welcome to the officers of Indigenous Business Australia.

**Senator SCULLION:** Mr Fry, I am pleased that, belatedly or not, you seem to be taking some action to improve the employment outcomes of your investments. As I move around the country, I have been told by a number of people and by some media reports that they are on the up and up. I have often wondered whether the questions from the committee have any real impact, but I think some of those inquiries have galvanised people into action, so congratulations.

I have some questions about the Wildman Wilderness Lodge. I understand that a deputy CEO of the ILC was involved in a quad-bike accident in the Northern Territory. What operational need required a senior executive of the ILC to be on a quad bike?

**Mr Fry:** This particular matter is still under some investigation by Comcare—the actual accident. The Comcare investigation has not been concluded, so it may be inappropriate to speak to aspects of that.

**Senator SCULLION:** You have answered one of my questions—it is under investigation by Comcare. Was the person licensed to operate a quad bike?

**Mr Fry:** The quad bike facility, in fact Wildman itself, is managed by a firm external to IBA. It is one of our subsidiaries and we outsource the management. They have the appropriate training in place. It is part of the ongoing investigation, but the training, I understand, was provided to all participants. I can also advise that the management of the company subsequently ceased its quad bike operations.

**Senator SCULLION:** Without verballing you, then—I am always very careful of that, Mr Fry; I just want to understand—you have told me that they do provide training in the company. Can you assure me that training and instruction was provided to the deputy CEO?

**Mr Fry:** I do not have the report in front of me but my understanding is that normal process training was conducted by the management company. But, as I said, that is part of the ongoing investigation. It would be inappropriate for me to make too much further comment.

**Senator SCULLION:** I appreciate that. Perhaps we can cut to the chase. You said you have not completely read the report. Is that a report that you commissioned into the incident? Is it an ILC report?

**Mr Fry:** As part of the ongoing investigation by Comcare, they require some information. I have read the report, but it has been nearly two years since this occurred, so it is not fresh in my memory.

**Senator SCULLION:** Can you provide that report to us?

**Mr Fry:** I would need to take that on notice—how that impacts on the Comcare investigation. It has been going for a considerable period of time.

**Senator SCULLION:** If you can look at that for the committee, I would appreciate it. I have some detail of this incident here, but perhaps it is not appropriate to go into that. You can provide that in the report. As a consequence of this accident, was leave taken—sick leave or other leave?

**Mr Fry:** I will have to answer this from memory. I am not trying to—

**Senator SCULLION:** I appreciate that and, if you have to take it on notice, that is okay.

**Mr Fry:** I am mindful of being as accurate as possible. The individual involved in the accident did take some sick leave. I cannot be more specific about the term of the sick leave at this point.

**Senator SCULLION:** How many consultancies do you have? Can you give me—perhaps on notice—a breakdown? Do you have a lot of consultants work for your organisation?

**Mr Fry:** Can you give me some clarity about the term 'consultants'? Within our organisation, we have business consultants aligned specifically to our business clients. They provide services such as mentoring, preparation of business plans and ongoing support of individual business clients. We have a range of consultants there. In fact, we have recently gone to tender and asked for expressions of interest from people to work in that area. Within the administration side, we have a range of consultants. We differentiate between the two

types of consultants. We can provide that information; it is just a question of the nature of information you want.

**Senator SCULLION:** The deputy CEO who was involved in that incident—is she still employed with your organisation?

**Mr Fry:** No, her contract ended some time ago. She chose to take time off. I think she was very keen to travel to Canada. She is, as a consequence, no longer employed by IBA. She was with us for a contracted period of time. The contract ended and she chose to enjoy life a bit more.

**Senator SCULLION:** Was the Wildman Wilderness Lodge purchased or leased?

**Mr Viswanathan:** That property was purchased by an IBA subsidiary.

**Senator SCULLION:** You have answered some questions in regard to the transportation and the installation of the site and the staff being there and all those sorts of things. Could you remind me: what was the original approved cost of those buildings and the installation?

**Mr Viswanathan:** I think we will get back to you with the specific numbers because we would like to be as precise as possible.

**Senator SCULLION:** Okay. I understood it was around \$4½ million. That was my recollection from a question in regard to the transportation.

**Mr Fry:** The challenge we have at the moment is, to be specific, that it happened before the time that the three of us gentlemen were involved, so we are not specifically involved or across it. Your figure might be correct, but I think, in fairness to the Senate and providing accurate information—

**Senator SCULLION:** We have had discussions about accuracy before, Mr Fry, and I am happy to be reprimanded in the same way. But, if somebody who is listening knows of that initial number, that would be very useful. The reason that I am looking for that original cost or clarification of that original cost is that I also understand that the board has been approached for extra and additional funding. I understand that additional funding has been required. Are you aware of any of those? Did that happen in your—

**Mr Fry:** Subsequent to the initial investment, some additional capital was required to get the operation of the business up to full operating capacity and to meet the expectations of the board.

**Senator SCULLION:** So are you aware of the—

**Mr Fry:** Can I just make the comment that that is not uncommon. We have 31 investments in our active portfolio. That represents in the order of \$220 million. For any of our investments which are commercial and operating, it is not uncommon for additional capital to keep them at full capacity to create the returns that we are after.

**Senator SCULLION:** Of course, the returns are always about a percentage of investment. That is how business is done. I can imagine that if, let us say, the figure of \$4.5 million—because that is the figure I can recall that I have here, but it may not be correct—is the figure that you would invest, we calculate the return on that and that meets the return parameters of IBA. But when you put in an additional sum of money—I think it is now about \$11 million or thereabouts; again, you can provide those to me on notice—how does that affect it? We have doubled the input, and, if the outputs are the same in the original formulaic approach which

we all do about a business to give the return we are getting, clearly that would change. I do not think you will be able to tell me what the return you were expecting from the IBA investment was. If you can, you can provide that to me now. And perhaps you could tell me: now that the cost of the investment has blown out, what returns are you now expecting?

**Mr Fry:** Maybe I can answer that more broadly and provide some specifics subsequently. Within our investment policy, which was renewed in approximately October last year through the board, we look at the investments in those 31 investments on a total portfolio basis. We set a series of parameters where we are looking for investment return, Indigenous job outcomes and Indigenous procurement, and we look at it on a total portfolio basis. To help us with that investment policy and the renewal, we employed external experts. In this case it was Towers Watson, who have also had experience in advising the Future Fund. Through that process, it was reinforced that we should look at things on a portfolio basis, so every investment is looked at within the risk parameters of what we are looking to achieve—some will be more commercial; some will be more driven around jobs—but it is a total portfolio basis and a very rigorous system.

The challenge I have with looking at specific investments is to provide the context of how we look at it in the total. For example, Vibe Medina, which you referred to previously, is providing, from memory, a 13 per cent return. We have other investments that might be earning a little less than that but providing strong aspects in returns to employment.

**Senator SCULLION:** Thank you for that. I might provide a question on notice on what the IBA's target rate of return for its investments is. You might set out for me the rate of return for those investments—I am sure you have done that work yourself—in 2011-12, and perhaps you can provide the rate of return for each individual investment. I will put a question on notice to you on that.

**Mr Fry:** If it helps your inquiry there, I can advise that the investment returns for last year for our Indigenous partners, for example, were nine per cent. We look within a range. I will refer to our general manager of investments for the broad range and how we approach it.

**Mr Viswanathan:** As of the renewal of the strategy late last year—and we will provide the specific information on notice—in the new strategy at a portfolio level, after reviewing the position and benchmarking ourselves against various other types of institutional investors, we set our target return as cash plus three per cent.

**Senator SCULLION:** Thank you for that. I look forward to seeing it in tabular form. I am sure that is what you do against your investments in any event.

I will just move to one of our favourite topics—or one of mine, anyway: Tjapukai. In question on notice 218, we asked if somebody could help us with pointing out where in the ATSI Act it says that Indigenous Business Australia can consider social or cultural values in relation to the financial viabilities of an organisation. We also requested minutes of meetings where the board had considered these factors. These questions were partially in relation to Dr Casey's comments in Deloitte's reports about Tjapukai. In your answer to the question, you provided me with the preamble of the ATSI Act, and thanks for that. I just wondered if your intent was that you were insinuating, perhaps, that the preamble overrode your obligations set out in part 4 of the ATSI Act, which is what I was asking about. When you provided the preamble, I was not sure what I was to read into that.

**Mr Fry:** In terms of clarity, I will ask our general counsel to provide an interpretation.

**Senator SCULLION:** Thanks, mate.

**Mr Fry:** We did look at it quite consistently. I will call on general counsel. Just while we are waiting on that—I know you have had a strong interest in Tjapukai, Senator—at this point in time I can report that we are looking at a 15 per cent increase on our visitor numbers. I know you have been interested on that side of it.

**Senator SCULLION:** That is great. I want to share with you, Mr Fry, that I had an Anzac Day moment like this this year, when I asked someone to come from the gloom and no-one appeared.

**Mr Fry:** They are just coming forward.

**Senator SCULLION:** A number of unauthorised people sang *Advance Australia Fair*. I tell you: it was great!

**Ms Gowans:** I am the General Counsel for Indigenous Business Australia. The preamble, of course, does not override any of the legal obligations in the Aboriginal and Torres Strait Islander Act, but it does set the scene. Of course, all acts of parliament have a fundamentally social purpose in mind because they are investing the money of the taxpayers of Australia on behalf of the Commonwealth to achieve particular social outcomes. IBA is no different to any other agency in that respect. IBA has certain purposes, including facilitating economic independence and self-sufficiency for Aboriginal and Torres Strait Islander people. To that extent, the purpose of providing with you with that information is to draw to your attention the fundamental social purpose of Indigenous Business Australia.

**Senator SCULLION:** Thank you for that. You would be no doubt aware, under the act, of the differences between the purposes of IBA and ILC. For the ILC it is quite clear, in that they are able to deal with matters on the basis of social and cultural issues. It is quite clear that that should be within their purview. It is not by mistake, I think, that it is absolutely clear, by omission, and it says:

In performing its functions, Indigenous Business Australia shall act in accordance with sound business principles.

I do appreciate your broader interpretation that all acts of parliament, if you like, have an element of social and cultural benefit, but I would argue that, because these two organisations were formed with specific tasks in mind and it specifically has a differential in the operating parameters under the act, where one says specifically 'social and cultural issues' and one specifically says 'sound business principles', as I understand it, that has always been the case.

Notwithstanding your interpretation or some people's interpretation of the preamble—and I am not allowed to ask for an opinion—it had been certainly the view of many that the IBA has breached its legislation by agreeing to fund the Tjapukai redevelopment for other reasons than in accordance with this. Certainly the chair indicated in her report, the Deloitte's report about Tjapukai, that the fundamental factors of this are cultural and social benefit. If this were, for example, an ILC application, we would be saying that they are doing exactly what they should be doing. This is exactly the way they are acting. Again I ask: what part of the act gives you comfort that the IBA, in performing their functions in the act—and it says the IBA 'shall act in accordance with sound business principles', full stop—they can behave in some other way, on some other principles; for example, in the same way as the ILC can do?

**Ms Gowans:** Nothing would give me comfort that IBA could behave otherwise than in accordance with its legislative purpose and functions. You are quite correct that, in exercising the functions of IBA, IBA is required to act in accordance with sound business principles, but sound business principles apply to the portfolio as a whole, and they relate to the overall business interests of IBA. Those interests in some respects are quite broad, and the board is required to have regard to a series of matters in the Aboriginal and Torres Strait Islander Act. One of the matters that the board is to have regard to is facilitating and developing industries that have significant benefit for Aboriginal and Torres Strait Islander people. Although I cannot speak for the board, and it would not be proper for me to do that, the board regards the tourism industry and in particular the Indigenous tourism industry as an industry of benefit to Aboriginal and Torres Strait Island people. That is a relevant factor and it is a proper thing for it to have regard to. To my mind, I would never take comfort from any breach of legislation, and I do not think any general counsel would. I can say that the board regularly does seek advice on issues such as this, and they are complex questions. There are many different views of business decisions and which business decisions are sound. But it is my view that the board has acted in accordance with legislation.

**Senator SCULLION:** I think your last comment was a most appropriate one, Ms Gowans. I assure you that my term 'comfort' was not trying to suggest by any means that you thought it was okay for the organisation to be outside the act. I meant no inference of that type. I agree with your premise that the act is to guide departments and these processes and they should be to benefit. I guess I make the case that there are two types of benefit that are clearly being contemplated in the construction of the act. One benefit is an economic plus a social and cultural benefit, and those particular taskings were given to the organisation called the Indigenous Land Corporation. In the act, it quite clearly contemplates that there will be a quite separate series, a separate motivation, which is purely economic benefit. I know you were called here to provide some advice, and I think you have done that. I do not seek to be argumentative at all. You have provided your advice and I thank you for that. I am hesitating because the next part of my questions goes—and you can provide further advice if you choose—to matters of what the board's advice was at the time.

**Mr Fry:** Could I just perhaps provide some more supporting comment to the comments you just made there, Senator. The board is mindful of providing financial and economic results, and you are particularly making comment on Tjapukai here. I just want to again make the point that Tjapukai is the largest Indigenous employer in northern Queensland. As at April, I think there were 56 Indigenous jobs, which represents 59 per cent of the workforce there. It is the largest employer there. Since Tjapukai has been operating, I think the figure of contribution to the Indigenous economy up there has been \$35 million. With regard to the impact to the wider Cairns economy, there is a multiplier contribution that Ernst & Young have calculated to be in the order of 2.08 times, and, with the job impact multiplier, somewhere in the order of 1.54. I suppose you could see through the board's deliberations and you can see through the activities of Tjapukai and the fact, before the development that you spoke of previously, that our visitor numbers are up 15 per cent, which is well ahead of the local tourism industry results, that we are very mindful of the economic impact in meeting those obligations.

**Senator SCULLION:** I think the real question is this. As I understand it from our previous iterations of this whole thing, the board advised against it and it was the chair who decided that she would be in support of that—

**Mr Fry:** No, that is not correct.

**Senator SCULLION:** I would have thought that this is core business—it is exactly what you would be doing if you were in fact a chief executive officer reporting to me at estimates or if you were the chief executive officer of the ILC—Mr Gemmell. These are exactly the outcomes that the act particularly contemplates about the separation of these things: one can take things into consideration and one cannot; one is purely about business. It is about building and investing in Indigenous businesses that are profitable businesses and have a profitable bottom line. Whilst nobody would take away from any of the benefits in the Cairns region that you have just spoken of, this is supposed to be a business that invests on the basis of sound business principles.

To be brutally frank, anybody in Cairns or anybody who has any sense of business would not throw \$14 million at Tjapukai. You will not make a zack out of that. It is a complete subsidy. There is no way that you have made or will make money out of that investment—full stop. I understand about the social aspects of it, but what I am trying to understand is that, given that most of your brief deals with that—you deal with that relatively successfully and you have it on that one—why is it that this one element that could be dealt with by a sister organisation is not dealt with by that organisation?

**Mr Fry:** I think the board deliberates very carefully, and has for some time, over all of its investments. As I said, we look at the broad portfolio return. Some of those the board considers, in its investment policy, to be specifically for financial return. In others, it looks for a balance of Indigenous jobs and other outcomes, as well as commercial outcomes. I am heartened to see a 15 per cent increase in visitor numbers, over the last 12 months, in industry up there, as against parts of Australia where it is diminishing. I think we have—or the board has—a difference of opinion at this point about the sound commercial principles with regards to this particular investment.

**Senator SCULLION:** We will continue to watch the numbers flow in from that. I really hope you are right, Mr Fry.

**Mr Fry:** Chair, could I seek permission to provide a letter subsequent to this meeting, with respect to the importance of this committee and the manner in which I hold the respect of it. I will not go through the letter, but it addresses a matter that was covered with reference to my role as CEO in appearing before the committee.

**CHAIR:** Would you provide that document to be tabled.

**Mr Fry:** I will do that, with your permission.

**CHAIR:** We would certainly be pleased to do that. Thank you very much to the officers.

[13:43]

**CHAIR:** Thank you. We will now move to employment and economic development. In this area I know that Senator Payne, Senator Siewert and Senator Furner all have some questions.

**Senator PAYNE:** I will start with some questions in relation to the RJCP, commencing with the EOI process, if I may. Can you please advise the committee on how many regions, as of today, have not had their successful RJCP providers announced?

**Ms Milliken:** As of today, there are six regions which have not had their providers announced. Of those, two of the applicant organisations have been advised and they are pending a ministerial announcement.

**Senator PAYNE:** Which are those six regions?

**Ms Milliken:** Those regions are Tiwi and Galiwinku-Yirrkala in the Northern Territory; in Queensland, they are western cape, central cape, Cook and the Torres Strait islands.

**Senator PAYNE:** When do you expect the two which have been advised but which are awaiting ministerial announcement to be announced?

**Ms Milliken:** It is a matter for the minister, but I would expect that it is imminent.

**Senator PAYNE:** Which are those two?

**Ms Milliken:** Those two are the two in the Northern Territory—Tiwi and Galiwinku-Yirrkala.

**Senator PAYNE:** Why have these particular contracts, if they are contracts—are you referring to them as contracts?

**Ms Milliken:** Funding deeds; it is a grant funding arrangement.

**Senator PAYNE:** Why have these particular grant funding deeds taken so much longer to finalise than the others?

**Ms Milliken:** The grant funding deeds have been announced over a period of time, since 24 April, and it was always intended that there would be rolling announcements of the outcomes. The distinct characteristics of this purchase model have made it different from other grant funding arrangements or employment services purchasing that DEEWR has been involved in before. Because there was a particular emphasis on attracting small, local and Indigenous organisations—and I think we have talked about that previously—there were levels of capacity strengthening when the EOI was opened. It was extended for two weeks, which had a consequential impact on the process. And then the expression of interest process also provided for a stage of capacity strengthening or negotiation and brokering of partnerships during the evaluation process, which also extended the arrangements for some regions. So the recommendations have been progressing serially to the minister, who is the decision maker in this regard.

**Senator PAYNE:** I am sorry, Ms Milliken, you said the first announcement was the 20-something of April.

**Ms Milliken:** The 24th of April.

**Senator PAYNE:** Is the program still commencing on 1 July?

**Ms Milliken:** It is.

**Senator PAYNE:** How is that going to go in western cape, central cape, Cook, Tiwi and the Torres Strait islands? Today is, I think, 7 June. Correct me if I am wrong.

**Ms J Taylor:** We have a series of plans in place to support providers as soon as they are announced. So there is a series of training that is undertaken with providers and also

stakeholder foreigners working with employers to connect the providers with the local employers in the region. We have support from existing organisations to hand over and transition the client groups to the new providers. There is assistance and further capacity building that we have available for those providers. It will depend, too, on who the providers are, whether they have an existing presence in the region or not, what sort of existing infrastructure they have available and where their location is. So it really is who they are and their current footprint, if they have one, in that region. There is a range of support that is available and a range of additional support that has been planned and can be provided for them, if necessary.

**Senator PAYNE:** I really appreciate that information, Ms Taylor, but let us be serious here. It is 7 June. western cape, central cape, Cook and the Torres Strait islands are not in the advantaged position of Tiwi and Galiwinku, because Tiwi and Galiwinku apparently know what is going to happen. You cannot seriously tell me that you expect those organisations to be operational and the rollout to occur for them on 1 July.

**Ms J Taylor:** I do. I do think—

**Senator PAYNE:** When are you going to tell them?

**Ms J Taylor:** As soon as we possibly can.

**Senator PAYNE:** So some time—sorry; I am innumerate as most of my colleagues know; they let me do words, not numbers—in the next three weeks you are going tell them, and then they are going to be ready to kick off on 1 July?

**Ms J Taylor:** Yes. As I say, we have a whole range of contingency plans—

**Senator PAYNE:** Why do you need contingency plans? Why should they have to have contingency plans? You have been doing this since the middle of last year, at least.

**Ms J Taylor:** We would always have contingency plans around any rollout like this, even if the announcements had been made during Christmas last year, because we have to plan in a risk management sense for there being, for example, a natural disaster, a provider that is already selected falling over—

**Senator PAYNE:** As opposed to a manmade disaster by the department, yes, so probably you do.

**Ms J Taylor:** So we would plan for contingencies of providers not being able to take up and commence the role, there being partnerships that cannot be put in place. That is just best practice management, Senator.

**Senator PAYNE:** Is it?

**Ms J Taylor:** Yes, it is.

**Senator PAYNE:** Fascinating! Best practice management is not advising organisations three weeks before the commencement of the rollout that you are seriously telling me is still the rollout date—that is best practice management?

**Ms J Taylor:** No, what I was referring to is having risk management plans and—

**Senator PAYNE:** You will need them.

**Ms J Taylor:** You always do in any rollout.

**Senator PAYNE:** Probably more if you do not tell people somewhat more in advance. The locations—Western Cape, Central Cape, Cook and the Torres Strait Islands, I could entertain myself and the committee by going to the maps but could you tell me what region numbers they are, please?

**Ms Milliken:** Cook is region 54, Central Cape is region 56, Western Cape is region 57 and Torres Strait Islands is region 59.

**Senator PAYNE:** Can you tell me how many people each of those regions is intended to serve?

**Ms Milliken:** In the Cook region, region 54, there are 679 jobseekers on our most recent count; in Central Cape, region 56, there are 235 jobseekers; in region 57, Western Cape, there are 729 jobseekers; and, in the Torres Strait Islands region there are 1,013 jobseekers.

**Senator PAYNE:** That is over 2,500 jobseekers, is it?

**Ms Milliken:** In that order, yes.

**Senator PAYNE:** I always encourage someone to check my maths. Of the 59 regions, how has the RJCP funding been divided?

**Ms Milliken:** The funding for the Remote Jobs and Communities Program comes in—two particular streams I will go to and I will ask my colleagues from FaHCSIA to answer on the second part.

**Senator PAYNE:** Are you going to be able to tell me by numbers?

**Ms Milliken:** No, there is not an allocation by dollars per region. I am going to explain that to you. The funding for the Remote Jobs and Communities Program derives from the number of individual jobseekers who will be supported in that region and also the achievement by the provider of outcomes, whether that is an employment outcome, an education outcome or a participation outcome for the individual. When an individual starts with an RJCP provider, the provider will receive activity payments and they are paid quarterly while that person is participating in the Remote Jobs and Communities Program and when they achieve outcomes for that individual, they will be able to claim an outcome. The employment outcome is derived when the individual has been in employment seven weeks out of 13 weeks, 13 out of 26 or 26 out of 52 weeks. They are more flexible outcome arrangements than operate in the mainstream employment services at the moment. There are also, as I mentioned, education outcomes and participation outcomes.

In addition, for each person, when they commence in the Remote Jobs and Communities Program there is credited to the participation account an amount of money based on whether the person has a disability and then after each 12 months the participation account is credited again for further support. So they are the payments that go to the provider with respect to individuals. In terms of the whole of the funding available for RJCP, in the order of \$237.5 million is also part of the Community Development Fund, which is administered by FaHCSIA.

**Senator PAYNE:** Just taking examples from the earlier numbers you gave me—the Torres Strait islands versus Central Cape, which is 1,000-odd versus 235—the number of individual job seekers means that the provider in the Torres Strait starts with a significantly greater funding amount. Is there an amount per job seeker that the provider receives?

**Ms Milliken:** The provider receives the activity payment per job seeker.

**Senator PAYNE:** Is that flat except for all the disability types—

**Ms Milliken:** The activity payment is flat and the participation account credit is the one that varies in the first year. The activity payment for the first 12 months that someone is in RJCP is \$2,750, GST inclusive, and it is paid quarterly. The providers can claim an advance payment of the first quarter when they start RJCP. For activities after the 12 months in RJCP it is \$2,200 a year, also paid quarterly.

**Senator PAYNE:** What is the theory behind decreasing the amount?

**Ms Milliken:** The initial amount gives the provider the opportunity to undertake some more intensive work with the individual. They need to make sure that they undertake an initial assessment of their capabilities and work with them on the sorts of activities that they might be doing over that period of time. So it is their investment in time.

**Senator PAYNE:** In an area like Maningrida, where the provider is an Aboriginal corporation called Bawinanga, when would you expect them to begin consulting with their job seekers?

**Ms Milliken:** Their funding deed starts on 1 July, so we would expect that they will commence formal discussions with their job seekers, in a structured way, after 1 July. They will develop a time frame for meeting with those job seekers and introducing them into the RJCP environment.

**Senator PAYNE:** How many job seekers do they have in Maningrida?

**Ms Milliken:** There are also some regions where the RJCP provider will have a pre-existing relationship with some of the job seekers because they may be a pre-existing JSA or CDEP organisation. Maningrida has 816 job seekers, by our most recently published document.

**Senator PAYNE:** Does the department have an expectation at least that you are informing the providers that you expect them to begin their consultation with their job seekers within, say, the first two, four or six weeks?

**Ms Milliken:** Yes, there is a structured time frame for that meeting. There will be new job seekers and they are not part of the pre-existing transition arrangement. For the others who are transitioning, we expect them to meet by the end of August.

**Senator PAYNE:** When was the Maningrida provider confirmed and announced? What number is Maningrida, by the way?

**Ms J Taylor:** It is 38. We might come back to that if we can. We will get someone else to dig that up.

**Ms Milliken:** I can advise you that it was 23 May.

**Senator PAYNE:** Ms Milliken, which was the first announcement?

**Ms Milliken:** The first announcement was for the two regions in New South Wales.

**Senator PAYNE:** That is, far western and upper Darwin?

**Ms Milliken:** Yes.

**Senator PAYNE:** They are both Murdi Paaki?

**Ms Milliken:** They are both the Murdi Paaki Regional Enterprise Corporation.

**Senator PAYNE:** Is the list on the website in chronological order, as it were?

**Ms Milliken:** I think it is in state order, so it may not be quite chronological.

**Senator PAYNE:** You can actually help me there. Which was the first community that was announced in Western Australia?

**Ms Milliken:** Setting aside the Christmas and Cocos Islands, the remaining Western Australian regions were announced on 17 May.

**Senator PAYNE:** We want to take some remote areas. We might rely on Senator Siewert and Senator Smith for more specific advice. Does Halls Creek qualify?

**Ms J Taylor:** It should.

**Senator PAYNE:** We will take Halls Creek, which is the Wunan East Kimberley CDEP Joint Venture Pty Ltd. They were announced on 17 May and they have until the end of August, based on the time lines provided by the department, to begin their consultations with their clients, pre-existing and in transition and, one assumes, new. The providers that are to be appointed at Western Cape, Central Cape, and the Cook and Torres Strait Islands are going to meet the same deadline, are they?

**Ms Milliken:** At this stage, our expectation is that they would meet, for the first time, with all of their job seekers by the end of August.

**Senator PAYNE:** That is great. Ms Milliken on notice, could you please give the committee a comparison of how the funding per job seeker under the RJCP compares with the funding extending to those jobseekers for the four existing employment services—that is, the JSA, disability employment, the CDEP and the IEP—so I can see the sort of money that is attracting to these providers versus what was there before for the same sorts of jobseekers?

**Ms Milliken:** Certainly.

**Senator PAYNE:** Thank you very much.

**Ms J Taylor:** We will certainly take that on notice. We would need to point out that, with the IEP in particular, where that is for an employer, if it is about economic development, there is not a natural per jobseeker—

**Senator PAYNE:** It will not be an apples and apples situation. I understand. Thank you very much. You mentioned the extension of the closing date for the EOI process of two weeks. What did that make the closing date? I am confused about whether it was still 28 November.

**Ms Milliken:** Yes—28 November.

**Senator PAYNE:** It was to have been 14 November?

**Ms Milliken:** Yes.

**Senator PAYNE:** If you had closed on 14 November, that would have been only a six-week period for expressions of interest. Isn't even eight weeks relatively short?

**Ms J Taylor:** For other grant rounds that we have run and for things like IEP, we have had four weeks. Six weeks is a good period to do that. For example, in other parts of my portfolio, four weeks has been used.

**Senator PAYNE:** Even for a program the size of this one—\$1.5 billion over five years?

**Ms J Taylor:** That is why we extended it for two weeks, really.

**Senator PAYNE:** Were people raising concerns about the time frame?

**Ms Taylor:** As I understand it, some small organisations had sought further assistance. That was to allow those organisations to make sure that they were able to put in their best bid.

**Senator PAYNE:** Why was the EOI process that was used selected rather than a formal tender process?

**Ms J Taylor:** I think, as we have said here before, it is to allow us to do the capacity building. If you went straight to the formal tender, say, a formal JSA tender, there is a very hard cut-off—bid is in, cut-off and assessed. The feature of the RJCP is about building. What we were looking for and what the government was looking for were those relationships between local organisations and providers or local organisations building capacity to deliver. You would not have been able to do that capacity building and that matching, and sometimes the brokering, that you would want to do in these circumstances with a formal tender.

**Senator PAYNE:** Is the time line on the website that you referred to earlier than you are expecting providers to meet?

**Ms Milliken:** I am not sure. I will need to take that on notice. It is in the funding deed.

**Senator PAYNE:** Do you have a copy with you?

**Ms Milliken:** I do not have a copy of the funding deed with me.

**Senator PAYNE:** Could you provide a copy of that on notice to the committee?

**Ms J Taylor:** Certainly.

**Ms Milliken:** And it will be in the transition guide which is about to go up. We have notified all of the current providers individually of the transition arrangements and we have also been working with the selected providers, but there is some additional information we are putting up on the website for them.

**Ms J Taylor:** We will get that copy for you.

**Senator PAYNE:** Do you have a copy with you of the selection criteria used for the assessment of the applications?

**Ms Milliken:** In the expression of interest, yes.

**Senator PAYNE:** Can you provide a copy of that to the committee?

**Ms Milliken:** Certainly.

**Senator PAYNE:** Are the selection criteria weighted?

**Ms Milliken:** Yes, they are.

**Senator PAYNE:** Can you indicate how the weightings are distributed?

**Ms Milliken:** There were four selection criteria. The first of the criteria was demonstrated connection to or acceptance by all communities within the particular remote region being applied for and that was weighted at 30 per cent. Criterion 2 was strategies to conduct employment and meaningful participation activities across the remote region applied for. That was 30 per cent. Criterion 3 was strategies to conduct activities for clients with different individual needs and that had a weighting of 20 per cent. Criterion 4 was demonstrated

capacity to develop strategies to meet the needs of local employers and industry, and to identify economic development opportunities. That also had a weighting of 20 per cent.

**Senator PAYNE:** Were applicants aware of the weighting of the criteria?

**Ms Milliken:** Yes, they were published in the call for expressions of interest.

**Senator PAYNE:** Were applicants asked to indicate whether they were going to operate as for-profit or not-for-profit providers?

**Ms Milliken:** I do not have that information to hand.

**Senator PAYNE:** Does anyone know?

**Ms J Taylor:** I cannot recall it being part of what we were asking for.

**Senator PAYNE:** So there was no preference for profits or not-for-profits?

**Ms J Taylor:** No.

**Ms Milliken:** We did ask organisations to indicate the nature of the entity, whether they were a sole trader, a partnership, an Indigenous corporation, a registered charity and those sorts of things. So they would have identified that in the application.

**Senator PAYNE:** Can you tell me what financial information applicants were asked to submit?

**Ms Milliken:** The applicants were asked to submit financial viability information—

**Senator PAYNE:** What sort?

**Ms Milliken:** With their initial application, applicants were asked to provide information that went to their financial statements, any Commonwealth debts and acquittals they might have and relevant people. They were also asked to outline the type of entity, trust details and those sorts of things.

**Senator PAYNE:** So just their own financial status, basically?

**Ms Milliken:** Yes, and then a financial viability assessment was undertaken for those who were likely to be selected. So additional information was sought on those candidates where we were investigating further.

**Senator PAYNE:** What was the nature of that sort of information?

**Ms Milliken:** I am sorry but I do not have the detail of that with me. I would need to take that on notice.

**Senator PAYNE:** Did successful applicants—so any of the ones on the current list that we have and any of those who are pending—have to provide a business model for how they were going to run their RJCP operation?

**Ms Milliken:** They did not provide a model for their operation but they did need to describe how they were going to provide the services.

**Senator PAYNE:** So they did not need to indicate or demonstrate that it was financially viable? I could describe how to provide the services, but—

**Ms Milliken:** We did not ask each organisation to demonstrate their internal modelling.

**Senator PAYNE:** So how do you know that they are going to be financially viable in some of these extraordinarily remote areas?

**Ms Milliken:** We have assisted each organisation who has been interested through support that has been available to them in the evaluation process or subsequently to work in stage 2 capacity strengthening with organisations to develop models. That continues to be available to organisations where they ask questions about the revenue modelling.

**Senator PAYNE:** Is that after they have been appointed?

**Ms Milliken:** For many it has been before they have been announced. So it has been in stage 2, before a decision has been made, they have sought more information on how the revenue modelling would occur and have sought third-party advice.

**Senator PAYNE:** So if I was to ask you to provide the committee with the information that enabled you to assess each applicant's financial and organisational capacity to deliver on the contract, would you be able to do that—even with identifiers removed to protect any aspects of commercial in confidence?

**Ms Milliken:** I would need to take that on notice.

**Senator PAYNE:** Do you think that you would be able to do that?

**Ms Taylor:** It is difficult to say, Senator.

**Senator PAYNE:** That bothers me somewhat.

**Ms Taylor:** I am just wondering whether we can de-identify. Can you give me a bit of an example of what you are thinking of here?

**Senator PAYNE:** I want to know that you know that, of all of the appointments that have been made, every single one of them has a business model and has proved their financial viability to you to run these programs.

**Ms Milliken:** In many circumstances this is not the only business that that organisation will be operating.

**Senator PAYNE:** What is your point? I am not sure I understand.

**Ms Milliken:** It is a matter for the corporation to determine the level of—

**Senator PAYNE:** I do not actually agree with that. This is Commonwealth money. It is a matter for the department to be assured, in my view.

**Ms Taylor:** The other thing is the commercial-in-confidence nature of the information, which is why I will take on notice to see what we can provide. I think that is the best thing to do.

**Senator PAYNE:** Who conducted the due diligence on each of the sites within the regions that has been chosen for the location of the RJCP funding? Who did the basic investigation of how economically viable each site was for the provision of the services, what the available infrastructure was, what the underlying costs were for the entity itself to be able to establish there if it was not already established and so on?

**Ms Milliken:** The assessment of the applications took into account what the applicants had proposed in their applications with respect to their sites and whether or not there was pre-existing infrastructure that they were planning to use or they would need to establish their organisation in those locations. That was taken into account at the assessment.

**Senator PAYNE:** How does that prove the economic viability of the provision of the RJCP services in that particular location?

**Ms Milliken:** I was responding to the question about how we considered the infrastructure as part of the process.

**Senator PAYNE:** Then let us go back to the first one. I asked: who did the basic investigation of the economic viability of providing the RJCP services in a particular location? Was it done by the department or was it done by a third party or was it done by the applicant who then provided that investigation and information to the department to satisfy the department that they should be extended funding in this program?

**Ms J Taylor:** I think, as Ms Milliken has said, as part of the application and assessment process the applicants have provided a certain amount of financial information—

**Senator PAYNE:** They have provided their accounts.

**Ms J Taylor:** If they were progressing, then further information was sought around the financial viability of the organisation. Where further information was required of those organisations, there were third parties that assisted them to look at various business models, and that is what we refer to as the capacity building, and there were organisations—such as KPMG, for example—who were contracted to provide those services for them.

**Senator PAYNE:** So to how many of the applicants who have been awarded projects did KPMG provide services?

**Ms J Taylor:** It would be KPMG or another like organisation, and I do not know if we have that but I can take that on notice.

**Senator PAYNE:** Could someone look for whether that is available now?

**Ms J Taylor:** Certainly.

**Senator PAYNE:** If it can be provided now that would be helpful. Were any of the funding deeds—I think that is the correct language—awarded to organisations that had not previously worked in the remote locations for which they were seeking the funding deed?

**Ms Milliken:** I do not think I have asked myself the question in that way. Sorry—do you mean: that had not worked in that region in the capacity of a JSA, disability appointment service provider or CDEP, or had not ever been in that region previously?

**Senator PAYNE:** Happily for you, I can say no on both, because you started it—

**Ms J Taylor:** Or not in remote areas at all?

**Senator PAYNE:** No, I had two questions. The first one is specific to the locations: so, did any organisations receive funding deeds who had not worked in the remote locations for which they were seeking contracts in any capacity or in a job service capacity?

**Ms Milliken:** I would need to take it on notice but I think the answer is probably no, in terms of looking at a region, whether it is the organisation that is the one that has been awarded the contract or a subcontractor who has been announced as part of their operational arrangements.

**Senator PAYNE:** Then the next question is: were any of the funding deeds awarded to organisations that had never worked in any capacity in remote Indigenous communities before?

**Ms Milliken:** I think that is the same answer.

**Ms J Taylor:** I think the answer is no.

**Ms Milliken:** Can I just clarify that? I think there are none where the provider or a subcontractor has not provided some service in that region—some program or service more broadly—and is not known to that region. And, in terms of providing JSA, CDEP or disability employment services in a region, I would need to take it on notice but I think it is a very small number.

**Senator SIEWERT:** Can I just clarify that? Where organisations have subcontractors that do not have that rural experience—and I am not asking about subcontractors; I am asking about the main organisation—

**Ms Milliken:** Sorry?

**Senator SIEWERT:** I am not asking about the subcontractors; I am asking about the main organisation. So I understand the issue about the subcontractors working in the community, but are there organisations that have contracts that do not have experience in remote areas, who are relying solely on the subcontractors to provide that experience? That is my question.

**Ms Milliken:** I do not believe so.

**Senator SIEWERT:** Could you take that on notice to double-check?

**Ms Milliken:** Yes.

**Senator SIEWERT:** Thank you.

**Senator PAYNE:** When is the first point of review of delivery by the providers and by the department? When are you first going to review how the program is rolling out?

**Ms Milliken:** There would be two responses to that. One is that we will establish—and our state offices are already establishing these—ongoing relationships with the Remote Jobs and Communities Program providers. On an ongoing basis they will be engaging with them and discussing with them their progress, whether there are any issues of concern, the level of support they might need and those sorts of things. In an ongoing, day-to-day agreement management partnering relationship that will be continuing. In terms of formal discussions, they would normally be six-monthly—so that will be around December.

**Senator PAYNE:** Will the results of the six-monthly more formal review be available publicly?

**Ms Milliken:** We are not operating a star rating model as they do in other employment services, so I think we still will need to consider the extent to which any formal or public information is provided.

**Senator PAYNE:** What feedback is the department giving unsuccessful applicants?

**Ms Milliken:** Formal debriefing of unsuccessful applicants will start once all of the successful applicants have been announced. But we have an arrangement that as soon as we have notified all applicants but in particular unsuccessful applicants either DEEWR or FaHCSIA will contact them, depending on who might have a pre-existing relationship with that organisation, and start talking with them about transition and any assistance they might need to support themselves in the organisational transformation.

**Senator PAYNE:** Do you write to them to do that?

**Ms Milliken:** We talk with them face to face. We have also published information on the DEEWR website about assistance and the modules of support. We have access to a jobs board

so that employees can look for job opportunities with remote job providers if they need to and remote jobs providers can look for assistance.

**Senator PAYNE:** There is something like 58 jobs on the jobs board and 8,000 job seekers registered at the moment.

**Ms Milliken:** This is particularly to work with an RJCP provider.

**Senator PAYNE:** I understand that.

**Ms Milliken:** There is also support that FaHCSIA is providing to the Aboriginal CDEPs that are not successful and are transitioning.

**Senator PAYNE:** If an applicant sought written advice that they could use as a tool to work with on why they were unsuccessful, would the department consider providing that?

**Ms Milliken:** We would not normally provide written advice, but they would be given a verbal debriefing.

**Senator PAYNE:** Why wouldn't you consider providing written advice if they sought it?

**Ms Milliken:** If an individual seeks it, we will consider their request.

**Senator PAYNE:** In terms of the number of existing employment service providers who are unsuccessful applicants, was there a preference within government for finding new providers and not giving RJCP funding deeds to existing providers?

**Ms J Taylor:** No. It is about who best meets the selection criteria. Of course, one of the selection criteria is about those links to community. That is one of the aspects. The assessment process was based solely around the selection criteria.

**Senator PAYNE:** Either you, Ms Taylor, or Ms Milliken said earlier on that you had an emphasis on small local Indigenous organisations and on trying to engage them in the process. Is that correct?

**Ms Milliken:** When the EOI was announced the government made it clear that it had an interest in ensuring that small local Indigenous organisations have the opportunity to participate.

**Senator PAYNE:** I do not see Campbell Page Limited as a small local Indigenous provider in the Palm Island region. They are not. But their subcontractors who are the Palm Island Community Company and the Coolgaree Aboriginal Corporation are the ones who are going to have the local knowledge. Is that what you are telling me? That is just one example I picked off a page.

**Ms Milliken:** In that case it is not a subcontracting arrangement. They are joint partners in delivery.

**Senator PAYNE:** I did not mean to use the wrong word, sorry.

**Ms Milliken:** One of the ways of attracting small organisations or local Indigenous organisations was through the capacity strengthening that was undertaken before the EOI closed and talking to the organisations about opportunities that might exist for partnering or for subcontracting. If they were not confident or not in a position to deliver on their own they could seek to partner or another organisation could seek to partner with them to establish a suitable provider.

**Senator PAYNE:** Perhaps I did not express myself clearly. I will use a different example. In the western tablelands and in the Wellesley Islands in Queensland, Jobfind Centres Australia are the providers in both those areas. There is no reference there to subcontracting or partnerships or joint ventures or anything else. How do they fit within the description you have given to the committee about the sorts of providers you were looking for? I am not picking on any particular provider at all; I am just looking at the list.

**Ms Milliken:** In every location where Jobfind or other organisations which do not include what we might call local Indigenous organisations as the provider have been selected, they are our existing providers of one or more of the employment services whether it is CDEP, Job Services Australia or Disability Employment Services in that region. So they have a local involvement either in their own right or as a subcontractor to other organisations, which is the case in Indian Ocean Group Training Association on Christmas Island and on the Cocos Islands.

**Senator PAYNE:** I saw that one. Did a lot of shire councils who were existing providers engage in the application process and were unsuccessful?

**Ms Milliken:** I am unable to advise you who might have applied but where there are shire councils who were successful, yes, they engaged in the process.

**Senator PAYNE:** That is remarkably unhelpful, Ms Milliken. How many existing employment service providers in the regions who submitted EOIs for the RJCP funding were not successful?

**Ms Milliken:** I am unable to provide details on applicant organisations.

**Senator PAYNE:** I did not ask you for any details on applicant organisations. I asked you how many existing ESPs were unsuccessful. I do not care who they were or where they were. I just want to know how many.

**Ms Milliken:** I do not have that information with me. I would need to take that on notice.

**Senator PAYNE:** Please do take it on notice. If I go back to your selection criteria and look at some of the providers that have been appointed, I see that one of them, at 30 per cent weighting, was 'connection to all communities'—I am paraphrasing what you said—and another one, at 30 per cent, was the strategies criteria that you mentioned. The fourth one was 'a demonstrated capacity to meet the needs of local employers and identify economic opportunities', I think at 20 per cent. When you are appointing a provider into an area like the Wellesley Islands, which, even on the maps that I can see here, is pretty much out there, what is the engagement of the successful provider—which I think is Jobfind—with the local infrastructure, the local community? What are they going to be using in that community to deliver the outcomes that you are looking for?

**Ms Milliken:** I do not have with me information on the detail of any particular application to that extent.

**Senator PAYNE:** Do you know if they will be working with the local council?

**Ms Milliken:** If I can speak in a generality rather than a specific, for each of the applications we did ask for information about infrastructure—so whether they would be sourcing their own infrastructure, whether they already had infrastructure or whether they would be using the infrastructure of other organisations within the region. In some locations,

of course, it is the private sector. There are townships involved where they would have premises. So information was provided in each of the applications. In terms of connection with key organisations within the regions, validation was undertaken with communities—and it differed for each region but it could have been traditional owners; it could have been the local CDEP organisation, if that was not the applicant; it could have been a shire; it could have been other key Indigenous stakeholders in the region—to talk about the connections of the organisation with that region. As I mentioned before, Jobfind is the current provider in that region, of other services.

**Senator PAYNE:** Do they provide services in the Wellesley Islands already?

**Ms Milliken:** They do.

**Senator PAYNE:** What do they provide?

**Ms Milliken:** I think they are a Job Services Australia provider.

**Senator PAYNE:** We were speaking about the extension of the cut-off date to 28 November. Were any EOIs lodged after 28 November that were considered?

**Ms Milliken:** I would need to take on notice whether there were any in the immediate period after that.

**Senator PAYNE:** Can I give you a breakdown for that then, if you would? Can you indicate whether any EOIs were lodged after the cut-off date and why was that permitted, given the cut-off date had already been extended? Can you indicate how many days or weeks after the cut-off date they were lodged? You probably will not tell me this, but can you tell me the names of any entities that did lodge after the cut-off date? As a subset to that question, can you give me the names of any entities that lodged after the cut-off date that were successful?

**Ms Milliken:** My recollection—and I will take it on notice—is that there were no applications that were received or lodged beyond the initial week, so they were ones where they were in train and there were technical issues about them not being able to be received on the day of closure. But there were none that were received beyond immediately after the applications closed. But I will follow that up.

**Senator PAYNE:** Can you also indicate what role, if any, in the process of selecting the applicants was played by any of the ministers involved in the structure? Did they have any overview of or involvement in the process, whether it was in the purview of Ms Macklin or the minister for Indigenous employment or Mr Snowdon?

**Ms J Taylor:** Minister Collins was the decision maker.

**Senator PAYNE:** Were any of the proposals put to the minister by the department rejected by the minister and other applicants chosen to be the providers in particular areas?

**Ms Milliken:** No.

**Senator PAYNE:** You said that the providers had to commence with the job seekers by the end of August, that leaves them two and a half months. What are they supposed to be doing for job seekers in that time? How are they supported?

**Ms Milliken:** They will be on the providers' caseload from 1 July, so the provider will be responsible for them and will have a structured way of meeting with them and determining with them the types of new activities they might be undertaking through RJCP. We are looking for a continuity of their participation from their previous arrangements to the new

arrangements where feasible and as part of the transition we will be working with the RJCP organisations and the previous organisations in the lead up to 30 June.

**Senator PAYNE:** I am still not sure what they are going to be doing for two and a half months. If there is an indication you can provide us, Ms Milliken, de-identified of a process, for example, that might apply in an area with a large number of job seekers. Let me choose one randomly. What about the Gibb River region in Western Australia? Has that been appointed? Is there something you can provide the community on notice to show what the provider in the Gibb River region will be doing to work with their job seekers between the day they were appointed and the end of August?

**Ms J Taylor:** We might be able to help you with a bit of a rundown between our expectations and what is happening with providers and job seekers prior to 1 July.

**Senator PAYNE:** I think Ms Milliken just did that. What I would like to see is a plan from a provider.

**Ms J Taylor:** The provider's plan?

**Senator PAYNE:** Correct.

**Ms J Taylor:** We will take that on notice.

**Senator PAYNE:** We have a number of large profit and not-for-profit organisations who will deliver the RJCP, partnered with, as you have said, a number of community groups. I am very much a glass-half-full person. I would like to think that all partnerships last forever and I still believe in Santa Claus. If there is an issue within a partnership, as the rollout of this progresses, what is the plan in place for the department to manage the separation process? You did say you had contingencies; I assume this is one of them.

**Ms J Taylor:** Yes. The first port of call is the relationship that will be established between the provider and the department so that we get very early indication of any issues. Second is the further capacity building and strengthening that will be available to try and deal with any issues that arise. If it is about the capacity of one part of the organisation to carry out the business there may be assistance, depending on the nature of the issue and that could take many forms. Going through all of that and we are successful—everything is terrific—if it then gets to a point where there is—I think you are meaning a breakdown in the relationship of the various partners—

**Senator PAYNE:** The parties, yes.

**Ms Taylor:** that made up the joint venture, and that is irretrievable, then there are, of course, some formal processes that we would need to go through about the contract and rescinding the contract, if you like, and looking at how we would progress that. But that would, I stress, a very last port of call.

**Senator PAYNE:** An undesirable outcome—I agree completely. Do you have appropriate arrangements to deal with the retention, purchase or whatever of any intellectual property that might be involved in that?

**Ms Taylor:** Yes, Senator. As part of the guidelines of the contract in our normal sort of processes we make very clear what those arrangements are.

**Senator PAYNE:** So we have the six that are yet to go, that are about to be the subject of ministerial announcement, and I think you said the other four were imminent. Is 'imminent' this month?

**Ms Taylor:** Yes. We would be expecting them to be this month, yes.

**Senator PAYNE:** The next step in the process, I think, is the CAP and CDF activities. I have one initial question about one of your fact sheets—the one about the CDF. It says:

Communities should start considering what funding they may need to support objectives that will be identified in their Community Action Plans. They are also encouraged to start talking to their RJCP provider (when known) about whether the CDF is the best option for funding these objectives.

When you talk about communities in globo like that, who is actually meant to get up and start that process?

**Ms Taylor:** At this point in time, Senator, I will gratefully hand to my colleagues from FaHCSIA.

**Senator PAYNE:** It is possible that I may get confused here, so please do not go too far.

**Ms Gumley:** In terms of communities, it may well be organisations within the communities, the local councils or group communities of interest that may apply. The Community Development Fund is open to private organisations, community organisations, business, employers et cetera.

**Senator PAYNE:** I am not sure that was my question, though, Ms Gumley. What I was concerned about was that the fact sheet says that 'communities should start considering', and I want to know who is supposed to start that. Is there a mayor, a local minister or an elder? What is going to be the genesis of the communities starting to do that? Or are there more guidelines that I am not seeing?

**Ms Gumley:** No, Senator. There are guidelines there for the Community Development Fund and also for the Community Action Plan.

**Senator PAYNE:** They are weighty, in fact.

**Ms Gumley:** Our staff from FaHCSIA, in conjunction with DEEWR, have been working with communities on the ground since the announcement of RJCP. So I suppose that generic term, being 'communities', covers a variety of different circumstances. So our engaging has been going on for some months—going out with different communities of interest and organisations within communities to consider what the priorities might be for their regions, how they might work with other communities in their regions, employers and other interest groups.

**Senator PAYNE:** Thanks, Ms Gumley. Can you please take on notice to advise the committee of how many staff are involved in this process for the department; where they are located; whether they are permanently located in those regions or whether they are working from a base; and detail for the committee what the FaHCSIA staff involvement is in the CDF in the preparation of this side of things?

**Ms Gumley:** Certainly.

**Senator PAYNE:** Thank you. Can you tell us when the decisions will be made on the first round of CDF funding?

**Ms Gumley:** Decisions will be made by the minister on the first round of funding, but the dates for the funding round are from 25 May and it closes on 21 June.

**Senator PAYNE:** I understand that. Do you know when the minister is going to make the decisions?

**Ms Gumley:** No, Senator, I do not.

**Senator PAYNE:** Do you know if it will be before 12 August?

**Ms Gumley:** I cannot comment on that, Senator.

**Senator PAYNE:** Mr Pratt, do you have any idea of the time line?

**Mr Pratt:** No, Senator. It will be up to the minister.

**Senator PAYNE:** Can you advise me, Ms Gumley, how many rounds of CDF funding there are expected to be?

**Ms Gumley:** There is a single funding round.

**Senator PAYNE:** A single?

**Ms Gumley:** Yes, a single funding round with some funds retained for contingency.

**Senator PAYNE:** What would be the contingency fund?

**Ms Gumley:** It is a small amount of funds held in reserve in case there are any particular priorities that come up through the year. You might recall we had a community affected very severely by flood a few years ago. It can be used for those sorts of situations, so that we can go in and work with the community.

**Senator PAYNE:** Sorry, I must have misspoken again. I know what contingency funding is; I just wanted to know how much money it is.

**Ms Gumley:** There is no set amount held for contingencies.

**Senator PAYNE:** So how much of the \$237.5 million, which is the total CDF funding, as I understand it, will be made available in the first and only funding round?

**Ms Gumley:** There is \$37.5 million in funding available for the Community Development Fund this financial year.

**Senator PAYNE:** On the CDF funding that has been announced, why has it been announced before the appointment of all the RJCP providers?

**Ms Gumley:** It is not for the exclusive use of the RJCP providers. It is about getting up projects that have economic, enterprise development and community development opportunities. Many of those opportunities in communities would need to be run across the full financial year. It is really about making sure that we give everyone the opportunity to make the best use of the funding available for the full financial year.

**Senator PAYNE:** As I understand it, CDF projects which are proposed for funding are required to be consistent with the priorities set out in the particular region's community action plan. Is that right?

**Ms Gumley:** Yes, that is correct. In the first year, where we have these arrangements coming into place, the community action plans will not be available. They will still be in development in that first year. So what we have advised is that communities and organisations should work with existing plans that are available in their region. Those may well be plans

such as local implementation plans for remote service delivery communities and other economic development plans that are available. They may draw on things such as regional partnerships, such as in Groote Eylandt.

**Senator PAYNE:** So they really do not have to be consistent with the community action plan until the second year of operation.

**Ms Gumley:** In many cases you will actually get the two being developed at the same time. So you will have community action plans underway and the Community Development Fund applications. In the early engagement that we were talking about earlier in relation to the Community Development Fund, we also spoke to communities around, 'What do you think the priorities for your community action plan are?' so that they could start having those discussions ahead of the providers. The Community Development Fund activities, desirably, are really looking at making sure we have sufficient and suitable economic and social participation opportunities for individuals to undertake in community so that everyone is actively participating.

**Senator PAYNE:** I am not sure that transitional process is clear from the fact sheets and the material that is publicly available. The fact sheets just keep saying, 'Project should be consistent with priorities set in the region's community action plan.'

**Mr Davitt:** With the discussions that we have been having over the past 12 months with communities and with organisations who have subsequently bid to become providers, it has been very clear that it would be quite difficult to get CAPs in place by 1 July. In that context, the discussions around the interplay, if you like, between the CAPs and CDF have clearly been about making use of existing plans in communities. That has been communicated many, many times and, as I understand it, has been quite well received. That will inform our assessment process. With the information being made available publicly, and also to providers on their commencement—they are provided with a resource kit that gives them information about their region—that includes some information about some of the government agreed plans for those areas. It might be a synopsis of the local implementation plan for RSD.

**Senator PAYNE:** Am I correct in understanding that the community action plans are to be submitted by the RJCP providers?

**Mr Davitt:** That is correct, Senator.

**Senator PAYNE:** Am I also correct in understanding that RJCP providers can apply for CDF funding?

**Mr Davitt:** That is correct.

**Senator PAYNE:** And the CDF funding proposals should be consistent with the priorities set out in the community action plan, which is provided by the RJCP provider which is also applying for CDF funding? Am I the only person who sees a small issue there?

**Mr Davitt:** If I can get into what I think is your issue, I think the concern comes into what is the level of community buy-in on the plan—

**Senator PAYNE:** No, that is not my issue. My issue is that I am writing the plan which is going to say: what should be the community action plan which will be the basis of the community development fund applications, and I can apply for the community development fund as well. I do not think that is healthy.

**Mr Davitt:** I do not think that there is a conflict. In developing the CAP, the provider's job is to develop the CAP in consultation with the communities. It is the community's opportunity to say, 'This is the service that we want.' There is no guarantee that if you identify particular priorities or actions in your community action plan that that would then be funded through the Community Development Fund. It is a nationally competitive grants process. The process is essentially one where applications are received that may be from the provider or may be from the community or may be from other organisations—employer organisations and the like. They have to have community endorsement for those proposals for the application to progress and in the assessment process whether that links in with local priorities. So there is no guarantee that because a provider has bid, they will get funding. They may have put in multiple applications.

**Senator PAYNE:** I was not suggesting that there is a guarantee, Mr Davitt, but I do think that if you are writing the community action plan and are then able to apply for funding which is based on the priorities identified in the community action plan, that there is a significant problem with the proprieties around that—a significant problem.

**Ms Gumley:** Those community action plans are developed by the provider, yes, in conjunction with the community. They are also independently assessed by FaHCSIA and recommendations made on the appropriateness of those plans, taking into account all of the other information available to us as the lead agency and agency responsible for the Indigenous coordination centres. We look at whether we think what the provider has done in the community action plan represents the local labour market, and we will draw that information from DEEWR. We look at whether it actually represents local priorities from our engagement and experience with the communities in that region. We will then put the advice about that, looking also at how well the provider has engaged with the community. We will independently verify that with communities, and then put that recommendation advice to ministers for them to consider in approving the community action plan. So there is a degree of independent oversight on the plan.

The issue in working with remote communities, as you were mentioning earlier, is that there is not always somebody who is the person to put together the plan. It was really a matter of thinking how we could get the providers to be working with the community where communities sometimes do not have those resources themselves.

**Senator PAYNE:** That is not my point. I do not argue or quibble with the fact that the RJCP provider is involved in the authoring of the community action plan and, in an ideal world they would never leave anything out; they would never tell a fib and they would be friends with everybody. Everyone always would be. But we do not live in an ideal world or none of us would be sitting here on Friday afternoon.

My issue is that they can also apply for funding based on a plan that they have authored. I do not know at what level you are making the decisions in FaHCSIA about whether you think that is appropriate community engagement or not, but one imagines that you and Mr Pratt do not have to go over all 59 of the regions yourself and try to decide whether it is a mates arrangement or it has another distasteful aspect to it or whether it is all sunshine. But I do have real concerns about that. It strikes me as a recipe for a very messy outcome.

**Ms Gumley:** Senator, may I just add that that funding really needs to be consistent with the plan. It is not actually exactly what is in the plan, which gives us the ability to look at a range of providers that will come through—

**Senator PAYNE:** I can see that we are going to agree to disagree, Ms Gumley. That is absolutely fine. I am just placing very firmly on the record from the parliament's point of view that I think that is a phenomenally inappropriate arrangement. Mr Davitt, you said I think just then that this is a nationally competitive grants process. And, Ms Gumley, I think you said that the minister will be making the decisions, but we do not have a time frame on those. Is that correct?

**Ms Gumley:** We have a time frame for when the funding applications close—

**Senator PAYNE:** Yes, but not the decision making.

**Ms Gumley:** but not the ministerial decision.

**Senator PAYNE:** Yes, so the funding applications close on 21 June.

**Ms Gumley:** Correct.

**Senator PAYNE:** Call me repetitive, but if you live in one of the six communities whose providers have yet to be announced, and they have no idea with whom they are working and have no idea what is happening, and that announcement is not made by 21 June either, what are those communities going to do?

**Ms Gumley:** Those communities are able to apply now.

**Senator PAYNE:** But apparently they need someone to help them with the authoring of their plan. You told me that; you told me the RJCP provider is going to be the leader in that space.

**Ms Gumley:** No, Senator, that is not the case. They can work with the RJCP provider to prepare the plan if they wish, but they are also able to apply independently, in partnership with other organisations, with employers, local government.

**Senator PAYNE:** Oh. So you might get multiple community action plan—sorry, I am talking about the CAP.

**Ms Gumley:** The CAPs or the Community Development Fund? Sorry if I have confused you, Senator.

**Senator PAYNE:** I think we have confused each other. That is all right. So they will make CDF applications. How will they know what to apply for and the structures under which to do it and how to do it? What level of support are you giving those communities who, as yet, do not have an appointed RJCP provider?

**Ms Gumley:** We have had our staff out on the ground talking to communities about what local priorities are. Some of those already have very good ideas about what they would like to put forward for social enterprises, local employment opportunities, business development, social participation activities, so many of them are already applying. For those in regions where their RJCP providers are known, they may well also be able to apply. For those that are in consideration, I expect they would still be putting forward applications.

**Senator FURNER:** I just wanted some feedback on the IYCP Program. I understand, since its commencement in 2012, there has been somewhere around 1,472 placements in

school-based traineeships and to date an investment of 9.57 million over a total commitment of 50.7. Would the department provide some real examples on how this program has been rolling out?

**Ms Wood:** The Indigenous Youth Careers Pathways Program commenced in the 2012 school year and it has two streams of activity. There are school-based traineeships, of which there has been 1,442 commencements as at 29 May, and that has seen expenditure of 10.1 million under the program to date. As well as the school-based traineeships, the program also has providers working with schools more broadly, so working with younger students in schools, back to year 7, looking at the pathway for students as well as working with a broader range of students in schools around their aspirations for further education and employment. It is really about exposing students to a range of experiences where they can actually see the value and the opportunities for themselves in completing school and going on to further education and employment, exposing them to a broader range of career options and working with those students to help them set some goals for themselves.

To date we have seen school-based traineeships in a range of industry sectors, including administration, the automotive industry, banking and financial services, beauty and fitness, community services, construction, engineering, health services, hospitality, labouring, retail and tourism. Obviously students generally take longer than 12 months to complete a traineeship, but we are starting to see some early case studies emerge of particular students even though some students are still at an early stage of their traineeship.

To give you a sense of the kind of process that providers use to get students connected to school-based traineeships, our provider in South Australia has been working with a high school student in South Australia. This young man was someone who was at risk of disengaging from education. Notionally he had an ambition to complete his South Australian Certificate of Education, but he really did not have a lot of motivation. He had some significant attendance issues at school. So the provider, which in this case was Mission Australia, worked with the student and with his school to work through the process of getting him reengaged with his education and work out what was going to motivate him, what was going to keep him engaged, what was going to help him manage his attendance.

The first thing they did was engage that student in a couple of short courses. He did two short courses in graphic design. That gave him an inspiration for something that he wanted to pursue further. They managed to match the student with a T-shirt printing company, where he commenced a school-based traineeship, and at the same time he started his certificate III in printing and graphic arts. That employment arrangement has been in place since November 2012, and it is really starting to show in the student's confidence and motivation. He is now working five days a week. The benefit of him completing the certificate III course is that it will also ultimately be submitted as part of his South Australian Certificate of Education. In addition to that, he is still enrolled in his high school undertaking some other units that will contribute to that certificate of education. The school, the provider and the employer—all three—are able to provide that young man with flexible arrangements that have helped him set his own goals and get engaged and be successful in both employment and study. That is the sort of model that we are seeing replicated across the program.

With the younger students, we are starting to see some of the models emerge from providers around how they engage younger students on aspiration building. We have seen

some examples in Victoria. Our provider there, AFL SportsReady, has established an event where they have a panel of Indigenous professionals engaging with Indigenous students to broaden the students' exposure to a diversity of career opportunities. It is an important part of that arrangement that students can see Indigenous professionals in those roles and see that these are the types of opportunities that they can aspire to as well. Following on from the panel, they build on that with employment and education workshops that are about exposing students to, and getting them to think about and to talk about, future employment and education possibilities for themselves. The workshops go to some of the skills and preparation students will need to pursue their employment goals: CV development, interview preparation and cultural activities. We have seen other providers who have run career expos, where they bring employers together with students and also employers together with education and training providers, so students can get a taste of what is out there and get some confidence about approaching some of these employers and education providers.

We also have some providers that are doing career mapping sessions with students, so sitting down with them on an individual basis and working through their career aspirations. So there is a range of different models emerging. And that part of the program, the aspiration building, is really important to building that pipeline of students who have the motivation and the commitment to get the most out of their education. It is also going to lead to more students being interested and qualified for school-based traineeships, but also, really importantly—and this is something that schools really value—is helping some students to set their ambition at university as well. The young man I talked about in the case study, some of the feedback is that he is starting to think about building on his cert III and go on to university study. So there are good stories coming through. It is early days for the program. Some of the students obviously have not made it as far as that, but it is encouraging to see those outcomes coming through quite early.

**Senator FURNER:** Thanks for that. I will go to FOGs. In particular, I want to know what the new proposals have been as a result of the two announcements of FOGs proposals for the Indigenous Employment Program and some understanding on those? In responding, could you indicate—I had origin great Gene Miles in my office some time ago and he was explaining the ARTIE program, so I would like to know if that has anything to do with those new announcements as well.

**Ms Wood:** Certainly. The FOGs, for others in the audience, are the Former Origin Greats who have run a number of programs under the Indigenous Employment Program over the past several years. They have been funded for just under 2.5 million over two years to run a series of career expos and they have run 14 Indigenous career expos so far. The expo model is not just an event that rolls into town and then leaves. In the lead-up to the expo, they also run Closing the Gap forums that not only bring together high school principals, employers and Job Services Australia providers to talk about the school-to-work transition and the importance of that for Indigenous students but also, really importantly, gets those stakeholders sharing some of their best practice in how they support their local students in school-to-work transition. In parallel with that Closing the Gap forum, there is also a corporate event that focuses on local employers presenting on their best practice initiatives for engaging and retaining Indigenous employees.

In 2012 there were seven of the FOGs Indigenous career expos in Cairns, Sunshine Coast, Mackay, Townsville, Rockhampton, Brisbane and Toowoomba. They had a total of 16,000 attendees with 363 exhibitors. The exhibitors would be employers and training providers that are seeking to engage with Indigenous school leavers, high school students and young jobseekers. In 2013 there will be a further set of expos in Brisbane, Cairns, Townsville, Sunshine Coast, Mount Isa and Toowoomba. In addition to that, we have had some recent discussions with the FOGs about where they would like to go next and what sorts of ideas they have for using the profile they have with young Indigenous people and the interests that young Indigenous people have in some of the Former Origin Greats to engage young people more directly in employment. We are starting a conversation there to look at what employment outcomes might actually be delivered using that kind of engagement that the FOGs have there.

The ARTIE Academy is not funded under the Indigenous Employment Program, it is funded under the Sporting Chance Program. Under the Sporting Chance Program the FOGs will receive around 5.7 million to continue the ARTIE Academy in 2013, 2014 and 2015 and expand the academy into Townsville. The ARTIE Academy uses sporting programs and cultural activities to help Aboriginal and Torres Strait Islander students stay at school, so again it is using that engagement of the sport and the role models in sport to keep young people interested and committed to completing their education. The ARTIE project has a target of reaching 2,000 Aboriginal and Torres Strait Islander students from years 4 to 12 and it will be operating in 21 primary and secondary schools across Queensland. Again, it is focusing on a younger cohort than the career expos that are funded through the Indigenous Employment Program, but it is using the same concept and similar kinds of engagement to get young people engaged around education.

**Senator FURNER:** Okay, thanks for that.

**CHAIR:** We have run out of time in this area, but we do appreciate the work from the officers. There will be questions on notice. I know Senator Scullion in particular had a couple of questions go on notice. Thank you very much.

**Proceedings suspended from 15:08 to 15:19**

**CHAIR:** The committee will resume. We will now move to Indigenous housing. Senator Scullion.

**Senator SCULLION:** I want to touch on some of the elements to do with the wind-up of SIHIP. Some houses were built and some houses were pushed over because they were uninhabitable and those sorts of things. Can I have some assurances, perhaps on notice, that no community has been left with the currency that was used at the time for the bedrooms, so they are not left with fewer bedrooms than they started with, particularly with regard to the refurbishments? Obviously you do not have time to break it down community by community. Perhaps you can indicate whether you are aware that there have been more bedrooms taken out of the housing pool by being demolished or written off than have been built in any community?

**Ms Edwards:** In all of the capital works which have been performed under NPARIH-SIHIP there is one location where after the building program there were fewer bedrooms than when it started—that is, Milngimbi.

**Senator SCULLION:** Is there any explanation as to how that occurred? Was it the nature of the original housing stock?

**Mr Sowry:** Across the delivery spectrum, we have put new houses into the remote service delivery communities. Overall, we have generally had on average a 27 per cent increase in bedrooms within communities. In the case of Milingimbi, as you are well aware, it is an island community and it is quite severely restricted in terms of its infrastructure and its water supply. It has an aquifer-fed water supply. So there are limitations as to the number of additional houses that we can put in.

The basis of the program is that we are providing houses that provide a greater degree of amenity. Within that they will be more in accordance with the National Indigenous Housing Guide. There will be greater provision of water, toilets and bathrooms to met the requirements of bathing, washing and so on. That overall has a greater demand on the community's water supply. The power and water corporation basically sets the limitations of how many additional houses we can add to a community. In the case of Milingimbi, it was a reduction of 11 bedrooms.

In doing the design and the consultation with the communities, the communities engaged very extensively, particularly so in the case of Milingimbi because of the nature of the impact of having fewer bedrooms. On paper, when we do our assessments of the number of bedrooms, that can also include bedrooms in improvised dwellings, enclosed verandahs where people have done their own partitioning of rooms and things like that. All those sorts of things impact on the data that we have in terms of the initial bedroom count.

In terms of the design improvements that alleviate the normal pressures of crowded living on household infrastructure, there is the design amenity that we add to the house—additional toilets, the improved cleanability of kitchens and floors et cetera, improved kitchens, more secure storage and the bedrooms are larger. There is culturally appropriate design so there are alternative exit and entry points for cultural avoidance behaviour in some communities. There is universal design for disability adaptability.

Overall, those sorts of things do reduce the normal pressures of crowded living. Certainly at the Indigenous Housing Conference that was held last year, the paper brought up by a presenter from Queensland addressed those sorts of issues and considerations that need to be incorporated into the housing design. Whilst we typically go by people per bedroom as a measure, there are some other factors that alleviate the overcrowding.

**Senator SCULLION:** I understand that the Milingimbi Council are currently looking at allocating some of the last areas of land that they think are available for housing. Are you aware of that?

**Mr Sowry:** I am aware that there have been some discussions, but again it comes down to the infrastructure of the community. There will be limitations placed on us by the power and water corporation.

**Senator SCULLION:** Do you think we have reached the limitations of additional bedrooms or houses on Milingimbi given the restrictions on the water and power?

**Mr Sowry:** In the foreseeable future, until such time as additional infrastructure can be provided, or an additional infrastructure solution, perhaps, to improve the water supply in that community.

**Senator SCULLION:** After some six years of a fair bit of expenditure under SIHIP, I know we were supposed to leave a legacy of trained Indigenous individuals. Can you tell me how many indentured apprentices have been employed under SIHIP?

**Mr Sowry:** Off the top of my head, I cannot give you the complete figure. I know with New Future Alliance there is one who has completed his apprenticeship, and that occurred about three weeks ago. They have I think three others who are currently undergoing their apprenticeship. For Territory Alliance, I would have to confirm the figure but I think it is around the same number, about four people. In some instances they have taken on apprentices and they have transferred those apprentices to other organisations as well.

**Senator SCULLION:** Perhaps on notice, if it is within your capacity to do so, you could give us tracking, to give the committee an understanding of the footprint of this legacy. I am really excited that anyone has got through it. It is a really good thing to have that capacity, but I am a little disappointed about the numbers, obviously. But if you could get it on notice that would be great.

**Mr Sowry:** Yes. That is just apprentices. In terms of courses and certificates, over the course of the program, we have engaged I think 1,858 Indigenous employees, and they have completed over 4½ thousand certificate related courses.

**Senator SCULLION:** If you can provide a list of the courses that were completed by those individuals, that would also be useful.

**Mr Sowry:** Yes.

**Ms Edwards:** Senator, Mr Sowry was talking about the Northern Territory alone. Obviously we have had really excellent results in Indigenous employment across the board in NPARIH. So I might draw this to the committee's attention. You are probably already aware of the NPARIH review, which I have copies of for you today, which deals with both the overcrowding and employment issues.

**Senator SCULLION:** Thank you very much. I understand Victoria has been allocated \$30.4 million under the National Partnership Agreement on Remote Indigenous Housing. Given that no areas of Victoria qualify as remote, can you explain where this money has gone and for what particular purpose?

**Ms Edwards:** The investment in Victoria under NPARIH is limited to the reform of the Indigenous housing centre, so the reform payments and upgrades there are to bring Indigenous housing providers—not necessarily remote—for Aboriginal people up to the standard you expect of housing. That activity is all that has occurred in Victoria under the NPARIH.

**Senator SCULLION:** I am assuming that, through the COAG agreement, everybody has to get their piece of the pie; if they have not got remote, they will need to get some anyway. The reason I asked the question is that I just took it from the title that that was specifically an allocation that was for those that had remote areas within their jurisdiction. How is that allocated? Do you go to a provider that upgrades the houses? For example, is it given to the Victorian government to run and they allocate through various providers?

**Ms Edwards:** Yes, all payments under the NPARIH go to state and territory governments. This is one of the elements of the reform separate to the capital works and the PTM and things we have discussed previously. It has to do with the transitioning to state community housing

frameworks of Indigenous community housing providers in order to provide consistency and sustainability of community housing management and support. So one of the additional elements of the NPARIH is to provide that upgrade and improvement and amenity. That may be in urban and regional centres.

**Senator SCULLION:** On notice, can you ask the Victorian government if they are able to provide a list of where the residences were and what was spent on each residence. In answer to question on notice 345 you indicated that \$242 million was spent on Indigenous community housing organisations. Whilst that was useful as a total number, would you be able to break that down into how much went to each organisation and whether there was a particular purpose or whether it was all part of the standard operations.

**Ms Edwards:** We can take that on notice.

**Senator SCULLION:** The minister recently announced an additional one year's funding for municipal services in the states. I understand perhaps New South Wales was not included in that or was not a recipient; nor was the Northern Territory. I think we were covered by a separate arrangement. Could you provide us with a list of the communities that were covered by that funding.

**Ms Edwards:** We can provide that on notice but Mr Matthews might like to provide just a general description of how that funding is delivered.

**Mr Matthews:** The municipal services program operates in Western Australia, Queensland, South Australia, Victoria and Tasmania. It generally supports about 300 communities all up, and around 65 to 70 providers provide those services. I do not have a list of the communities but we could take that on notice and table it. Basically it is those providers who are then engaged to continue the same services that have been provided for previous years.

**Senator SCULLION:** I think we are all still struggling with why the Commonwealth is involved in fundamentally local government business in municipal services. I think we all share the same frustration about that. What is the stumbling block? I understand historically that there have been negotiations to try to hand this back and to do these things, and I was beaten up the other day on the radio for suggesting that it was not our business. Why is the Commonwealth still doing this?

**Ms Edwards:** They are very complex arrangements, as you say, with a great history to them. The discussions with the states and territories are ongoing as to roles and responsibilities and how municipal services should be carried out in remote and very remote Australia. The extension of funding is to allow those discussions to continue, because you would agree that you would not want to leave people without services in the interim while those discussions are continuing. It is a very complex situation and it is important that we get it right.

**Senator SCULLION:** Do you reasonably anticipate a time frame where we may expect a line in the sand—we are not doing this any more—or is it just a part of ongoing negotiations that seem to keep going?

**Ms Edwards:** We are having intense discussions with the states and territories—

**Senator SCULLION:** They seem to enjoy having a chat about it rather than changing their position.

**Ms Edwards:** We are hopeful and confident we will be coming to an agreed position about the best way to deliver these services for Aboriginal people.

**Senator SCULLION:** I understand that HOIL has now been abolished. Can you tell me how many loans have been made for private housing on Indigenous land since 2007? Perhaps you can provide what information you have.

**Ms Gumley:** The Home Ownership on Indigenous Land program has not been abolished. IBA now runs a single home ownership program and those funds have been able to provide home ownership opportunities. My understanding is that 4,032 loans have been made available.

**Mr Litchfield:** Across Australia as of 30 April 2013 there were 4,032 active loans.

**Senator SCULLION:** Notwithstanding the privacy issues, is it possible to have a rundown that has been deprivatised—just the actual amounts for each of those loans? Would that be possible?

**Mr Pratt:** There is quite an administrative workload associated with that. Would it be all right if we put it into bands or something like that?

**Senator SCULLION:** That would be excellent. I want to get some indicators as to the amounts of money that are actually being used to facilitate it. The entire amount that is required for the house would also be useful.

**Mr Litchfield:** Senator, as you probably know, the Indigenous Home Ownership program is administered by Indigenous Business Australia, so this question may be better directed to them in the first instance. That type of information may—

**Senator SCULLION:** I will be taking that on notice in any event, so I will put the question on notice to them.

**Mr Litchfield:** And it may be readily available in the annual report, but I am sorry I cannot confirm that.

**Senator SCULLION:** Thank you very much. I have one question in regard to the hostels, but I might put that on notice as well, Madam Chair. I have a large number of questions that I will put on notice. Thank you very much.

**Senator PAYNE:** I do not have a lot of questions in this area, so I do not propose to detain the officers for an extended period of time.

**CHAIR:** We may surprise everybody by actually finishing early, which would be a miracle in itself. Go ahead, Senator Payne.

**Senator PAYNE:** Thank you very much. I am not sure when we last had a cross-jurisdiction update of the NPARIH progress. Can you provide one, please?

**Ms Edwards:** Yes, Senator. Firstly, I would refer you again to the NPARIH review, which was released—

**Senator PAYNE:** Which you are about to give me, Ms Edwards, I know.

**Ms Edwards:** I have already tabled some copies of the review.

**Senator PAYNE:** Thank you.

**Ms Edwards:** That review was conducted by an independently engaged contractor and was overseen by a steering committee of a number of jurisdictions, including the

Commonwealth, and then agreed by all of the jurisdictions. I think you will find that it provides a summary across the key objectives of the NPARIH. In addition, I have also got—

**Senator PAYNE:** Where is the numerical summary? I am happy to go to it.

**Ms Edwards:** We have some diagrammatic representations of progress of the NPARIH across the board—

**Senator PAYNE:** You are going to kill Hansard there, Ms Edwards; they cannot do that for you.

**Ms Edwards:** Indeed. So we might provide those, too, if you are interested in looking at them in a diagrammatic way. Also, I could just run through the overall achievements of the NPARIH for you, which, again, is covered and analysed in the review. Just generally speaking, I have numbers as of 31 March. We may have some more up-to-date ones, but I think these probably do for the overview. As at 31 March 2013, 1,629 new houses had been delivered and 5,351 refurbishments. That makes 39 per cent of the overall program target for new houses and 110 per cent of the target for refurbishments. You may have seen that some months ago the whole of NPARIH target for refurbishments was exceeded.

**Senator PAYNE:** I did

**Ms Edwards:** So now we are working with states and territories to find ways to do additional refurbishments, which is why we have the over 100 per cent figure.

**Senator PAYNE:** That is great.

**Ms Edwards:** NPARIH has been delivered in 93 communities in the Northern Territory, 57 communities in Western Australia, nine communities in South Australia, 28 communities in New South Wales and two communities in Tasmania. Obviously, that is the capital works and in addition to that is the work in Victoria we were discussing with Senator Scullion. Property and tenancy management reforms are well underway in all jurisdictions. When you have a chance to read the review, you will see that we are transferring our effort, keeping up our momentum, on capital works to ensure that the property tenancy management reforms are really embedded. They are likely to be an even greater focus over the remaining years of the NPARIH on the basis that providing people with the property and tenancy reforms is a key way of having sustainable housing and also better lives for people. So it is about making sure the rent is correct, that people have a tenancy agreement, that they understand their obligations and, very importantly, that repairs and maintenance is conducted appropriately. They are the really core parts of that element.

**Senator PAYNE:** Sorry to interrupt, Ms Edwards: is that what part 3.3, for example, is relevant to in the report? No, it is 4.2—reformed property and tenancy management.

**Ms Edwards:** It is referred to a couple of times in the report, in terms of one of the key challenges moving forward for the reasons I have described and there is also a description. In section 1, 1.6 is the summary of key findings from property tenancy management, and then that is expanded upon, and somewhere else that one of my colleagues will point me to in a moment—

**Senator PAYNE:** I think it is 4.2.1. No, that is the challenges, sorry.

**Ms Edwards:** I was just going to go on and mention, as an overview, the two other additional elements of the NPARIH. The first is the Employment Related Accommodation

Program, which has delivered a total of 83 houses and five units with an estimated 277 bedrooms, and four hostels with 54 beds and four family units. That is designed to give accommodation to people to allow them to pursue education and employment opportunities outside of their home community. The second is the Indigenous community housing organisation reforms, which we mentioned before. Across all of the capital works—and a key focus for us as well—are the Indigenous employment targets. The 20 per cent Indigenous employment target has been met or exceeded by all jurisdictions throughout. Again, that is one of our key challenges going forward—to make sure that the skills and employment obtained through the capital works are maintained both in our property and tenancy management and also in other forms of employment.

**Senator PAYNE:** Is it possible to break down the numbers you gave me earlier—1,629 houses completed and 5,351 refurbishments completed—by jurisdiction?

**Ms Edwards:** I think Ms Campbell may even have 30 April figures to update you with.

**Ms Campbell:** To 30 April, there were 145 new houses completed in New South Wales; in Queensland, 190; in South Australia, 119; in Western Australia, 321; in Tasmania, 8; and in the Northern Territory, 848. For refurbishments, New South Wales had 401; Queensland, 1,072; South Australia, 178; Western Australia, 890; Tasmania, 51; and the Northern Territory, 2,725.

**Senator PAYNE:** Previously there has been an 'other' category. I am looking at the table now and thinking, 'I do not know what that is myself.' Do you have an 'other' category?

**Ms Campbell:** We do. For new houses, that is 51. For refurbishments, it is 119. That represents housing completed from former Commonwealth funded programs since NPARIH commenced.

**Senator PAYNE:** Thank you for clarifying that. I could not decipher my own notes. The figures I had in front of me were as at the end of the last financial year. In some of those jurisdictions, particularly in 'houses completed', there has been little or no shift. Is that because maximums have been reached or is progress slow for another reason? For example, according to what I am trying to decipher here, there were 135 houses completed in New South Wales as at 30 June 2012 and now it is only 145 houses. In South Australia, the number at 30 June 2012 was 119 and is still 119.

**Ms Edwards:** The number of new houses for this year as at 31 March—and you might have a 30 April number—is 530 houses. So you can see there has been—

**Senator PAYNE:** You are going to kill me doing that.

**Ms Edwards:** It is because I have an old folder, I am sorry. But there have been more than 500 new houses this financial year. So we should be clear that there have been a lot of houses built so far this financial year. The other thing to note is that how many houses you do depends on local conditions. In Tasmania, for example, we have very small numbers. In addition, traditionally, the bulk of the building work—completion and acquisition—happens in the last quarter of the financial year.

**Senator PAYNE:** I am not sure what the due date is for return of answers, but could I ask you to provide me with those figures updated to 30 June?

**CHAIR:** They are due on 26 July.

**Senator PAYNE:** Good, that will work.

**Ms Edwards:** Noting that, of course, the final figures are not available to us on 30 June. We may struggle a little bit with that timing, because they have to be verified and supplied by the states and so on.

**Senator PAYNE:** See how you go. I would appreciate it. Thank you very much.

I want to ask a question about a specific remote area, which has been raised with me, which is the central Western Desert region of Western Australia. As I understand it, the Western Desert Lands Aboriginal Corporation, is predominantly the body corporate for that area and the main communities are, Parngurr (Cotton Creek), Jigalong, Punmu and Kunawarritji (Well 33). It has been raised with me that there has been very little work done in those communities for in excess of two decades. Is that the responsibility of the state governments to raise those particular areas with the federal government? Who actually identifies the areas specifically?

**Ms Edwards:** I do not have the detail with me today—and I do not think Ms Campbell would either—on those particular communities. Generally speaking, where you direct investment is primarily a matter which the state governments come up with and then it is discussed and agreed. That would be dependent on need—also bearing in mind that the need across remote Australia is enormous, so it is a long-term process.

**Senator PAYNE:** Yes, of course.

**Ms Edwards:** Primarily the states make an investment plan, sometimes a long-term plan, and those are discussed in the joint steering committee meetings and proceed in that way.

**Senator PAYNE:** Okay. I will pursue that further then in other ways. Twenty years just struck me as a long time to have not seen any movement in that area.

Madam Chair, I had one other question. It may have been answered in part when the officers were talking to Senator Scullion about land tenure reform. I was actually writing some questions on another document. So if it was asked and answered then please tell me and I will just go to the *Hansard*. Does this report give me any updates on land tenure reform or is that a separate report?

**Ms Edwards:** It does deal with the issue. It talks about the general approaches and what advances have been made. But, Senator, if you are interested in an update on leasing in the Northern Territory, I can certainly provide that today. That is something we tend to provide usually at estimates.

**Senator PAYNE:** Yes, indeed.

**Ms Edwards:** In terms of where we are up to or?

**Senator PAYNE:** I am very interested in that. That would be helpful, thanks, Ms Edwards. Can you briefly describe forming the sort of information I can glean from the report on land tenure reform? Obviously now I will go to the whole report myself.

**Ms Edwards:** Hoping that I quote appropriately, generally it deals with the fact that an important part of the NPARIH is to allow capital works, and property and tenancy management need to be supported by secure tenure going forward to ensure that the government's investments are maintained and also that the property and tenancy management can happen—obviously tenancy agreements. How that goes forward depends a lot on the underlying tenure. For example, in the Northern Territory, it is primarily the Aboriginal Land

Rights Act or community living areas, so there is leasing involved. In Western Australia it is a very different type of arrangement. Some places have native title issues that also need to be resolved prior to a building work. So there has been a diversity of strategies put in place by the states with our support to make sure that they can be sure that government can have access to the properties for the period in order to do repairs and maintenance and so forth. The report basically provides a little bit of a snapshot of the way each jurisdiction has gone about that process. I think it makes the point that a lot of progress has been made—certainly over the period of the NPARIH and so forth—and also it puts out a key challenge to keep that reform going, because it is not only essential for housing services but for economic development and home ownership and service delivery.

**Senator PAYNE:** Okay.

**Ms Gumley:** Could I also add that one of the other reforms that NPARIH required was that state governments would work on normalising the land tenure arrangements to provide a suitable environment for private investment, home ownership as well as that secure tenure. A very important part is that economic development that Ms Edwards was talking about.

**Senator PAYNE:** Thank you very much, Ms Gumley.

**Ms Edwards:** Then in relation to our work to achieve leasing in the Northern Territory to support the housing program, I will just provide an update on that. On the last occasion we met with the committee, we were happy to advise that leases had just been agreed at Imangara and Ali Curung. We have had a lot of progress since then. We have recently had agreement at Alpurrurulam, Ampilatwatja, Atitjere, Imanpa, Laramba, Tara and Titjikala. This brings it to a total of 45 communities that have agreed to leasing out of 64 five-year-lease communities.

You would be aware that there are also whole-of-township leases in place in additional communities in the Northern Territory. There are some that, for various reasons, do not require leasing, because they are already Northern Territory crown land and so forth. So we really feel pleased that we have a very large proportion of the leases in place. We are continuing to work on that. We would certainly have well and truly enough leasing to support the capital works program in the Northern Territory for at least the next two years.

**Senator PAYNE:** That is very interesting. I do have some more questions on that, but I would like to examine the *Hansard* and come back on those. Can you advise who the author of the report is?

**Ms Edwards:** It was written by Dianne Hawgood, who was engaged as a contractor by the department.

**Senator PAYNE:** I am not familiar with Ms Hawgood's work. Could you give the committee an indication of her experience in this area?

**Ms Edwards:** Ms Hawgood is a very experienced, long-term public servant. She did some work with the steering committee initially to scope the review and then, with the agreement of all the jurisdictions, was engaged to continue the report. She has a long experience in Indigenous affairs and housing, as well as other things.

**Senator PAYNE:** What was the cost of the report?

**Ms Edwards:** Yes, I think Ms Campbell probably can.

**Ms Campbell:** We are still finalising costs, because this is still hot off the press. But it is around \$200,000.

**Senator PAYNE:** And Ms Hawgood did that as a consultant, I assume?

**Ms Edwards:** As a contractor.

**Senator PAYNE:** This might be a question for Mr Pratt, but is this a report to which the government is expected to make a response? Perhaps it is for Ms Edwards, I am not sure.

**Ms Edwards:** I have just been passed a note to say I have understated our achievements in leasing. There are 48 rather than 45 of the previous number.

**Mr Pratt:** I do not know whether the report is going to be responded to by the government, but certainly the government will study it very carefully and take it into account in developing its policy in this area.

**Senator PAYNE:** Will you be seeking responses from the states and territories?

**Mr Pratt:** I imagine that we will be seeking that.

**Ms Edwards:** It has already formed the basis of the work we are doing with states and territories for the next five years of the NPARIH.

**Senator PAYNE:** I do have a number of other questions relating to tenure that I might put on notice.

**CHAIR:** It is the first time, since we had this day of hearings, that we have ever finished before time. It is a good way to end this Parliament. Thank you very much to Mr Pratt and all the officers. We deeply appreciate the cooperation and support that your officers have given us from the very start. We will end today's hearing.

**Committee adjourned at 15:53**



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

COMMUNITY AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

FRIDAY, 15 FEBRUARY 2013

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

**Friday, 15 February 2013**

**Members in attendance:** Senators Boyce, Fierravanti-Wells, Furner, McEwen, Moore, Scullion, Siewert, Smith.



## **CROSS-PORTFOLIO INDIGENOUS MATTERS**

### **In Attendance**

Senator Farrell, Parliamentary Secretary for Sustainability and Urban Water

**Department of Families, Housing, Community Services and Indigenous Affairs**

### **Executive**

Mr Finn Pratt, Secretary

Ms Liza Carroll, Deputy Secretary

Mr Michael Dillon, Deputy Secretary

Ms Felicity Hand, Deputy Secretary and Chief Operating Officer

Ms Serena Wilson, Deputy Secretary

### **Outcome 7**

Ms Julia Burns, Group Manager, Corporate Support

Ms Caroline Edwards, Group Manager, Strategic Priorities and Remote Housing

Mr Anthony Field, Group Manager, NDIS Legislation

Ms Kate Gumley, Group Manager, Land and Economic Development

Mr Steve Jennaway, Group Manager and Chief Finance Officer, Business and Financial Services

Ms Cate McKenzie, Group Manager, Women, Children, Communities and Mental Health

Ms Donna Moody, Group Manager, Operations Strategy and Performance

Ms Janean Richards, Group Manager, Legal and Compliance

Mr Brian Stacey, Group Manager, Indigenous Engagement and Remote Delivery

Ms Kari Ahmer, Branch Manager, Stronger Futures in the Northern Territory

Ms Sharon Bailey, Branch Manager, Ministerial, Parliamentary and Executive Support

Ms Helen Bedford, Branch Manager, Children's Policy

Ms Tracey Bell, Branch Manager, Communication and Media

Mr Phil Brown, Branch Manager, Stronger Communities

Ms Belinda Campbell, Branch Manager, Indigenous Housing Delivery

Ms Joanna Carey, Branch Manager, Public Law

Ms Lisa Croft, Branch Manager, Remote Service Delivery

Mr Andrew Davitt, Branch Manager, Community Development and Purchasing

Ms Mandy Doherty, Branch Manager, Reconciliation and Relationships

Ms Lee Emerson, Branch Manager, Land Programs

Ms Jill Farrelly, Branch Manager, Mental Health

Ms Liz Hefren-Webb, Branch Manager, Welfare Payments Reform

Mr Matthew James, Branch Manager, Performance and Evaluation

Ms Michelle Kinnane, Branch Manager, Indigenous Commonwealth State Relations Support

Mr Andrew Lander, Branch Manager, Assurance and Compliance  
Ms Jan Lawless, Branch Manager, Cross Portfolio and Information  
Ms Diana Lindenmayer, Acting Branch Manager, CDEP  
Ms Lynette MacLean, Branch Manager, People  
Mr Gavin Matthews, Indigenous Housing Programs  
Mr James McDonald, Branch Manager, Stakeholder Engagement and Capacity Building  
Ms Marian Moss, Branch Manager, Commercial and Indigenous Law  
Ms Sally Moyle, Branch Manager, Indigenous Housing and Land Policy  
Ms Susan Parker, Deputy Branch Manager, Communication and Media  
Mr Robert Ryan, Branch Manager, Remote Priorities  
Mr Pat Sowry, Executive Director, Remote Housing NT  
Ms Fiona Smart, Branch Manager, Women's Safety and Family Violence  
Ms Janet Stodulka, Branch Manager, Family Support Program  
Ms Eliza Strapp, Acting Branch Manager, Family Support Program  
Ms Kim Vella, Branch Manager, Leadership and Governance

**Coordinator General for Remote Indigenous Services**

Mr Brian Gleeson, Coordinator General for Remote Indigenous Services  
Dr Timothy Reddel, Deputy Coordinator General for Remote Indigenous Services

**Office of the Registrar of Indigenous Corporations**

Mr Anthony Beven, Registrar, Office of the Registrar of Indigenous Corporations

**Indigenous Land Corporation**

Mr Bruce Gemmell, Acting Chief Executive Officer  
Ms Jodie Lindsay, Chief Operating Officer  
Mr Bob Harvey, Director, Major Employment Projects

**Indigenous Business Australia**

Mr Leo Bator, Acting Chief Executive Officer  
Mr Satish Kumar, Chief Financial Officer

**Department of Education, Employment and Workplace Relations**

Ms Jennifer Taylor, Deputy Secretary, Early Childhood, Working age and Indigenous Participation

Ms Jo Wood, Group Manager, Indigenous Economic Strategy  
Ms Brenda Love, Branch Manager, Indigenous Economic Strategy  
Ms Lynne Stevenson, Branch Manager, Indigenous Economic Strategy  
Ms Tania Rishniw, Branch Manager, Indigenous Economic Strategy  
Ms Marsha Milliken, Group Manager, Income Support and Remote Service Implementation  
Mr Derek Stiller, Branch Manager, Job Services Australia

Ms Ingrid Kemp, Branch Manager, Remote Services Implementation

Mr Tony Zanderigo, Group Manager (Acting), School Performance and Improvement

**Department of Health and Ageing**

**Whole of Portfolio**

Mr David Learmonth, Deputy Secretary

**Outcome 8**

Mr Adam Davey, Acting First Assistant Secretary, People, Capability and Communication Division

Ms Michelle Howe, Acting Assistant Secretary, Health Campaigns Branch

Mrs Samantha Palmer, First Assistant Secretary, Office of Aboriginal and Torres Strait Islander Health

Dr Jenean Spencer, Assistant Secretary, Operational Policy Branch

Ms Tarja Saastamoinen, Assistant Secretary, Strategic Policy Branch

Mr Garry Fisk, Assistant Secretary, Capacity Development Branch

Ms Alison Killen, Assistant Secretary, Program Management and Evaluation Branch

Dr Masha Somi, Assistant Secretary, OATSIH Support Branch

Ms Linda Young, State Manager, NT State Office

Ms Sue Champion, First Assistant Secretary, Mental Health and Drug Treatment Division

Mr John Shevlin, Assistant Secretary, Substance Misuse and Indigenous Wellbeing Programs Branch

Ms Penny Shakespeare, First Assistant Secretary, Health Workforce Division

Ms Gay Santiago, Assistant Secretary, Health Workforce Capacity Branch

Mr Nathan Smyth, First Assistant Secretary, Population Health Division

Ms Colleen Krestensen, Assistant Secretary, Drug Strategy Branch

Ms Janet Anderson, First Assistant Secretary, Acute Care Division

Mr Charles Maskell-Knight, Principal Adviser

Ms Ann Smith, Assistant Secretary, Hospital Development Branch

Ms Gillian Shaw, Assistant Secretary, National Partnership Agreements branch

Mr Mark Booth, First Assistant Secretary, Primary and Ambulatory Care Division

Ms Meredith Taylor, National Manager, Rural and Regional Health Australia Branch

Mr Iain Scott, First Assistant Secretary, Office of Aged Care Quality and Compliance

Ms Lyn Murphy, Assistant Secretary, Quality and Monitoring Branch

Ms Tracey Duffy, Assistant Secretary, Office of Hearing Services Branch, Regulation Policy and Governance Division

Ms Cheryl Wilson, Executive Director, Office of Hearing Services Branch

**Committee met at 08:23**

**CHAIR (Senator Moore):** Welcome. I declare open this Senate Community Affairs Legislation committee hearing on the cross-portfolio Indigenous matters. The committee is considering additional estimates on Indigenous matters across several portfolios. These have been grouped on the program into themes and issues, and relate to the portfolios of Families, Housing, Community Services and Indigenous Affairs; Education, Employment and Workplace Relations; and Health and Ageing. The committee must report to the Senate on 19 March and has set Friday, 5 April, as the date for return of answers to questions taken on notice. The senators are reminded that any written questions on notice should be provided to the committee secretariat by close of business Friday, 22 February. Officers and senators are familiar with the rules of the Senate. If you have any questions, the secretariat are here to help.

I particularly draw attention to the Senate order of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

I welcome Senator Don Farrell, who was at the last estimates, and Mr Pratt, and officers of the portfolios that you are looking after today. Mr Pratt, I want to put on the record our appreciation to the officers for coming together and holding the pre-planning meeting for today. It makes it much easier. Mr Dillon has been able to coordinate that. The committee wishes to record its appreciation of that on the record. Senator, do you have an opening statement?

**Senator Farrell:** I like the hearings so much, I have come back, as you say, but I have no formal statement at this point.

**CHAIR:** The committee wishes to register our disappointment—no. Thank you, Senator Farrell. Mr Pratt, do you have an opening statement.

**Mr Pratt:** No, thank you.

**CHAIR:** We will start with the general matters, as per the agenda.

**Senator SCULLION:** Good morning, Mr Pratt, Senator Farrell, Mr Dillon. Last night we have received the final FaHCSIA responses to questions on notice from the last estimates. Thank you for providing them. Clearly, you also spoke to the Northern Land Council and I am also grateful for that. I know these are difficult things. Sometimes, there are quite a number of questions on notice and I know the administrative issues there. However, I make the plea that many of the answers are predicated upon other questions—some are more helpful than others, you may not have quite got the gist of some of the questions and some further information may be available but only know that when we get the answer. It is very difficult the night before estimates to receive those answers and move ahead on those things. The Senate does require them quite a considerable period of time before now, but I do thank you for providing the answers.

In terms of the answers to the questions on notice, Mr Pratt, you can actually send the answers to questions earlier than the due date. I think that is a useful reminder—a bit like the speed limit. I know you are busy with the business of government and I appreciate that. But it makes it very difficult to do the research that is necessary when we do not have those answers.

**CHAIR:** Mr Pratt, can I put on the record this is a standard process in our committee and we understand the difficulty, particularly with the wide range of issues and a number of questions. We have asked this before. If there is going to be a delay with particular answers because of the complexity or because you need to get in contact with other people, we need to be advised of that. It would just be an easier process for us down the track. If we have an expectation that some questions will be late—and of course that is understandable with the volume—and if there are particular questions that have issues that will affect their delivery, it would be useful if we had that interim acknowledgement.

**Senator SCULLION:** I would like them to be provided when you have them and I insist on that, as would the committee. You would understand that the Senate would insist on having them provided by the due date as provided in the Senate orders and that has not happened.

**Mr Pratt:** I apologise to the committee for the late responses. There is no adequate excuse for that other than of course the fact that we often have to get material from other sources and so forth, and I agree we should provide what we can by the due date. In our defence, however, from the last estimates we got nearly 500 questions on notice. We had probably over 90 per cent of those answered around Christmas or early in the new year. We of course put our best efforts in to getting as many done as possible. I apologise for the lateness of the remaining few, but I think our record is actually not too bad in terms of getting the vast bulk through. We will continue to try to do better though.

**CHAIR:** I would put on record our disappointment with the answers from the Northern Land Council and Senator Scullion particularly raised this last week. I know it was followed up by the secretariat. It took the secretariat a number of contacts with the Northern Land Council to get responses and the last of those came through last night. I do not know whether Senator Scullion is going to follow-up on those. However, I particularly wanted it put on the record that numerous contacts were made. I know that is not your particular area. But questions were put on notice by this committee at the last estimates. Senator Scullion followed this up twice to see whether they were back and yet they were still only received at the very last minute.

**Mr Dillon:** In relation to the Northern Land Council, I also put on record that we have recorded on file 26 follow-ups from the department to the Northern Land Council between November 2012 and last night.

**CHAIR:** I was very pleased you put that on record, Mr Dillon.

**Senator SCULLION:** I do appreciate that, and perhaps we should remind ourselves that the Northern Land Council get \$10 million a year. They are a Commonwealth statutory authority. I am not really sure, apart from putting it on the record and next time I have a chat to them I will perhaps remark on it to them personally, that we should support conventions that are basically outside of the standing orders.

To facilitate today, we have some arrangements in terms of timing with the chair and the committee. Items appear through the day which involve numbers and so on. I thought I would expedite the process and I have provided those questions of that type. If you can answer them, and I know how helpful you can be, Mr Pratt, fine. If not, you got them early and they are questions on notice, as you will see; they are details of numbers and those sorts of things.

**Mr Pratt:** To clarify, Senator, do we have those?

**Senator SCULLION:** I will pass them to you now, Mr Pratt. By way of explanation, you will be a bit miffed to know why I am asking the Indigenous cross-portfolio, some issues about income management, again some administrative numbers. We did attempt to ask the questions in the right portfolio but I understand somebody said no. Anyway, there was some confusion there, but I have included the question on notice in here in that regard.

In terms of some of the general items, I would like to ask about the availability of a report. No doubt you can recall certain allegations about the chair of the IBA that surfaced in the estimates I think around May last year. I understood a review was then commissioned by the minister. In August last year the minister revoked a misbehaviour determination that was introduced by the Howard government under the ATSIC Act. Is there a link between those two events?

**Mr Dillon:** I am not aware that there is any link whatsoever, but I would happily be corrected by colleagues behind me.

**Senator SCULLION:** No-one is leaping up. The explanatory memorandum for the instrument that revoked this determination says that it was revoked on the basis of a report that claimed that as a result of the abolition of ATSIC the regulation was redundant. The original determination was not in fact redundant as the misbehaviour determination applied not only to ATSIC but to officeholders of TSRA, IBA and ILC, for example. So the ATSIC Act was not repealed, it was simply amended and renamed the Aboriginal and Torres Strait Islander Act. The determination would have applied to it under that as well. Could I have a copy of that report the minister relied upon that said the determination was redundant?

**Mr Dillon:** We will have to take that on notice. It will be useful if you could put on the record the actual title of the instrument the minister signed.

**Senator SCULLION:** There was a revocation of the misbehaviour determination. I am not sure exactly what that would be but I am more than happy to assist you on notice in that regard.

**CHAIR:** What was the date?

**Senator SCULLION:** It was in August last year but I do not have the exact date. If I had a copy of the report I would not need to ask questions.

**Mr Dillon:** That will help us. Thank you, Senator.

**Mr Pratt:** Just to be clear, I think Mr Dillon has indicated that he has absolutely no knowledge of any link between the two and I certainly have no knowledge of any link between the two.

**Senator SCULLION:** I appreciate that. I have a reply to a question on notice to the minister asking about the distribution of royalty equivalents under the Aboriginal Land Rights Act. The question number was 2567. I do not have it and the answer in front of me but if my memory serves me well it was part (d) the question.

I think it related to how traditional owners are kept informed about the investments made on their behalf by royalty associations. Again, it is one of those times when someone may have misread the question and meant no mischief, but the answer was given in the context of circumstances where the land council holds that money in trust when recipients have not been

clearly determined. I appreciated that answer, but what I was referring to was the normal processes where those funds are distributed through royalty associations to the traditional owners. How exactly are they informed? Is there a requirement to inform them in the same way that, say investors in superannuation funds get regular updates about what is their portfolio, how much it is worth and how it is going? Many Aboriginal people would see this as their superannuation. I have plenty of questions about this issue from my constituents. Would you be able to assist me in how that works? What is the frequency and the nature of the advice provided to those traditional owners about those investments through the royalty associations?

**Mr Dillon:** This is a matter for the Northern Land Council who has administrative and legal responsibility for those investments. Ms Edwards might wish to make a further comment, but I think this is a matter that we ought to put to the Northern Land Council, or the land councils generally.

**Senator SCULLION:** I have put this question to the land councils before. It is not that the question was unsatisfactory, but they tell me, 'It is the royalty associations, and we know nothing of it.' Basically, that all disappears and nobody knows anything more than the land council. It is not their job, it is the royalty associations. It is fundamentally still the act that we manage. I am genuinely trying to find this out because I will be sneaking around in this area, trying to get a bit more information and trying to find out exactly how I can provide my constituents with some real information about their investments.

**Ms Edwards:** I would only add to the comments of Mr Dillon to note that it is actually question 459 of those you were referring to earlier, provided by the NLC on Wednesday night, in this instance. I really want to clarify this is the information you are talking about. The third part of the question is:

What information do royalty associations provide to the NLC?

And previously:

Can you explain what reporting processes or arrangements are in place between the NLC and the royalty associations?

And you have their answer there. Is this the information that you are—

**Senator SCULLION:** It is in that area. Was that a question to the NLC, or to the minister?

**Ms Edwards:** Correct. To the NLC.

**Senator SCULLION:** You can see by the answer that I did not really get one. I wrote another question which was taken on notice by the minister, and that was number 2567. It was quite useful. The answer given to part (d) of that question was in the context of there being circumstances where the land council holds the money in trust. The answer effectively said that the money is held in trust and the details of that trust are provided in the annual report. I am saying that is a very tiny percentage of the circumstances. Most of the time it comes to the land council then goes to a royalty association, the royalty association then deals with those investments of behalf of Aboriginal people. This is all done under a Commonwealth act. I am very concerned that many of the constituents have absolutely no idea how much, where it is, what the investments are made for. They have tried through royalty associations to find out these things. I am also very interested to find out how these are distributed, what sort of

information is provided to them informing them that we now have new royalties, this is where it is being invested, is there a choice. I am interested in all of these sorts of processes. I have been trying for a couple of years to find out. While it has not been a really significant issue, it is becoming more and more significant to me because I cannot seem to find out any information. The Northern Land Council has not been helpful in my view. Perhaps it is the case that the process is that the money simply goes out the door of the land council and none of us can ever find out about it again. But, if that is the case, let us have a look at that.

**Mr Pratt:** Are you asking the department the question: how does the Northern Land Council provide information to traditional owners about royalties they may get? Is that the question?

**Senator SCULLION:** It is, but I understand also that the Northern Land Council, as you have indicated, Ms Edwards, has the view: 'That's not our problem. That's the royalty association. You can't ask us about them. We are nothing to do with them.' Although they share an office, they are nothing to do with them and they know nothing about it. That is why I have just come back to the minister. I am not asking about exactly what happens but about what should be the process? This is taxpayers' money that has been paid through royalty equivalents. A third or so of it ends up as investments in royalty associations or disbursements for royalty associations. What I am looking for is some transparency about exactly how that works, particularly how individuals are informed of their investment. I was looking for information about the process, not particular details, that I thought you, as the department, would be aware of.

**Mr Dillon:** The high-level process is as follows: the land rights act provides a statutory function to the Land Council to oversee the statutory royalties that are paid to royalty associations. Under that legislation those associations must be incorporated under the CATSI legislation. So there is a regulator—the registrar—who ensures that CATSI corporations hold AGMs and do all those things that a corporation should normally do, including being responsive to its members. However, I would characterise that as high-level oversight. It is quite possible that the NLC does not have a line of sight to the investments, for example, inside a separate corporation. It is a separate legal entity and once those royalties are transferred, legal ownership of the royalties transfers with them. They have a statutory oversight function but they—

**Senator SCULLION:** They just cannot see it.

**Mr Dillon:** They do not have a responsibility for knowing which investments they are investing in: bonds, shares or whatever. But the corporations themselves—the royalty corporations—have a responsibility to their members, and it would certainly be good public policy for those corporations to be held to account in terms of their responsiveness to their members, and that is one of the tasks of the regulator, the registrar.

**Senator SCULLION:** I understand it, Mr Dillon. Thanks for explaining that to me. That is very useful. The challenge is that whilst it is Commonwealth funding that is going through there is this point under which there is no more scrutiny from us. I can call the Northern Land Council here, because they are a Commonwealth statutory authority, but, as I understand it, there is no scrutiny I am aware of that is allowed by the Commonwealth, through estimates, for example, to bring those royalty associations before us to ask all of these questions. I

understand we have some comfort because these, in fact, have to be incorporated under the CATSI act.

Obviously, I cannot get any more information, but would you be able to provide a brief to the committee about, for example, the names of those organisations under the act that are currently distributing royalties? We have got four land council areas, so they will have different arrangements. I will not say that the Land Council were reluctant, but they were particularly unhelpful. Would it be possible for you to seek that information and provide a brief? Perhaps you could make a suggestion whether, under the CATSI act, there is somebody else who could come and say, 'This is the oversight we provide to these corporations.' There are anecdotal circumstances that have been put to me. People say: 'I just don't know. I just came along to this meeting. There are all sorts of horrible stories about people saying, "Take it or leave it," or "I'm going on the plane, and you will all get nothing."' All this sort of stuff. There must be a process of oversight. There are significant sums of money involved, so we need a brief of some form. I am not really sure about how to pursue it, but it would seem that is the responsibility of the Land Council, when they are passing this over, to have some security that there is some probity around the allocation of the funds, and that the people whose funds that that organisation invests on their behalf are, in fact, informed in much the same way as any other Australian would want to be informed about their investments.

**Mr Dillon:** We would be happy to take your request on notice and try and produce an explanation for you. I make the point that this is a complex space. Your comments and my answers have been about the statutory royalties. There are also privately negotiated royalties which go through a different set of mechanisms.

**Senator SCULLION:** I am only interested in those royalties that are the royalty equivalent under the act.

**Mr Dillon:** In this space there is always a lot of argument on the ground as to entitlement and access to funds. That is the normal course of business in this area, so it is not an easy area to administer. There are always going to be disaffected or unhappy individuals.

**Senator SCULLION:** And many of them ask me simple questions. One said: 'I don't know how much, it would be in the hundreds of thousands. All I want is a deposit for a house, but they won't give it to me. I can't access it.' These are people I know to be senior traditional owners. Through this process I have hit a wall on these issues. I would appreciate it if you could get a brief on this. If it is the case that it is beyond the purview and we simply cannot get it, we may have to start thinking about changing the act. I am not sure what we will have to do, but it is quite reasonable that we have more transparency around those processes. I would appreciate it if you would get back to me in that regard.

**Senator SIEWERT:** I have Closing the Gap questions on health that I will ask under DOHA. I also have questions that will be across the portfolios of the Coordinator General and FaHCSIA.

**Mr Pratt:** I have seen the Coordinator General here, so we can cover those off in the next session.

**Senator SIEWERT:** I also have questions about a report FaHCSIA commissioned about homelessness and young people in Kununurra. Where will we deal with that?

**Ms Gumley:** Is it about mainstream housing services or general homelessness? If you give me the source of the report I can make sure we have that information.

**Senator SIEWERT:** It is a report about at-risk young people which includes homelessness. It is based on Save the Children research undertaken in 2010 funded by FaHCSIA.

**Ms Gumley:** Could you give us the name of the report?

**Senator SIEWERT:** It is about the public place dwelling of Aboriginal young people in Kununurra. It is called 'Research to inform the development of the youth diversion communication strategy in the East Kimberly and Central Desert Region (CDR)'.

**Mr Pratt:** Understanding the nature of the report, we will do some research and try and cover it off this afternoon during the housing session.

**Senator SIEWERT:** Thank you.

**Senator SMITH:** I would like an update on the Aboriginal Benefit Account and any decision with regard to the 1 August to 31 August application period. What is the time frame around decisions for applications that closed on 8 February?

**Mr Dillon:** I have a brief which I cannot find. Lee Emerson might help us.

**Ms Emerson:** To clarify your question, you wanted to know what the status of the account was? What recent decisions—

**Senator SMITH:** Yes. What recent decisions have been taken in regards to the projects that had been submitted in the 1 August to 31 August 2012 application period? What might be the future time line for those applications that have been submitted for the period that closed on 8 February?

**Ms Emerson:** I would probably have to take some of those on notice just for the actual time lines themselves. I understand, though, that the minister has approved three projects this year from recent recommendations and I think the other current recommendations are still being considered.

**Senator SMITH:** Considered by the department still?

**Ms Emerson:** I think so. I think advice is being prepared.

**Senator SMITH:** Right. If you could provide me with that information about the decisions that have been taken that would be good. The ABA, Aboriginals Benefit Account program, had previously funded the protective behaviours program Safe4Kids creating safer communities in the Northern Territory. I just want to make sure that the department was aware of the positive report that that program got in the New South Wales Ombudsman's December 2012 report responding to child sexual assault in Aboriginal communities. Are you familiar with the Ombudsman's report?

**Ms Emerson:** I am not. The children's services area would be familiar with that.

**Senator SMITH:** You can take these on notice.

**Ms Emerson:** Yes, that might be best.

**Senator SMITH:** I just want to be sure that the department is aware of the New South Wales Ombudsman's report and the positive reflection that has been given to the Safe4Kids

creating safer communities in the Northern Territory program, which was funded by the Aboriginals Benefits Account.

**Ms Emerson:** Thank you. That its excellent feedback.

**Mr Pratt:** I can almost certainly guarantee we are across the report. We will make sure we have had a look at that part.

**Senator SMITH:** Thank you very much.

**Mr Dillon:** I could add that the ABA guidelines are really based on one-off grants. It is not an ongoing funder of programs.

**Senator SMITH:** Does that mean that successful programs have to look for funding elsewhere?

**Mr Dillon:** In short, yes.

**Senator SMITH:** I may quote from the New South Wales Ombudsman's report, which talks about a significant positive benefit that this particular program is having in Indigenous communities. Page 63 of the report states:

Most importantly, Safe4Kids provides children with an opportunity to participate in decision making about their own safety and wellbeing. In recognition of the high quality of the Safe4Kids program, Absec has recently engaged Ms Martin to provide protective behaviours training to Aboriginal out-of-home care service providers across NSW.

Then it goes on to report the very significant benefits of the program. What funding opportunities exist for successful programs that are delivering a benefit, that are protecting young people from life destroying behaviours in Indigenous communities if they are first developed and implemented through the ABA? Where does a successful program go after that?

**Mr Dillon:** In the Northern Territory, one obvious answer will be the significant funding that will flow through the Stronger Futures in the Northern Territory program, which from memory is \$3.4 billion over 10 years. We are in the process of finalising the negotiation of the implementation plans. The national partnership agreement has been signed by the two governments.

**Senator SMITH:** So there could be a gap in the period in which—Mr Dillon are you referring to another colleague or—

**Mr Dillon:** I think Ms McKenzie may have more information for you.

**Ms McKenzie:** One of the things in terms of Indigenous children and both sexual assault and abuse and neglect is that they are part of the considerations of the National Framework for Protecting Australia's Children. This is something that the Commonwealth is working on with all states and territories. That is a 12-year initiative that is split into four three-year action plans. Each action plan is focusing, amongst other things, on the needs of Indigenous children. Part of that is the sharing of information about programs that work and initiatives that can be useful.

In this second action plan, this three-year period, one of the things that we are really looking at is culturally appropriate practices in terms of protecting children and increasing the protection of children and safe practices.

These are the issues that are discussed by states and territories and the non-government sector. The way that the national framework works is that all governments, Commonwealth state and territory governments, and non-government organisations manage the framework jointly. On that body SNAICC, the Secretariat of National Aboriginal and Islander Child Care, represents the Indigenous children. They work to spread that knowledge amongst other groups and we get other people involved. That is the way that the process and the knowledge are being shared. These projects are reported on in the national framework and they are up on the FaHCSIA website. We provide regular reports. Ministers report to COAG annually on these projects.

I just wanted to provide you some background to assure you that these things are not slipping through the net. They are being worked on and they are being given a very strong focus by all governments.

**Senator SMITH:** When the New South Wales Ombudsman releases a report that speaks very favourably about a particular program that goes to the heart of empowering young people to protect themselves, my interest is in making sure that those opportunities continue, that it has been rolled out successfully in communities and ensuring that those opportunities are extended beyond those initial communities is a strong interest of mine.

**Ms McKenzie:** Can I just assure you that passing on knowledge about programs that work is a key feature of the national framework. That is what people are interested in doing. There are a range of programs that are working in Australia at the moment, and passing on that knowledge from one jurisdiction to another and understanding what makes a program and what stops a program from working, is exactly the focus of the national framework. I will certainly ensure that at the next meeting of the group, which is meeting next Monday, this is brought to their attention.

**CHAIR:** As there are no further questions on that, we will move on to the Closing the Gap group.

**Senator SCULLION:** I thought I would start with some questions on some of the indicators in the *Closing the gap* report. Indigenous mortality rates have declined from 2006 to 2011 and the *Closing the gap* report shows no significant change in the life expectancy gap and this is as a result of the non-Indigenous mortality rates having also got better. So it is a sort of a parallel. Would you say that we are on track to meet this target? Basically we are flowing parallel; we are not trending anywhere. It seems to be a function of the decline in mortality rates across the board and the Indigenous demographic seems to be a part of that. Would you be able to make a comment on that? What would be the assessment? I am not asking whether you are satisfied with that. Obviously that is a bit leading. When you look at these issues when they come around, sometimes the statistics are difficult to work out. My take on this is that we are not on track to meet that target. Is that right, Mr Dillon?

**Mr Dillon:** Senator, I think Matthew James might be able to inform you much better than I.

**Mr James:** In the Prime Minister's report itself, I think the words used are that if the target is going to be met progress has to accelerate—which is another way of saying that we have to do better than current trends if that target is going to be met. So it has to accelerate from now on.

**Senator SCULLION:** Given that that is the case, what measures are being put in place by the government to ensure that that is accelerated? What programs are you putting in place to deal with that particular gap measure?

**Mr Dillon:** I think the answer would be that everything that we are doing is focused on closing the gap. That is the overarching framework that the government is applying. The building blocks underpin the Closing the Gap framework. The housing efforts, our health efforts and our employment efforts are all ultimately targeted at closing the gap. As you know, there have been substantial new investments over the past five years across virtually all of those Indigenous specific and, indeed, our mainstream national partnerships, which all have, in a sense, a substantial impact on closing the gap.

**Senator SCULLION:** Mr Dillon, as you know I commend a variety of governments for actually having a specific program. For example, if there are not enough houses, obviously part of that would be programs to build housing. Whilst we do not have time to discuss it here today, obviously with respect to life expectancy, there are a number of indicators about the area and there has been much written about why Aboriginal people are not living as long as other Australians. I just want confirmation. So there is no particular program or measure that deals with some of those specific reasons? With some of them it is obviously difficult to have that sort of a program, and I acknowledge that across the board having high levels of amenity and service can assist in that headline figure. There has been a lot of work done on why Aboriginal people are not living as long as white people. Therefore, has there been a corresponding program to try to specifically deal with that as a closing the gap measure?

**Mr Dillon:** As I said, this is a multipronged program. I will turn to Mr James in a second, but I would make the point that our colleagues in Health would have a whole range of very focused and targeted initiatives. For example, I know they are doing a lot of work on reducing smoking, which is a killer of not just Indigenous Australians but all Australians. But Indigenous Australians tend to smoke more than non-Indigenous Australians. So there are very focused programs there. I would also make the point that our housing programs and education programs feed into healthier lifestyles and better health outcomes and therefore into better lifespans for Indigenous citizens.

**Mr James:** I would add that there is a report that was done in, I think, 2003—the *Aboriginal and Torres Strait Islander burden of disease* report—which highlighted quite a number of the contributions of different factors to the gap, if you like, including smoking, diabetes and the like. Another thing I would point to in the Prime Minister's report is figure 5, which looks at access to Medicare benefit health assessments, and it shows that that picked up in around 2009. There is the chronic disease package as well. Chronic disease is a big contributor to that gap. That is one of the initiatives in recent years. That is outlined a little bit in the PM's report but, as Mr Dillon said, DoHA would be able to give more detail in terms of the policies. Some of the policies are coming through at different times. If you look at the Medicare benefit health assessments, you can see quite a pick-up around the third quarter of 2009. So some of these things take a while to go through.

**Senator SCULLION:** I acknowledge that it is one of the more difficult indicators to manage. I would now like to move to the issue of halving the gap in infant mortality. It appears that this is an indicator that we can definitely say is on track. As I recall, it has probably been on track since about 1998.

It is a very important indicator. Have there been any downward trends at any time since 1998, that you can recall, or is this simply a pretty steady trend line that we can have a lot of confidence in?

**Mr James:** In terms of 1998, I cannot remember every single number, although there is a chart that does that—figure 6 in the PM's report. It shows the historical data and it shows the trend in that data. What that shows is that since 2008, when the baseline was established, it has been consistent with the required trajectory.

The chart gives you the figures right back to 1998, and it does show, that from year to year there are some blips in the numbers. But that is probably more by way of noise. The trend is downward.

**Senator SCULLION:** The trend is that way.

**Mr James:** Yes.

**Senator SCULLION:** That is excellent. It looks as if we can have a great deal of faith that that one is going to be met. One of the other measures is ensuring that all four-year-old Indigenous children in remote communities have access to childhood education by 2013. I want to clarify some of the terms here. What is the difference between a preschool program and childhood education? Are there terms within government where that means one thing and something else would mean another?

**Mr James:** DEEWR might be a bit more expert on this than me. I think that sometimes that language is used because you can have a preschool program in a long-day-care centre. So you might have a preschool but if you just looked at the preschools per se, you would be missing out on the preschool programs in long-day-care centres. We are trying to measure both. So I think sometimes the term 'early childhood education' may be more associated with preschools but you do have preschool programs in long-day-care centres.

**Senator SCULLION:** Again, this may be outside your particular skill set, Mr James, but you seem to be doing pretty well. Can you tell me the sort of range of activities that would fall within the definition of a preschool program? Are they set? Will someone say, 'Look, this is what we're trying to do. We're ensuring all four-year-old Indigenous children have access to childhood education.' My question is around this preschool program. I am really not an expert at these things but we need to ensure that every time Australians look at this data they can see exactly what this means. So could you just tell me what range of activities fall within a preschool program.

**Mr James:** There is an Australian Bureau of Statistics collection that brings all the data together. All the definitions are in that. I probably should not hazard a description of that without the detail in front of me. Perhaps DEEWR could give you that in more detail.

**Senator SCULLION:** Here is one of the things you might be able to provide to me. When I think of a preschool I think that there is probably a building that keeps the rain off your head. It is not a program that is in amongst other things: it is something that is there. I know there has been the provision of infrastructure in that way, and the Prime Minister referred to the preschool program. If there is a preschool there and we have provided a preschool, is that ticking off the measure—so by 2013, we see that this is where everybody lives and we are going to make sure there is a preschool there? If a preschool is built and they have access to

the preschool therefore we have met the benchmark and can we give it a tick? Or is it something a bit more complex?

**Mr James:** It is based on enrolment. So kids are enrolled in an actual preschool or program. That is how it is measured.

**Senator SCULLION:** So a preschool program could be a tree rather than a building?

**Mr James:** No, it would either be in a preschool—a standard education department preschool—or a preschool program in a long-day-care centre.

**Senator SCULLION:** They would be the only two circumstances?

**Mr James:** That is my understanding, yes.

**Ms Gumley:** My understanding of the preschools programs—this is perhaps best referred to DEEWR later in the day—is that it is a structured curriculum that is delivered. So it would be either in a long-day-care centre with qualified staff or in a preschool program as part of the state education system.

**Senator SCULLION:** Senator Boyce has a couple of other questions in this area. You say that there are enrolment programs. Can you provide attendance figures for the preschool programs, on notice? Are you able to? Is someone able to? Do you measure them? Does the Commonwealth say, 'We've got to meet our target.' Obviously it is great having programs and enrolment but I would have thought it was fundamental to ask, 'Is anybody attending?'

**Mr James:** There is some data on that available already.

Again, it is more for DEEWR than for me. We are working with the states and territories to get consistent attendance data. We are measuring enrolment but we are moving towards measuring attendance as well. There already are some data available on attendance at preschool, as well.

**Senator SCULLION:** If you have any further information perhaps you could provide that on notice.

**Senator SIEWERT:** I have noticed in the Coordinator General's report the first recommendation is around this issue. Is it appropriate, since we are here now, that we talk about that now, or would you rather wait and go on?

**Senator SCULLION:** I am happy. I am just going through the measures and trying to get a finer—

**Senator SIEWERT:** That is one of the measures that I particularly wanted to follow up. I noticed that there is not a lot of data in here. As the Coordinator General has specifically made a recommendation around that it seems to me it would suggest there are ongoing issues.

**Senator SCULLION:** I think we are dealing with them one at a time. The committee can agree with that.

**Mr James:** One point I should make about preschool attendance is that unlike school attendance it is not compulsory—hence the focus on enrolment as well as attendance. So it is a little bit different, obviously, to school attendance.

**Senator SIEWERT:** I understand that, but it is no use having this in there unless we are actually going to measure it. You can put the infrastructure there but if we are not getting kids in and through—

**Mr James:** That is true, except of course that you cannot attend if there is no access. So the first thing is obviously access, and then attendance as well.

**Senator SIEWERT:** It is a broader issue that we started touching on yesterday—and that is actual real, measurable progress. Those that were around yesterday afternoon would know that we were talking about income management and what is a genuine measure of progress. I still do not think we are there yet, which is why I was really interested in this particular outcome, because just measuring enrolments does not mean you are getting the kids in. And we do not know what the quality of it is. And there are issues around hearing, which I will come to later in the health area.

**Mr James:** There are already some data available on attendance. There has been a new national collection established. We are reporting for the first time, for that collection for 2011. So there has been a lot of work to improve the data. There were issues with the previous preschool census. It had good data in it but this new data is a lot better. This is one of those areas where you are trying to measure something but you also realise that you have to make a big effort to improve the data as well. That obviously sometimes makes the historical comparisons a bit trickier but you have a choice because at some point you have to improve the data.

**Senator SIEWERT:** Could we perhaps ask Mr Gleeson.

**CHAIR:** It is going to flow on to the Coordinator General's report. We could get Mr Gleeson up to the table as well and then we will take it issue by issue if senators have particular questions on this one. It seems they do. As it is a recommendation from the Coordinator General's report we will spend some time on this issue now.

**Senator SIEWERT:** Mr Gleeson, your first recommendation in your report that came out in November last year was:

That by 30 June 2013 the Department of Education, Employment and Workplace Relations – in collaboration with Boards of Management (or similar) and where required State or Northern Territory education agencies – publish data measuring the number and estimated percentage of Indigenous children in the Remote Service Delivery communities who are accessing 15 hours of preschool 40 weeks per year, delivered by a degree qualified early childhood teacher ...

Could you go through why you made that recommendation and what other concerns you have in terms of lack of access to data or the lack of data on that particular issue.

**Mr Gleeson:** Good morning. I would make a general comment that the issue of data and information continues to be a problem, certainly in terms of agencies at the state and territory levels, and also at the federal level. We continue to try to inform the quality of our decision making, inform policy planning and the like, and the data needs to inform that. My experience, from being in this position over three years, is that we still strive to improve both the access and the quality of the data. The further you go down, particularly in terms of a place based approach, the more difficult it becomes. There may be systems in place to provide information on mainstream programs that cover mainstream arrangements across jurisdictions et cetera, but when you get into a place based situation it becomes more complex. A quick example is that I was out in Maningrida in the Northern Territory late last year and I asked the principal about attendance rates and about enrolments. He has his own system. He feeds that into the Northern Territory Department of Education and they try to do something across the region. But it is not very sophisticated, not systematic; sometimes you will find that people

use different criteria to capture the information. You may have a situation where, again, during the wet season, there are different issues in terms of the transient nature of schooling and attendance. So I have a general issue of concern about the quality of data and information.

With regard to recommendation 1, that particular measurement—15 hours of pre-school, 40 weeks a year—is one of the measurement targets. So I felt that, if you want to try and assess progress, it is not just the access, as Mr James and others have talked about; it is the issue, again, of what comes after the access in terms of quality and different educational outcomes. So I put in both recommendations; there are two—

**Senator SIEWERT:** Yes, I was going to go onto the second one about longitudinal data.

**Mr Gleeson:** Yes. So, if we are serious about looking at closing the gap, we have to have the tools in place to be able to assess that in a long-term journey. It is not easy—I appreciate that. But, again, 3 is in the National Partnership Agreement. We should have these things in place before.

**Senator SIEWERT:** Thank you. Can I just explore that a little bit further. We had a discussion yesterday about measurable outcomes, and it was based around the income-management measures and the fact that we still seem to be surveying and working on perceptions rather than measuring real outcomes. We have been at the intervention—I know that is just focused on the NT—and Stronger Futures for 5½ years now and we still do not seem to have really proper progress indicators measuring genuine outcomes. I understand—and we had a long discussion about—how hard it is; but just measuring access, to me, does not show that we are improving things. How do we achieve that?

**Mr Gleeson:** One of the things required in the National Partnership Agreement is the development of service standards for our 29 communities. That body of work is still in progress. The Commonwealth agencies have been working very hard with my office with regard to developing those service standards, and we are just in the process now of engaging the states and the Territory in negotiating those standards with them. Because it is a partnership, again, you have to have everybody on board. I believe those service standards will help a lot in addressing my concerns. I know it is something that is supported by the government in terms of being able to measure in different ways. So, one of my priorities, certainly in the first half of this year, will be to get those service standards across the line. From a recent discussion with Minister Macklin I know she is very much on board with that as a priority.

**Senator SIEWERT:** Can you give a bit of an outline of what the service standards are going to look like?

**Mr Gleeson:** We have standards across all the building blocks, so sometimes it could be a basic thing about infrastructure; but a lot of times it is about the quality. So we are talking about these basic things—it could be NAPLAN in terms of participation and results; it could be attendance; it could be response rates with regard to police, where there are no police in the communities. So it goes right across the whole spectrum of the building blocks to try to, again, look at access but also quality.

**Senator SIEWERT:** I am not critical of that per se, but it still does not then say whether kids are attending, whether they are coming out prepared for their first year of school,

whether their hearing difficulties have been addressed—those sorts of things. Is that included in that quality of service?

**Mr Gleeson:** Yes. I am quite happy to provide the committee with a summary of those standards at some stage, because they do go into that level of detail—in terms of both the health side of things but also education.

**Senator SIEWERT:** It would be appreciated if you could table those.

**Mr James:** I was just going to mention a couple of things. Even at the community level you can get outcome data. For the NTER, in the last monitoring report, we reported data on the incidence of things like malnutrition and wasting—so there are outcome data around. In terms of outcome data at the community level, sometimes you have to be a bit careful with the numbers but you can obtain the Australian Early Development Index data as a baseline. That AEDI score will be repeated. At the school level, on My School every school in Australia up to minimum requirements publishes school attendance data and enrolment data.

In our evaluations we also obtain a lot of unpublished data, with the cooperation of each state and territory. There are different issues with the data. Some states and territories have more consistent data than others, and there are differences in their IT systems and the like. So there is data around. Often it is not the easiest thing to get, but it is not the case that there is no outcome data. In the last monitoring report, again, we also looked at data for the NT communities from the census in terms of outcomes and how they are changing. So it is not all just perceptions—there are the NAPLAN scores for each school, which are published. So there is quite a degree of data around. There are some gaps in the data—don't get me wrong—but it is not that there is no outcome data, even at the community level.

**Senator SIEWERT:** Okay. So, when I asked yesterday about where the measureable outcomes from the progress or not of income management were, the data that is used there obviously does not then match to looking at the outcomes from income management, because you cannot link income management back to any of that.

**Mr James:** I am not an expert on income management. I do know a bit about it. My colleague will answer this as well, but one of the challenges is, for example, there is historical data on school attendance, so you can measure that but for something like income management one of the things you might want to measure is the effect on people's expenditure patterns—and so, unless you had the data for their expenditure patterns before they were on income management, it is going to be a bit harder to see the change. So there are data challenges in some areas, but they are specific to the particular program involved. On the other hand, say with the Cape York welfare reform, if we wanted to look at the impact of the Family Responsibilities Commission on school attendance, we can match the Family Responsibilities Commission data and ask, 'Okay, did school attendance get better or not for that student after the Family Responsibilities Commission got involved?' So it is not a general thing; data issues are always specific to the particular policy and program you are talking about. But I will pass to my colleague.

**Ms Hefren-Webb:** I think the only additional comment I have is that, when we were discussing this yesterday, one of the issues we raised was there may have been an improvement in child health in the NT over the last five years but the question of attribution to a particular intervention is where we have had a lot of difficulty, because so many different

programs and measures were put in place around 2007 and subsequently some additional ones around the Closing the Gap National Partnership 2009 and now Stronger Futures. At the same time income management entered many people's lives, as did a big series of health checks, a school nutrition program, a stores licensing regime, alcohol restrictions et cetera. So I guess what I was talking about yesterday was not the question that there is no measureable data on outcomes for children but how do you attribute them to a particular program in the context of a very complex policy environment.

**Ms Croft:** The service delivery standards will assist going forward in terms of reporting data, and they will be set against the building blocks. In relation to what Mr Gleeson said about making them available, we would not be able to do that until it had been agreed with states and territories, because there will be a joint Commonwealth-state-territory government document.

**Senator BOYCE:** One thing I was looking at was the fact that incarceration rates for Indigenous people is not a measurement that is covered by Closing the Gap. Clearly, like all the other Closing the Gap targets, it is a really complex, complicated issue. Do we have the tools right now to do this properly, or should we be looking at a far more sophisticated assessment tool to look at this area genuinely rather than perhaps congratulating ourselves on things that, as Ms Hefren-Webb said, might have been going to happen anyway. Maybe Ms Croft is the person I should start with.

**Mr Pratt:** I am sorry, Senator, could I clarify: what is your question there?

**Senator BOYCE:** The question is: is the Closing the Gap framework a sufficiently sophisticated tool to be using to achieve what we are trying to achieve? It is great if we can say that we are halving infant mortality; that is wonderful. But quantity of life and quality of life are two different issues.

**Mr Pratt:** Effectively that question calls for officials to make a comment about government policy, which I would decline to do. However, the Closing the Gap framework really does identify the key targets that one would expect a government would focus on in trying to close the gap for Indigenous people with non-Indigenous people in Australia. Incarceration issues are very important, and those are things which we are very interested in and—

**Senator BOYCE:** But not measured by Closing the Gap.

**Mr Pratt:** That is correct.

**Mr James:** Data such as incarceration is reported in reports like the *Overcoming Indigenous Disadvantage* report, so there are many other statistical reports and frameworks that are broader than Closing the Gap and they sort of complement each other, if you like. Incarceration is, I know, one of the measures in the OID report.

**Senator BOYCE:** I guess we come back to the fact that we have not really got it all collected up in one place—and I appreciate how complex it is.

**Senator FURNER:** Going back to the early education issue for Closing the Gap, I note in the report that the target is 95 per cent and you have reached 91, so you are on your way, tracking to that result. Several years ago I was up in the cape and experienced some significant growth in child attendance up there. I wonder whether you could provide some feedback on how that is tracking in Northern Queensland.

**Mr James:** In terms of the cape, we have been involved in an evaluation of Cape York welfare reform. That should be released soon, and that provides an analysis of trends in school attendance and attempts to isolate the effect of different factors on that. That is probably the best way I can answer that one. The Queensland government does publish the data in terms of attendance as well in their quarterly reports for Indigenous communities in Queensland. That is probably the best way to answer that. In terms of the preschool, that is probably best directed to DEEWR, but the only point I would make is that the 91 per cent figure is for 2011, and obviously the end target point is 2013. There is further investment to be reflected in those numbers.

**Senator FURNER:** Thanks.

**Senator SIEWERT:** Could I ask another follow-up on incarceration and then we should move on. In terms of following up from Senator Boyce's question, has anybody from the community raised with you looking at an indicator around incarceration? It has certainly been raised in discussions with me around maybe considering that. Has that been raised? Maybe I need to ask Mr Dillon.

**Mr Dillon:** Senator, I think the answer is yes.

**Senator SIEWERT:** Thank you.

**Senator SCULLION:** I would just like to wrap the questions up surrounding access to childhood education. The challenge for everybody, I suspect, is: we appear to be measuring it not by the words of the Prime Minister but the report. When we have the program there and everyone has got a program, that means they have got access to it and that should be over. I am not suggesting that is what people think, but clearly the next part of that measure, if we have got the programs in place, rather than saying, 'We've hit that measure,' people actually need to be attending. People need to be engaged, and we need to ensure that element of it, now that we are getting close to the programs being in place. What are the plans, then, given some of the answers in regard to attendance and some of the comments from the coordinator general about 'It's less than perfect' and 'It's a complex situation'? Do you have any other ways of finding out not only attendance but whether people are actually getting better as a result of the programs. Are you planning to change the way you collect data? Are you planning, for example, to publish some of the attendance rates every parliamentary year? Are there any other measures that you are putting in place within this measure, so that we can see how effective it is?

**Mr Dillon:** Senator, this measure is actually owned by DEEWR, so I feel uncomfortable commenting. I think it might be best if we just take it on notice.

**Mr Pratt:** As a general comment, though, certainly all these issues are under consideration.

**Senator SCULLION:** So as the lead agency, in terms of Closing the Gap, are you aware of any current plans, as part of the Closing the Gap report, to include in that more information so that the engagement of people under four years old, which is what we are supposed to be doing, is a little bit easier to measure than just the fact we have got a program in place? Are you aware of any specific proposals to do that?

**Mr James:** As I mentioned before, we are moving to a situation where we measure attendance as well. It already happens in some jurisdictions, but rather than get the detail

wrong, I should leave that to DEEWR. But we are attempting, as I said before, to measure attendance as well.

**Senator SCULLION:** Even if you could just take that on notice so we do not miss out, and hopefully someone from DEEWR will be helpful when they appear.

**Mr Dillon:** Senator, I would make a general point, as the lead agency, and that is: we are not stopping and saying, 'target achieved', 'will be achieved' or 'our job is done'. We understand absolutely that there is a huge challenge in front of us—not just in the early childhood space but across every one of the Close the Gap targets. We always have policy work going on which is actually trying to look ahead to what is the next step, or the next step after that, as to where we might be going. I can assure you that we are not just sitting on our hands doing nothing.

**Senator SCULLION:** I was not suggesting that at all, Mr Dillon—quite the contrary. I think we have done quite well, but we now have a benchmark in 95 per cent of enrolment for 2011. That is great, but we all know, if it is anything like the enrolment against attendance statistics in primary schools in my jurisdiction of the Northern Territory, then we will need some more measures. But the fact that we cannot even measure it yet—I was simply asking whether or not that is a consideration, and you have taken that on notice.

**Mr Pratt:** Senator, again we understand your point. Access is an important component. Also extremely important is that if you have access, how much attendance is there. Once you have got attendance then what is the quality of the outcome you receive. We understand all of those issues, and those are things which we and our colleagues are focused on.

**Senator SCULLION:** Although you are the head agency, some answers to halving the gap in reading, writing and numeracy within 10 years may have to be provided by another agency. In relation to reading, writing and numeracy targets, with five years to go, which of these targets can we meet?

**Mr James:** The best way to answer is that the report compares the targets to their required trajectory points and it shows how many are on track against the trajectory points and how many need to accelerate. From memory, three out of eight are on track and five need to accelerate. I am pretty sure that is what the report says.

**Senator SIEWERT:** Yes, that is what it says.

**Senator SCULLION:** So we have identified from that process, which is to identify where they are doing well and doing not so well, the five areas that need acceleration. They are quite specific areas and, taking on the broad brush approach that Mr Dillon says helps everything—I accept that—what plans are in place to accelerate progress for those particular areas that were identified in the *Closing the Gap* report?

**Mr James:** The only point I guess you could make is that some of the things, like getting better access to preschool, will feed through eventually. I think DEEWR should answer that question.

**Senator SCULLION:** Who should I direct that question to?

**Mr James:** To DEEWR.

**Senator SCULLION:** Perhaps, Mr Pratt, if I could comment, because the lead agency for *Closing the Gap* is FaHCSIA, I understand that with the levels of detail needed it is

reasonable to expect other departments or agencies to provide answers for those. You might take this on notice but you had this beautiful glossy report, which has been around for a while, and in the report, in some areas, it is very clearly identified for everybody where progress can and should be accelerated. It is a FaHCSIA agency that is responsible for this. They are the coordinating agency for the report. I would have thought that by now when a question arises along the lines of: 'We have had the report and you are the coordinating agency—that is why we have a coordinating and single agency—here are the issues that clearly you need to accelerate; what are you doing about those?' I would not expect to be told, 'The Department of Education will have more detail.'. I am trying not to be overly critical about that; no doubt they will. Is it a fact that each of the different agencies, DEEWR for example, is dealing with one of the indicators and that that is their responsibility? Do you simply put the report together, or are you responsible for the report and coordinating all of the other agencies?

**Mr Pratt:** It is the second of those, of course. If you like, we can talk at macro level about the sorts of things which are being done in these areas. For example, I know that DEEWR spends a great deal of time interacting with the state and territory governments about numeracy and literacy and other education programs. They expend a huge effort on that sort of work, all aimed at trying to jointly identify ways to improve performance of Aboriginal and Torres Strait Islander students in those areas. But we would not be doing the committee a service if we were to talk in areas which are outside our direct expertise, hence the suggestion that DEEWR might answer these questions when they come along. A suggestion that we might pick up the next time we plan the schedule for the committee's day is that we look at those areas where there will be contributions by both FaHCSIA and other departments, like on *Closing the Gap*, if that is the interest of the committee, and have those people here at the same time so that we can properly advise you.

**CHAIR:** Mr Pratt, it is very clear, and I think we need to put it on record, that as we planned these days we specifically said with DEEWR that they were coming to this day to talk about issues to do with employment. We agreed at the start that issues to do with education, and my understanding is that the issue of early education is deemed to be education, would be done at the DEEWR estimates. That is an agreement the committee has had with all the departments. I take the point that in terms of coordination around Closing the Gap FaHCSIA is the lead agency. But on specific issues around education and early childhood, that is to be dealt with at the DEEWR estimates. That is our agreement. If you want to go back and renegotiate that, that is fine, but that is the agreement.

**Senator SCULLION:** Not at all, Madam Chair. This says Closing the Gap in the title and I thought we would be able to be provided some answers. I am not saying you are trying to avoid that. Mr Pratt, are you aware of a response from either your agency or other agencies involved in this that would be a report to say that if we are to accelerate the Closing the Gap numbers this is what we would do, or a report that would be like that?

**Mr Dillon:** To add to Mr Pratt's previous comments, the problem we have with your line of questioning is that in a sense you are asking us to pre-empt future policy decisions. We may or may not have a line of sight to the detail of those but you are asking the impossible. That is part of our reticence to go down this path. You are not actually asking questions about the Closing the Gap report, you are asking about hypothetical future actions to address issues

in the Closing the Gap report. That is part of our reticence here. The direct answer to your question is that I am not aware of any piece of paper that goes to that particular issue.

**Senator SCULLION:** Thank you. I will close that line of questioning before I go on to the next indicator. But Australians reasonably expect that if there is a big statement in the parliament it has become a particular time of the parliamentary process that we can all focus on something. I think everybody is now as we are having more trend just getting more valuable every year people are really looking to that. But the report that says where we are up to and sometimes not doing as well as we can do in some of the indicators, around the same time or not long afterwards I think Australians would be far more confident if they knew that there is a report on a response, if you like, that this is what we are doing to accelerate these indicators, this indicator is not were going to move but we hope generally the level of amenity will assist. I was hoping that there would be a response, there would be a plan to assist in Closing the Gap. The Closing the Gap report is very important but it is simply a report on the statistics of where we are at. I think the government response—all power to the excellent speech by the Prime Minister and Leader of the Opposition—did not deal with what we are going to do specifically. Each time we hope that the report varies and we are doing better in some areas. That is the intention. What I was looking for is whether this government has a response to ensure that we can accelerate Closing the Gap, which I would have thought would be the principle. I am not looking for other agencies and details; I was hoping someone would have a plan.

**Mr Pratt:** As a general response, I can confirm that that is what we and our colleague departments are focused on all of the time. To go back to what Mr Dillon said some time ago, every program and every service that we work on is aimed at trying to close the gap. So we have a report that says this is where we are at this stage. I hope it is helpful to confirm for you that we and our colleague departments are thinking, 'How do we try get these results even better? What specific measures can we put in place to try and drive a closing of those measures?'

**Senator SCULLION:** I have some questions in the same area. What was the gap between Indigenous and non-Indigenous employment in 2008 and what is the gap in the most recently available data?

**Mr James:** The 2008 figures were provided in the last report. I cannot remember exactly what they were. I would caution that you cannot directly compare the survey results from 2008 to the census results because, just to give one example, the census includes people in non-private dwellings, so that can unfortunately make a difference for the Indigenous population because it includes people in jail and that has an effect on young men. So they are not really comparable. That is why in this report we have focused on comparing the two census results. It is the soundest way of comparing the data.

We will get another survey-based estimate from the Aboriginal and Torres Strait Islander health survey that the ABS is currently in the field with as well. There are other survey estimates but, when you are comparing census data, you are better off comparing census data to census data.

**Senator SCULLION:** That is the intention in the future? It will be relying on the census data because it is going to be the most consistent?

**Mr James:** The baseline is survey data, so we will use survey data when the data is available. For this year's report, given that the census was available—and the census was clearly an important source—we used that to compare with 2006. In different years you will use census data or survey data, depending on what year it is.

**Senator SCULLION:** It did not appear from my reading that this was one of the targets that we have many prospects of closing in the time frame, certainly in comparison with some of the others. I take into consideration everything that Mr Pratt and others have said, but if we can know that these are the programs, and this is how we are accelerating it, I will perhaps create another question on notice to whoever it is supposed to be. I thought perhaps, as the lead agency, we could coordinate that and I could provide a question on notice that says, 'Are there any particular programs or initiatives that are intended to accelerate the Closing the Gap, as identified in the most recent Prime Ministerial statement, that can be made available to the committee?'

**Mr Pratt:** We have the Remote Jobs and Communities Program which we are going to talk about this afternoon. This is a very specific response to trying to improve employment outcomes for Aboriginal and Torres Strait Islander people in remote parts of Australia. We also have the mainstream Job Services Australia system which is aimed at helping job seekers across the board, including Indigenous job seekers to get into employment. Those are two programs.

**Senator SCULLION:** Thank you. I think it would be useful to have the answer. Even if it was a list of programs so that, if we still have the same programs and have had exactly the same outcomes the next time the report comes out, it will give us all an opportunity to say, 'Perhaps some of these need to be changed, or some sort of action taken.' I think it would augment the report very well. One of the challenges with the Closing the Gap report is that it does not have a geographic breakdown. It is only my personal view that, whilst we can applaud the increase in the number of people who have left school having completed year 12, when you look at the NAPLAN tests and you attend a lot of these schools, I am quite sure that it is actually better in Sydney and Melbourne. I am pretty convinced that there are a lot more than two per cent of Aboriginal people who are getting through schools, but in other areas is going backwards. I understand this is a generic report, however, I just wondered if there has been some consideration in providing a breakdown of the results in each area of the Closing the Gap report—if it is possible—by very remote, remote, rural and urban areas. The disaggregation would simply inform us, because we might be steaming ahead in cities because the delivery of programs are slightly different, and we might be going backwards in some areas because it has not been delivered in the same way. I think it would greatly inform the report because, if you read the headline figures, from my perspective, in any event, I am a bit cynical about whether that is a genuine reflection given the vastly different circumstances we have across Aboriginal and Torres Strait Islanders around Australia. I was not sure if you had considered a disaggregation of that data as a subset of the next report?

**Mr James:** Some of the data already is like that. The NAPLAN data it is done by remoteness. With the census data, strictly speaking, the ABS are introducing a new remoteness to the way they do it. It is basically the same, but the boundaries change. That comes in in March, so we can run data that way in March, but I have asked the ABS, for example, to run the year 12 target data for me by remoteness area using the 2006 remoteness

area categories, and you can see there that it does show what you are referring to, that is, say, for the year 12 target.

You see variation across remoteness areas. In the major cities, the year 12 attainment is quite a bit higher than in very remote, but you also see improvements as well across. The improvements are certainly not just in the more urban areas. You get a bit of a sense of that in the report because we showed the separate results for the NT. The NT is unique in that 80 per cent of the Indigenous population is in remote areas, so whatever happens in the NT is largely a reflection of that. And you saw that against two of the measures at least the NT had a faster improvement than the other jurisdictions. Sure, it came from a lower base but it still had a faster improvement.

The ABS is looking at the options for even producing life expectancy estimates by remoteness area. There are a lot of complications in doing that, particularly around someone moving to an area to retire and they may have come from somewhere else. We have asked the ABS to look at the possibility of producing at least life expectancy at the national level by remoteness area.

**Senator SCULLION:** Just to get it clear, the ABS are responsible for the collection of the data that you use. You have asked them to disaggregate in areas that you think are important and they seem to be doing that.

**Mr James:** They do do that. The life expectancy one poses quite a number of conceptual challenges but they are looking to the possibility of being able to do it.

**Senator SCULLION:** Do you think that that would be included in the next report, that the next Closing the Gap prime ministerial statement may include that level of data?

**Mr Dillon:** The report is the Prime Minister's report. The Prime Minister determines what is in the report and the level of detail. One of the advantages of the Closing the Gap framework is that we have a finite number of national targets and that creates a national focus. We are also focused on, as you can see from Mr James's previous answer, the disparities between remote and non-remote. But I think there is an issue here as to what level the annual report from the Prime Minister goes to and it is not for us to pre-empt or foreshadow any change to the level of disaggregation of the data within it.

**CHAIR:** I am sure Senator Farrell will take their message to the Prime Minister.

**Senator SIEWERT:** Recommendation 6 in your report concerns the transition plans for those two particular communities under the Remote Jobs and Communities package. You recommended that advice be provided by the end of 2012. Has that advice been provided?

**Mr Gleeson:** I will give my response and I am happy if FaHCSIA adds to it. I refer to Walgett and Mossman Gorge. These are two of the 29 remote service delivery priority communities. In each of those two communities there is a need for transition arrangements because they will not be able to access the RJCP roll out as the other regional locations will, particularly because of the procurement contract arrangements that apply. It is a legacy, particularly in the case of Walgett, where the current arrangements were reviewed through a contractual arrangement and you could not therefore undo a procurement arrangement as it would create a lot of penalties. Therefore, when I met the Walgett community working party they were particularly concerned that they may miss out on some of the opportunities that RJCP would provide.

What I asked, through DEEWR and FaHCSIA, was that we made sure that the community was able to access some of the benefits, if you like, of RJCP. I wanted to ensure they do not miss out, even though they have to go under the current arrangements until 2014. That is basically what it was about. The short answer is that we are still having those discussions in terms of the details of the transition plans. But I have been advised, and it has been confirmed to me, that there will be detailed plans put in place for both those committees.

**Senator SIEWERT:** So in other words there has been action on that particular recommendation.

**Mr Gleeson:** Yes.

**Senator SIEWERT:** I want to ask about the level of engagement that you have had in terms of the recommendation around the Medicare Locals and, particularly, the recommendation about how the relevant Medicare Locals are progressing in relation to objective 3. How Medicare Locals have been addressing Aboriginal and Torres Strait Islander health has been an ongoing concern of mine. Have you had any feedback yet from the health department—and I will ask the department, obviously, about this—since you made that recommendation?

**Mr Gleeson:** The first comment I would make is that, in regard to all recommendations that go in my report, we have a lot of consultation with the relevant agencies beforehand. So it is not a surprise when they come out. Generally there is a consensus: 'This is okay; it is a good recommendation. We can work with you in terms of how it is implemented.' The report only came out late last year. FaHCSIA has the lead role in regard to follow-up on those recommendations. Ms Croft might like to add to that. They have a mechanism in place to progress the recommendations. We have had some consultation, but we have not had detailed follow-up in terms of the exact time frame, plan of action, to address that recommendation.

**Ms Croft:** We do coordinate a process across governments, both Commonwealth and state and territory, to respond to the coordinator-general's reports. We obviously do that as the lead agency. That process, once agreed, will go through the Working Group on Indigenous Reform, and it constitutes a cross-government response to each of the coordinator-general's recommendations. Then, through our boards of management and other agency working groups, we monitor progress against previous report recommendations. We are currently in the process of responding to the report that came out before Christmas. Once that is finalised, it is made public on the FaHCSIA website.

**Senator SIEWERT:** Thank you.

**Senator SCULLION:** Mr Gleeson, we have just been speaking about the Closing the Gap issue. Much of your reporting has been, in the early days, on providing a database so we know exactly what is there, the visitation rate and all of that. That has been very useful. You have a lot of hands-on, on-the-ground experience on the issues associated with preschool attendance and trying to get a coordinated approach. You have indicated that that approach is far from optimal, and we can understand why—it is the nature of the jurisdiction and those sorts of issues. Do you have any recommendations or suggestions about what can be done in terms of a process to tighten up the coordination of the various jurisdictions and agencies who share the responsibilities—the Northern Territory is providing education and the Commonwealth is providing some of the funding—and in terms of who is responsible for attendance and all

those sorts of things? They seem to have been around for a fair while and we are still reporting on them, but there does not seem to have been any change. For example, we should know exactly who attends what school, and that is not the case yet. Do you have any suggestions from a practical perspective—I know you have a lot of experience on the ground—on how that could be changed and what sort of forum or process we should use? How should we address the issues of coordinating the various jurisdictions to get better data and better compliance?

**Mr Gleeson:** As I mentioned earlier to the committee, I spend a lot of time in my office trying to get information from a range of sources to inform the quality of my role of assessment of progress. I also have a role particularly around Closing the Gap, but it is very difficult to do things in relation to closing the gap—as the previous range of questions alluded to—at a place level, let alone doing it at the macro level. In that sense, I want to make that generalised comment that my role does cover off the issue of Closing the Gap, and I have some way to go to acquitting that role in regard to saying the gap is closing in this community and that target et cetera.

In terms of your specific question, those two recommendations that I put in my last report go to some practical solutions, in my view. I do believe there are appropriate mechanisms in place for coordination. There is a board of management, or equivalent, that exists in each of the different jurisdictions of the priority communities. That is a very good mechanism to bring the three levels of government together to talk. If there is a gap in terms of information gathering or quality of data, then that could be executed through that particular forum. That is why I referred to the board of management as a mechanism to coordinate those things.

The only comment I would make is that we need to be a bit more rigorous in regard to using that forum, and other similar forums, to make sure that the right people are at the table to be able to address where the gaps need to be followed up. That is something that I know my colleagues in FaHCSIA and I, and others, are working on. In fact, as early as the week of 25 February we are having a very good workshop in Alice Springs around improving RSD government arrangements.

**Senator SCULLION:** Thank you very much, Mr Gleeson. If I could just take this opportunity, Mr Dillon asked me about the name of that report. I can be of some assistance. The original misbehaviour determination was made on 14 November 2002 under Philip Ruddock. That misbehaviour determination was revoked on 21 August 2012 by the minister, Ms Macklin. While I do not have a date, I think the title of the report is *Pre-2008 Review of Subordinate Legislation (Final Report)*. I understand it was completed by the department of finance for each of the portfolios. That is as much information as I can provide. I can hand over those two bits of advice if that would assist you, Mr Dillon.

**Mr Dillon:** Thank you. I am sure they will be very helpful.

**Senator SCULLION:** We are always being helpful here.

**CHAIR:** I know that Senator Furner has one question and then we are going onto Stronger Futures.

**Senator FURNER:** The Prime Minister's Closing the Gap report indicated some good successes in respect of mortality rates for Indigenous children under five years of age up to

2018. Would you update the committee on the progress of that and what the government is doing to ensure that that it is met?

**Mr James:** We discussed the under-five mortality target before and looked at the existing trends. In some of the data in the report one of the important indicators is access to antenatal care. The report talks about the data on that and some of the improvements there. It also talks about new directions such as the Mothers and Babies Services program. The report makes the point that maintaining the existing trends is going to require a continued focus on all of the preventative measures that have been taken. Some of the things that we measure in the NIRA that was reported on by the COAG Reform Council in their more detailed report on progress, and some of the lead indicators we look at for this target, are things like access to antenatal care, smoking during pregnancy and how those sorts of things are tracking, and policy is responding to those priorities. Some of that is spelt out in the report itself.

**Mr Dillon:** The bottom line is that we are heading in the right direction. That is the simple way to frame this. We are on a downward trend in terms of the mortality rates, and, as you said in your question, the trajectories go out to 2018 and we are on track to halve that gap.

[10:14]

**CHAIR:** We will now move to Stronger Futures general questions.

**Senator SIEWERT:** I specifically want to ask about the alcohol component of Stronger Futures. The minister—I think it was last week—announced her intention to use the powers under the Stronger Futures legislation to review two establishments in Alice Springs. I am wondering how that decision-making process rolled out. Could you explain the time period? The legislation came in in June and it was not until a week or two weeks ago that the minister announced her intention to take that particular action. Could you just outline that for us, please?

**Ms Edwards:** The provision that the minister is acting under at the moment is section 15 of the Stronger Futures Act. It relates to assessments of licensed premises, as you have mentioned. Assessments are actually a process done under the Northern Territory legislation, under section 14 of the Liquor Act. What the provision in the Stronger Futures Act does and is designed to do is to allow the Commonwealth minister to bring scrutiny onto premises of which he or she might be concerned.

It is a three-pass process, really. The first thing that happens—which is what the minister has done recently—is that the minister writes effectively a private letter to the Northern Territory minister saying that he or she is intending to request an assessment and it gives an opportunity for the Northern Territory minister to respond. The Northern Territory minister might respond and say, 'You've got the wrong premises,' or 'We should do a few more of them,' or 'I've got a problem.' The idea is for a collaboration between governments about what premises might be causing alcohol related harm to the community and whether some sort of extra scrutiny should be applied to those premises.

Twenty-eight days after that notice has been provided, the minister can formally request the assessments of the premises. In that 28 days that has passed in the meantime the Northern Territory might have written back and provided some extra information or they might have had a meeting. It might of its own motion gone and decided to take action or consideration of those premises.

**Senator SIEWERT:** The time is ticking now.

**Ms Edwards:** That time is ticking now. Once the minister has made the request in a more formal way, the Northern Territory has 28 days in which it is expected to commence those assessments and the correspondence between ministers would set out the time frame, what it is, what the premises are and so on. If it declines to do it—and there are a couple of reasons it can do that—it has to basically publicly explain why. The provision is about scrutiny. We are at the beginning of that process.

As you are aware the provision is there to say the minister can first notify of their intention and then request an assessment of a premises that they have reason to believe might be causing harm to the community. It is not a conclusion that it is causing harm; it is simply a matter of having reasonable, credible information to suggest that there might be issues from particular premises. In terms of your question about timing, I might need you to be a bit clearer about what you mean.

**Senator SIEWERT:** There are some well-known establishments in Alice Springs that people have known about for years, that the community has been raising concerns about for years. In fact, I would hazard a guess that some of those were the reasons that the minister wanted some more powers under Stronger Futures to deal with it. What process was undertaken between the legislation being passed—and I appreciate that there is a time for royal assent and all that sort of stuff—to the minister making a decision in early February. I am not having a go about the decision itself; it is the time frame and what process was undertaken between the legislation passing to the minister making a decision six months later to take that action.

**Ms Edwards:** We have been talking about particular premises, issues, licensing conditions and all of those sorts of matters with the Northern Territory at officials level and amongst ministers for a long time before the Stronger Futures Act and so on. We have had discussions about the potential for assessments and who assessors might be and all of those sorts of things at an officials level for some time. Of course, the change of government in the Northern Territory always means there is a bit of a hiatus in activity.

I think the key things that happened before this particular intention to request happened were some representations from particular community organisations and individuals in Alice Springs. So the minister's information is based on those sorts of representations, which are of course a really important way to raise the issue. If your question is going to why it took so long—

**Senator SIEWERT:** Yes.

**Ms Edwards:** I would say that we have been doing a lot of things about licensing and other alcohol related measures in the meantime and are continuing to do so. This intention to request has come up in response to additional information becoming available and, particularly, representations from individuals and organisations in Alice Springs.

**Senator SIEWERT:** As you know, I am critical of a lot of Stronger Futures, but that was one of the bits of the legislation that we actually thought was a very useful tool. So this was more to do with the time frame.

I realise that we are short of time and I may have to ask you take a bit of this on notice. I am interested in where the community planning process is up to. I am aware that some

community plans had been significantly progressed. It is only from conversations but I have been told that there has been some concern that there has been a delay in the process in progressing some of the community plans—more because of the change in government, which inevitably causes delays. So where are we up to now with some of those plans? How many are you engaging with at the moment?

**Ms Edwards:** So we are talking about alcohol management plans?

**Senator SIEWERT:** Yes, alcohol managements plan.

**Ms Edwards:** Of course there is a specific meaning in the Northern Territory quite separate to its Queensland meaning.

**Senator SIEWERT:** Yes.

**Ms Edwards:** Alcohol management plans have been part of the landscape in the Northern Territory for a long time, both the Northern Territory direct and as part of the Northern Territory Emergency Response and now as part of Stronger Futures.

**Senator SIEWERT:** And there was a modification under NTER and then there was the modification again under Stronger Futures.

**Ms Edwards:** Yes, in short. The main modification now is really between the Northern Territory Emergency Response provisions and the Stronger Futures one. The Stronger Futures one gives the minister a much more holistic view of alcohol management plans. In the past we tried to be involved and to cooperate with Northern Territory colleagues on alcohol management planning—it is really a matter for the Territory to lead, as it still is—but decisions would come to our minister if they involved some sort of change to the Northern Territory Emergency Response restrictions.

Under the new legislation it is a more holistic approach. We are providing funding under Stronger Futures. The concept is for the Northern Territory to lead those but with our close involvement. The plans as a whole come to the minister for approval. The implementation plan with the Northern Territory for exactly how those provisions settle down is still in negotiation. We hope to resolve that shortly.

There are a number of communities which have plans in preparation and so on. When the new arrangements finally really imbed, it might be required to go back and have a look at some of those to check, in particular, that they meet the minimum standards that the minister has been consulting about in the Northern Territory. The important thing to say is that some of them will already well and truly meet those standards. Some of them will need reasonably minor adjustment and some of them might need renegotiation.

In the meantime, there is nothing to stop various initiatives that are being considered and proposed by the community or for service provision of those plans. There is nothing to stop those happening at any time. In fact, various of those negotiated under the previous scheme and ongoing have happened. So the actual conclusion of the plan does not prevent important activities happening in the communities.

**Senator SIEWERT:** I have a couple of questions coming out of that process. Because of the ongoing negotiations with the NT government, does that mean that you have not been able to progress sign-off on plans because you have not had that big-picture sign-off? Is that a correct interpretation?

**Ms Edwards:** I think it has meant that we would not have had any plans go to the minister for final approval.

**Senator SIEWERT:** That is what I mean.

**Ms Edwards:** Northern Territory staff are still engaging with communities on the ground and talking to them about their alcohol plans and so on.

**Senator SIEWERT:** That is what I meant. Is that the reason that some plans have not been progressed to finalisation—to tick-off?

**Ms Edwards:** It is possible that that is the case, particularly given that the minimum standards are still out with the community for consultation. The main aspect of that is talking to the communities and getting things happening, and we do not see any reason that that is being held up.

**Senator SIEWERT:** When do you expect the minimum standards to be finalised?

**Ms Edwards:** The minimum standards consultation period happened shortly before Christmas. It was a very productive process. We got back lots of input. It was generally positive about the minimum standards and there has been a process of making sure we look forensically at all the comments and make sure that they are included in the final standards. That process is very advanced.

**Senator SIEWERT:** That was helpful information but you did not answer my question.

**Mr Pratt:** What was the question again?

**Senator SIEWERT:** When are the minimum standards going to be finalised?

**Ms Edwards:** When the minister considers our proposed amendments and decides on them.

**Mr Pratt:** It is a matter for the minister.

**Senator SIEWERT:** You have provided those.

**Ms Edwards:** We are at a very advanced stage of considering them.

**Senator SIEWERT:** Of providing advice to the minister? The minister has not received it yet so she cannot actually make a decision.

**Ms Edwards:** It is an ongoing, complex process. We are well advanced.

**Senator SIEWERT:** Could you take notice the expenditure against each of the stronger futures measures for this financial year?

**Mr Dillon:** Yes.

**Senator SCULLION:** In regard to the two establishments or other establishments, is it that there are allegations of unlawful practice or criminal practice, or alternatively sharp practice that may not necessarily be against the law? It has always been a bit of a grey area.

**Ms Edwards:** It is a very useful question. The concept of the assessment, as we understand it in the Northern Territory legislation and in our capacity for the federal minister to request it, it is not necessarily about anything to do with illegality or breach of licence conditions. There might be a premises that repeatedly breaches its licence conditions and might well be one that you want to assess. But that is not necessarily what it is about. It is about what the licence conditions are, how that business operates, its impact on the

surrounding community, whether it is the right fit for the community and whether it is associated with harm even if it is entirely compliant with its licence conditions. So it is a chance to step back, have a look at the licensed premises and ask how this premises works in the community, how it works in the context of what is happening in the town or wherever and come back with recommendations which the licensing commission would have regard to. It is not necessarily about illegality.

**Senator SCULLION:** That is very useful. Let's say the recommendations are for the liquor licensing commission. The commissioner would then have to amend the liquor licensing act in the Northern Territory or some regulation to ensure that people can comply.

**Ms Edwards:** It would depend upon the recommendations but they might be recommendations that the premises licence conditions are varied or, totally hypothetically, the trading hours changed, or the manner in which stock is displayed or any sorts of things like that. It might be about compliance. It might be about recommending that we do something with this premises. It is an open process to look at the premises and the impact that it is having with the aim of finding problems or solutions to alcohol-related harm and, in collaboration with the Northern Territory, fixing them.

**Senator SCULLION:** I am well and truly on the record of not having a great deal of sympathy for these establishments. One of the great challenges is that they say, 'What am I doing that is against the law?' At the end of this process there needs to be a lot more clarity. For example, is it going to be that the conditionality will change because of harm? At the end of the day, I think it is reasonable also that someone who conducts a business has to have a very clear set of guidelines. I have been a bit critical. But they are actually operating under the law and in their defence, they say, 'Retrospectively, you have come in and said that we are not doing the right thing, yet we are obeying the rules.' I think there is a precedent in terms of how we are attempting to go about this. To a large degree that does answer some of the questions.

**Ms Edwards:** It is about drawing to the attention of the Northern Territory government premises that appear to be associated with harm or which might be and calling on them to have a good look at them to see whether they are correctly structured in terms of their business model and licensing conditions for the surrounding community—and certainly no further than that at this stage.

**Senator SCULLION:** I read in the media, though it was just a perfunctory glance, that the Northern Territory is not being all that cooperative. The Northern Territory government had indicated that it was unlikely to instruct the Licensing Commission to do an assessment. Is that accurate?

**Ms Edwards:** There was a press statement from the Northern Territory government indicating that it was not going to order the assessments. We are still hoping to talk to officials who have a collaborative arrangement to have the best possible licensed premises for people.

**Senator SCULLION:** Thank you.

**Senator Farrell:** If you have any influence, Senator—

**Senator SCULLION:** I was hoping you were not going to ask me that. Probably no influence at all, that is probably my defence.

**Senator Farrell:** I know that feeling.

**Senator SIEWERT:** Have you had representations from community organisations about other establishments?

**Ms Edwards:** We talk to people a lot about all sorts of availability of alcohol. We make representations about major retailers that lots of alcohol is sold and harm ensues. The specific allegations I am mainly aware of are in relation to the ones in Alice Springs; the ones that have been the subject of the initial correspondence.

**Senator SIEWERT:** I have some broader questions about Stronger Futures. It does involve income management, but it is specifically about the powers of referral for the Alcohol and Other Drugs Tribunal. Can I ask about progress of the referral powers that were granted under Stronger Futures and where that particular element is up to.

**Ms Hefren-Webb:** The minister signed an instrument late last year authorising the Alcohol and Other Drugs Tribunal of the Northern Territory to make referrals to income management. It has commenced making referrals. The number of referrals it has made is less than 20. I am not in a position to give you the number, but it has made referrals. You would be aware that in the Northern Territory government's mini-budget it announced the abolition of that tribunal. We are still working through the process for individuals arising out of that.

**Senator SIEWERT:** The process from what mechanism would be—

**Ms Hefren-Webb:** Yes. If the tribunal ceases to be in existence, essentially, how would a person who had been referred to income management by that mechanism be managed by Centrelink.

**Senator SIEWERT:** If they have already been referred?

**Ms Hefren-Webb:** Yes.

**Senator SIEWERT:** Why would that be an ongoing issue?

**Ms Hefren-Webb:** Because the referral is for a period of time. If the tribunal is abolished then there is no-one to go back to at the, say, 12-month point and give advice about whether the person should remain on or not. But we have not made any final decision about that.

**Senator SIEWERT:** Is it possible to get a copy of that instrument? I missed that at the end of last year.

**Ms Hefren-Webb:** Yes, sure.

**Senator SIEWERT:** That would be great. There is the group of less than 20 who have been referred, so that is one issue that you need to work through. Do you have plans to enable another body to be able to refer?

**Ms Hefren-Webb:** At this stage, the information we have is just that the Northern Territory government plans to cease the tribunal. I understand there is some discussion about an alternate approach, but we are really waiting for some advice from the Northern Territory government about what that might look like.

**Senator SIEWERT:** About the alternative approach?

**Ms Hefren-Webb:** Yes. I do not know if Ms Edwards has that information.

**Ms Edwards:** Only to add that in addition to the issues that Ms Hefren-Webb's people are dealing with, with what happens to people who are already referred, we are also looking at the

broader scope of alcohol policy. We are looking at what the Commonwealth does, our relationship with the Northern Territory and how we might put into place other initiatives given that one tool which was part of the overall package of Stronger Futures together with the Enough is Enough initiative, as it was then, to address correlated harm.

It is both an initial thing about how we deal with these people, whether and how we might have some other avenue to income management, and what else we might be able to do in this suite of measures. As you know, dealing with alcohol abuse is extremely broad and multifaceted so we look at what other things we might do in order to make up for a lost tool somewhere in the system.

**Senator SIEWERT:** You are right. That package was designed around the NT's existing structures and elements of that have now disappeared.

**Ms Edwards:** Yes. It was designed to complement *Enough is Enough* which, as you know, is the alcohol and other drugs tribunal where banned drinkers register, with other initiatives.

**Senator SIEWERT:** What time line have you got for that?

**Ms Edwards:** It is an ongoing thing. Obviously, we are talking with the Northern Territory government about bedding down the implementation plan. We want to get these AMPs and minimum standards in; we have commenced the discussion about potential assessments, as we have discussed already today; and we continue to look at all possible mechanisms to work with the Northern Territory to tackle alcohol abuse.

**Senator SIEWERT:** I have a question about some of the other budget cuts that were made in the NT and how those then relate to the funding of programs. Mr Pratt, I will probably need your advice on that. Should I have asked that in general matters? I know it crosses all portfolios.

**Mr Pratt:** With the Chair's permission, why don't you ask the question now.

**Senator SIEWERT:** There are various programs that have been either cut completely or their funding has been decreased. You fund some in partnership—child support programs and family support programs. What has FaHCSIA done—and DOHA is the same—in dealing with the fact that some of those programs are no longer funded or have had their funding cut?

**Mr Pratt:** Are you talking about the Northern Territory government?

**Senator SIEWERT:** I beg your pardon, yes, the Northern Territory government.

**Mr Dillon:** This is largely wrapped up with our negotiation of the implementation plans under the Stronger Futures in the Northern Territory National Partnership Agreement. We are in the process of trying to finalise those implementation plans—I think there are nine that we are working on. We have made quite a bit of progress on that front but in the course of those negotiations one of the key issues for us has been to try to ensure that there is ongoing service delivery on a whole range of fronts and that over time the Northern Territory government takes ongoing responsibility for key service delivery in the areas you are talking about. It is fair to say that the cuts in the Northern Territory budget have complicated these issues for us but I am not in a position to, in a sense, outline a definitive landing spot.

**Senator SIEWERT:** Okay, I do follow it. Perhaps I should ask in the next estimates then. You gave us a really good briefing in response to the Bath report—I still call it the Bath

report—and the additional program funding it provided for family support programs, which, as I understood it at the time, was also related to setting up the peak Aboriginal organisation. There have been funding cuts there as well. Has that all been taken into consideration in those negotiations? And, of those programs you are still funding, are they continuing regardless of whether the NT has cut funding?

**Mr Stacey:** We are alert to reductions that were made in the mini budget of the Northern Territory government in early December. Yes, they included a reduction in funding for that peak body called SAF,T. I think it had its funding reduced significantly over a three-year period. In the meantime, that is not impacting on the funding that we are providing to *Stronger Futures*. The funding that has been announced by our minister, by the federal government, is continuing.

We have had discussions with SAF,T about what possibilities might exist and whether or not they might play a role in *Stronger Futures*. That is still to be determined. We have to see what happens next.

**Senator SIEWERT:** Is that part of the implementation plan negotiations, or is it separately?

**Mr Stacey:** No, it is separately.

**Senator SIEWERT:** When do you anticipate resolving that?

**Mr Stacey:** The implementation plans?

**Senator SIEWERT:** No, resolving these ongoing funding issues you were just talking about.

**Mr Stacey:** I cannot say. We have been in contact with SAF,T on a couple of occasions. We have other initiatives with *Stronger Futures* that we are rolling out which are not part of the implementation plan. We have to see whether or not ultimately there is a role for SAF,T. I cannot say that there is any time frame on that at this stage.

**Senator SIEWERT:** Thank you for outlining what is happening in that particular area. Has the delivery of other programs that you have been funding, where there was an ongoing input from the Northern Territory government, been affected? I understand it has not affected the delivery of your funds but is it affecting the delivery of programs on the ground? Is there a gap in funding since the Northern Territory government's contributions were cut?

**Mr Stacey:** We did an analysis of the mini budget after it was announced. There were some reductions in programs, not directly linked to *Stronger Futures*, that we thought nonetheless potentially could lead to some gaps. One that comes to my mind that I know we were concerned about related to night patrol in Darwin. As far as I know, there were not any others that we thought were directly linked to *Stronger Futures* that we thought would create a gap.

**Mr Dillon:** The only addition I would make is that the NT government did cut the banned drinkers register, which was funded with Commonwealth dollars. You have seen public comments by ministers expressing concern about that.

**CHAIR:** Thank you very much to the officers. We will now break until 11 o'clock when we will come back with the agencies.

**Proceedings suspended from 10:42 to 11:03**

**Indigenous Land Corporation**

**CHAIR:** Welcome back.

**Mr Pratt:** Chair, with your permission, I would like to table those instruments that Senator Siewert sought in the last hearing.

**CHAIR:** Thank you very much. The first agency is the ILC. It has been a while since we have had the ILC, so welcome back!

**Senator SCULLION:** My first questions will be about some of the ILC employment programs. How many people does the ILC employ, directly and through its subsidiaries, including through their group training arrangements?

**Mr Gemmell:** Our headcount at the end of January this year in the ILC proper—the core business of ILC—was 98. If we add together ILC and all our subsidiaries the total number for employment is 1,145.

**Senator SCULLION:** Thank you. Can you give me a brief update on the progress of the employment and trade training strategy at the Ayers Rock Resort?

**Mr Gemmell:** Yes. The employment training strategy at Ayers Rock Resort is going along quite nicely. You might recall that one of the targets for the ILC in purchasing Ayers Rock Resort was to try and get to a figure of 50 per cent Indigenous employment at the resort. The figure is, now, after a short period of time, 19 per cent Indigenous employment. There are 163 Indigenous staff, 61 trainees and 16 contractors.

We also have a significant investment in the National Indigenous Training Academy, which is training young Indigenous people for employment.

**Senator SCULLION:** That is the academy on site at the—

**Mr Gemmell:** It is on site at the Ayers Rock Resort. We have 61 trainees through there. We had our first intake in October 2011. Four have graduated but there are 61 trainees in that category now.

**Senator SCULLION:** Thank you. I take the opportunity to congratulate the ILC. Every time I go to stay at the Ayers Rock Resort I find that, for the first time, wherever I go there are faces of Aboriginal people. Many of the people who are staying there talk to me and say, 'This is just fantastic.' That is what they come here to do: to interact with Aboriginal people particularly. This gives them that opportunity and it also gives an opportunity for the people involved. It has been an outstandingly successful program.

**Mr Gemmell:** Thank you. We are hoping for more of that, as time goes on.

**Senator SCULLION:** Can you provide me with any details of the cost of the Ayers Rock Resort program and provide some details of the funding contributions from DEEWR received so far and agreed over the future years.

**Mr Gemmell:** We have received, according to my advice, \$4.9 million from DEEWR in support of our Indigenous employment and training strategy. We are negotiating with them about future contributions to support the strategy.

**Senator SCULLION:** Perhaps I could ask you to put that on notice and once you are aware of that figure you could supply it to the committee.

**Mr Gemmell:** Certainly.

**Senator SCULLION:** The Brewarrina shearing school—another successful outcome. Is that still being supported by DEEWR?

**Mr Gemmell:** We call it the Merriman Shearing School near Brewarrina. We had a recent intake. We had 15 students come through; 13 successfully completed the course, 11 of whom are now in employment in shearing and associated matters. I think that is extremely successful. That program was supported with funding from DEEWR. We have an application in with DEEWR for funding to support the next intake, which we need to do quite soon. We do not yet have a response from DEEWR about—

**Senator SCULLION:** You do not know whether future funding for Merriman Shearing School has been approved or not.

**Mr Gemmell:** It is done on a project basis, so we have to make the application.

**Senator SCULLION:** Take that on notice in the same way as the other question.

**Mr Gemmell:** Certainly.

**Senator SCULLION:** I have some other questions in that area that I will put on notice. I will provide them at the end of the day. In December of 2012 I understand that the ILC board and senior management had a planning day of some form facilitated by a consultant.

**Mr Gemmell:** That is correct.

**Senator SCULLION:** What was that consultant's name?

**Mr Gemmell:** Virginia Hickey. She is from an organisation called @ the Board Table.

**Senator SCULLION:** How much was the consultant's fee for the day?

**Mr Gemmell:** The contract covers preparation for the meeting, facilitation on the day and then production of a report afterwards. The total contract cost was \$5,500.

**Senator SCULLION:** It seems extraordinarily high. I recall the amount and, whilst notwithstanding that people have to prepare for that, as a comparison, the fee of Julian Burnside QC, when representing the Commonwealth on the James Ashby matter, was only \$4,800 for the day. It was very similar—he represented him in court, he made similar preparations. It seems like a lot of money. Did you get three quotes for the facilitator, given that it was that much money for a day?

**Mr Gemmell:** Yes, we sought interest from four facilitators, two of which were not available.

**Senator SCULLION:** Not a suitable time?

**Mr Gemmell:** So there were two to look at and Ms Hickey's proposal was deemed the most appropriate.

**Senator SCULLION:** When you looked at some and they were not suitable—I understand that—so did you use the ILC Procurement Guidelines specifically to do that? You basically still got three quotes?

**Mr Gemmell:** Yes, we actually approached four organisations.

**Senator SCULLION:** They gave you a quote and all that sort of stuff?

**Mr Gemmell:** They responded. When they were not available at the time, that is hardly a quote. They were not available, so they could not do the job. Two of them could not do the job.

**Senator SCULLION:** So did you get two quotes, not three quotes?

**Mr Gemmell:** In effect, yes. Four organisations were approached to do the work, which is in accordance with the procurement guidelines.

**Senator SCULLION:** I thought the procurement guidelines actually said you have to get a price—a price had to be a fundamental part. I know there are other elements of that. You actually have to get three quotes. If I say to a painter: 'I have got three quotes.' Two painters were not available, then it is not really a quote. They are not able to take part in the procurement process. That would be my understanding.

**Ms Lindsay:** Our procurement guidelines say that three quotes is a guideline. It is about establishing value for money. It does not stipulate you must have three quotes. It uses the three quotes as a guideline for establishing value for money.

**Senator SCULLION:** Would that be the exactly the same as the Commonwealth guidelines?

**Ms Lindsay:** We are not bound by the Commonwealth guidelines, but our guidelines are based on the Commonwealth procurement guidelines.

**Senator SCULLION:** I understand the procurement processes a little better, although I am still a bit miffed why only two organisations were approached, instead of the normal process of approaching and getting a quotation or an expression of interest from three. Who authorises the payment? Whilst you seem to say that the procurement guidelines have been met, clearly, as you indicated they were not the normal sorts of processes because only two were available. Two were unavailable. Did you provide in writing to the delegate why the payment would be authorised?

**Mr Gemmell:** I am the authorising person for such things. To be honest, I regarded that as a fairly normal process for organisations to be approached. I actually finished up with two quotes out of that which is a fairly normal process.

**Senator SCULLION:** I am particularly interested in these agencies and the nature of the conflict of interest provisions when you are going through these procurement processes. Through the board, you would establish whether or not there was a conflict of interest—for example, whether there was any interest in the board and this company and whether there was a close personal relationship with somebody in this company. And if a board made a decision or you made a decision, you would ensure that those people or you indicated that there was some conflict of interest or an interest. The normal process would be that a board member would simply identify that interest and step aside.

**Mr Gemmell:** Where the matter goes to the board, yes, the normal process would be for the board member to declare the interest and then of course not partake in discussions.

**Senator SCULLION:** So whose recommendation was it to appoint this facilitator?

**Mr Gemmell:** It would have been my decision.

**Senator SCULLION:** Was there any discussion or conversations you had with any of the board members?

**Mr Gemmell:** Yes. It was a board management strategic planning day, and so we were all there. They can be difficult days, so it was really important that we had a high-quality facilitator to produce the results we wanted. I was wanting to ensure that whoever was appointed was accepted by board members and listened to and appropriately obeyed, if you like, by the board members. So we had to have someone who commanded respect. Yes, I certainly did talk to them, but not much—it was not a particularly big issue.

**Senator SCULLION:** Did you talk to any of the board members about the quality of the facilitators and do a comparative discussion about the facilitators?

**Mr Gemmell:** No, it was more like just telling them, 'The one we prefer is Virginia Hickey. Do you know her? What do you think?'

**Senator SCULLION:** Did any of the board members indicate they had a close relationship with facilitator, they are good mates or something like that?

**Mr Gemmell:** Not to my knowledge, but I should clarify that I did not talk to the board about this, I talked to the chair and also to one member of the board.

**Senator SCULLION:** Who was the member of the board you spoke to?

**Mr Gemmell:** Director Neil Westbury.

**Senator SCULLION:** So none of those conversations were around the recommendation or the selection of the facilitator.

**Mr Gemmell:** No, not really. That is my decision.

**Senator SCULLION:** Not really. I am just asking the nature of the conversation you had with Mr Westbury. Is it a good facilitator, is it a bad facilitator? Did he declare that he knew the facilitator and probably should not be talking to you about things like that? What was the nature of the conversation?

**Mr Gemmell:** Certainly I had no conversation where anyone told me they knew the facilitator in a personal sense. I am aware that the facilitator had done work for IBA in the past. The chair of ILC is also the chair of IBA. But that does not make it a personal connection.

**Senator SCULLION:** So you stand by your comment that the only conversations you have had with any of the directors was with Neil Westbury and you indicate with the chair as well, and that none of those conversations were had in a way that would recommend the facilitator that was chosen, and certainly there were no indications of a conflict of interest for Mr Westbury being identified to you in these conversations that he may have known the facilitator.

**Mr Gemmell:** Not to my recollection at all. I have to say, do I have very clear recollections of the conversation? No, not particularly. This was not a huge issue.

**Senator SCULLION:** If you have further recollections, Mr Gemmell, you can perhaps provide me with that answer at some further stage.

**Mr Gemmell:** I certainly will, though the chances of that are minimal given my memory.

**Senator SCULLION:** You never know. I have some questions in regard to your appointment. We know the history, that David Galvin no longer works for the ILC and you have taken over his position. Big shoes to fill, I have to say. I thought he was an excellent

operator. The act requires that acting appointments for the CEO be no more than six months. Were you appointed as an acting CEO for six months and now you continue to act beyond that six-month period?

**Mr Gemmell:** Yes, I was originally appointed—

**CHAIR:** Mr Gemmell, can I break in for a moment. I am happy for the questions to continue and the questions that you can answer please answer. It is just unusual to be asking questions about someone's appointment to the person themselves.

**Senator SCULLION:** If someone else can provide answers to the questions, I am more than happy for those answers to be provided.

**Mr Pratt:** I would like to point out that the CEO of the ILC is appointed by the board and the cabinet handbook requires endorsement from the minister.

Mr Gemmell was appointed for a period of just under six months as CEO. He then resigned and was away for several weeks and then was reappointed.

**Senator SCULLION:** I understand that would be the case because the ATSI Act actually says that an acting ILC CEO can be appointed where there is a vacancy:

but the person appointed to act during a vacancy must not continue to act for more than six months.

Is that correct?

**Mr Pratt:** That is correct.

**Senator SCULLION:** I assume—and perhaps, Mr Gemmell you can assist, if Mr Pratt does not have the details—once you resigned you did the normal thing: you handed in your ILC phone, keys to the office, removed from the ILC emailing list, you did not attend any ILC work related matters and incurred no cost to the ILC during that period, since you had resigned?

**Mr Gemmell:** You would have expected that, perhaps, Senator, but that was not the case.

**Mr Pratt:** It is also worth putting on the record that the position has actually been advertised in the national press on 2 February.

**Senator SCULLION:** Thank you for that! Is there any explanation about why you hung onto the phone and the keys as if you were still working? Mr Gemmell, is there any explanation for that, seeing that you had resigned?

**Mr Gemmell:** It was because I had an expectation that a further appointment would come through, which it did. So, given I was likely to be back at the organisation, it seemed unnecessary to hand back all the things like my phone. I also attended, for example, a corporate management team meeting on the Friday—I was starting back on the Monday.

**Senator SCULLION:** Where was that held?

**Mr Gemmell:** Adelaide.

**Senator SCULLION:** Who flew you to Adelaide?

**Mr Gemmell:** ILC.

**Senator SCULLION:** The ILC paid for you to attend the management meeting during the period of time that you were supposed to be resigned?

**Mr Gemmell:** Yes. I chaired the meeting.

**Senator SCULLION:** Under section 192P of the ATSI Act it says that an acting ILC CEO can be appointed when there is no vacancy:

... but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

I do not want to speak directly to Mr Gemmell in this matter. Perhaps Mr Pratt may be able to assist me. It would appear that he did not really resign at all and this is just an attempt to get around the very specific dictate of the ATSI Act. Can you explain why that would possibly be the case?

**Mr Pratt:** Ultimately these are matters for the board but, as I understand it, we have legal advice which indicates that this was not inappropriate.

**Senator SCULLION:** So you have received legal advice—without verballing you again, Mr Pratt—that indicates that this is consistent with the spirit of the ATSI Act? I have to say that, quite clearly, I can read this and it says that you 'must not continue to act for more than 6 months'. That is very clear.

**Ms Hand:** Yes, we did get legal advice because the ATSI Act does state that. The advice was very clear that, providing the person who was acting does not do so for more than a period of six months, there is absolutely nothing to preclude that person being reappointed. Obviously it is a matter for the board but my understanding from the board was that the board was very happy with the work that Mr Gemmell was doing, that there was no other suitable candidate to act and given the process for a permanent CEO was well underway, it was deemed an appropriate strategy to ensure stability in the organisation and to make sure the best person was there acting until the permanent person is appointed. And I understand that that is a matter of months.

**Senator SCULLION:** Ms Hand, just for the record, there is no question about the work or otherwise of Mr Gemmell. That is not a question here. What is at question is the act. If we can be provided with that legal advice it would be very useful. The act simply says—again, without verballing you—that, yes, that is quite consistent. Somebody actually resigns. My point is, perhaps, Mr Pratt, that Mr Gemmell did not really resign. He did not give his gear back, he still attended a function, they were paying for him. I hope the ILC is not in the habit of paying strangers and nonemployees to attend things and actually chair things. This is just a fabrication. This whole thing is a farce to get around the ATSI Act. That is clearly what this is. Can somebody tell me that that is not the case?

**Mr Pratt:** I think Ms Hand has made it quite clear that this is a strategy to ensure that there was stability and ongoing management while a permanent CEO was selected. We have legal advice that this was acceptable to do so. We are in the business of not verballing people. Without wanting to verbal Mr Gemmell, I understand he has no intention or expectation of being appointed permanently as the CEO. This is to enable continuity of management during that period. That is all. I am very pleased that you have pointed this out yourself, Senator, but Mr Gemmell is a very experienced administrator who has had substantial experience in managing organisations of this sort. Frankly, I do not think there is any scandal here. I think this is just a sensible strategy to deal with an inconvenient part of the act.

**Senator SCULLION:** It would have been far more sensible, with respect, if whoever decided to get rid of the previous CEO did it at a time that this could actually happen in sync

with this, so he could have stayed on for another five months. It is not every day that a government agency acknowledges that they sat down and specifically found a way that they thought they could get around the ATSI Act. Personally, I do not think you have. I do not think it is clear, simply because nobody has denied and it is acknowledged that if you still maintain the property of an organisation, if you still act as part of that organisation, if that organisation still pays your fares, Mr Gemmell did not resign. Therefore he has been employed as CEO to fill a vacancy for more than six months, which the ATSI Act specifically prescribes that you must not do. I know it is for convenience of organisation and it is all those wonderful words. The only problem was that Mr Gemmell did not resign.

**Mr Gemmell:** In the period after my resignation until I was reappointed Ms Lindsay was appointed as the acting CEO of ILC and exercised all the authorities that went with that. Everything I did was as a guest of ILC, noting that I was in fact the acting CEO designate. I have to say that it is not unusual to fly people who are not part of the organisation into a particular meeting to provide some assistance or do whatever. The particular management meeting we had, if you recall, was on the Friday. The Monday I was back as the acting CEO, so it made an awful lot of sense for me to participate in that meeting.

**Senator SCULLION:** This is not a matter, with respect, Mr Gemmell, about common sense and convenience. There is an act that guides quite sensibly corporations like the ILC. In fact, it is quite specific about this. It said you shall not do something. My problem with this is simply that this is a mechanism that has been contrived to get around it. Somebody said, 'What you need to do is resign.' But through none of your actions or the actions of the board of the ILC was your resignation real in any sense that a piece of paper was put and you were reappointed. You continued to have your role not as a guest. You continued your role. As you say, it was convenience as you were starting on the Monday anyway. You attended the ILC management meeting and actually chaired the meeting. Wouldn't you say that you were still continuing in your role as the CEO?

**Mr Gemmell:** No, I exercised none of the powers of the acting CEO in that period, none at all. That was all done by Ms Lindsay in my absence. I had no authority. Indeed, at that particular meeting I made quite clear at the outset that I was in fact a guest, Ms Lindsay was the acting CEO, so I had no authority there. Given that on Monday everyone knew I was going to be, it proceeded quite normally.

**Senator SCULLION:** I would not characterise it as quite normal. I am not going to flog seriously injured horse, but I am certainly not convinced that this is not something that has been contrived to get around a piece of legislation. I understand if someone has to resign and be reappointed that that is quite okay. It is not getting around it, it is the way it is.

In those circumstances people who resign give back their phone and the keys to the office. They do all the normal things that people do when they resign. They have to step aside from the organisation completely. That is what a resignation is, and I do not think the definition is in question. There is nothing more I can do. You have indicated to me, Mr Pratt, the secretary of the organisation, that the acting chief executive of ILC says that this behaviour seems to be okay. I understand your motivation—it must be frustrating in these times—but I think it was very untidily done. And it does not send a very good message to say that if we have something that stands in the way of what we want to do—like the law—then we should have a chat about how we might get around that. I do not think you have done it particularly well,

Mr Gemmell. In fact, I should not be talking to you because I think you are innocent of all of these things and this was no doubt a directive to others. You have filled and, no doubt, will continue to fill a very important role in the ILC. So I will withdraw most of those comments simply because I am looking at you, and I will look slightly to my right. Mr Pratt, all I can say is that I am very disappointed. You are clearly not going to do anything about it. You said it is quite okay.

**Mr Pratt:** Senator, before you direct that angst at me, I would like to point out again that this is actually a matter for the board, not for the department. The department is providing advice on this matter. We do not appoint Mr Gemmell as acting CEO; we do not have a role in that. I am just providing the advice that we have on this matter.

**Senator SCULLION:** Did you seek that advice subsequent to these processes taking place, or did you seek that advice before the date of resignation?

**Mr Pratt:** I do not know.

**Ms Hand:** We sought it before the date of the resignation. The minister asked as to provide advice and so did the chair of the board.

**Senator SCULLION:** The minister asked for advice on how she was able to get around the ATSI Act by ensuring—

**Ms Hand:** No, she did not.

**Senator SCULLION:** I am just clarifying that.

**Ms Hand:** She categorically did not.

**Senator SCULLION:** Did you have any indication about why she required that specific advice in the context that the CEO's time was up. The ATSI Act says he is not going to act for a further period, so I would have thought it was—

**Ms Hand:** I think it has been made very clear that there has been no law broken here and that this was a sound risk management strategy by the board, with absolutely no intention of keeping Mr Gemmell in the position permanently. In fact, for the staff of the organisation and for the operations of the ILC, the board, as I understand it, deemed it a very sensible risk management strategy, providing the advice they got said that they could do it. And clearly the legal advice that we got stated that it was able to be done.

**Senator SCULLION:** I am very much a layperson. It says very clearly that the person required to act during the vacancy must—must, not may—continue to act for more than six months. That is very clear. That is the basis of my question. I do not intend to debate the case; I am sure I would be crushed by your much higher intellect and knowledge of these matters. But, as a simple person, it would seem to me that that is what has been attempted. Anyway, perhaps I will pursue that in other areas.

I would like to ask some questions about the National Centre for Indigenous Excellence. Perhaps you can provide me some advice, Mr Gemmell. I understand that the NCIE is a body that is totally owned and operated by the ILC.

**Mr Gemmell:** That is correct.

**Senator SCULLION:** Can you give me the final result for the NCIE for 2011-12? I cannot see it from the accounts.

**Mr Gemmell:** Just to clarify, the NCIE is wholly owned by the ILC. It is set up as a charity.

**Senator SCULLION:** So it is like a non-profitable charity?

**Mr Gemmell:** I have not brought with me their financial results for 2012.

**Senator SCULLION:** Are you familiar with the financial documents? If not, I am not sure whether the chief operating officer would be. I know you do not have the documents with you, but I do not need the details to the last decimal point. I was just wondering whether, for example, they had an operating surplus in the charitable businesses.

**Mr Gemmell:** No. In rough terms, a turnover of about \$4 million goes through the NCIE. We underwrite—I think that would be the best expression—any financial losses they make. We are putting something in the order of \$1 million into that organisation per annum.

**Senator SCULLION:** So what is the annual loss—around \$1 million a year?

**Mr Gemmell:** Yes. We are hoping for that to decline over time and for charitable contributions to come into the organisation. The plan is that, eventually, we will not continue that underwriting and they will be fully independent.

**Senator SCULLION:** I assume that, at the start of this, there was seed funding and eventually you will become self-sustaining through philanthropy and those sorts of processes.

**Mr Gemmell:** Yes. We purchased the land, which was the old Redfern Public School. We invested a significant amount of money into upgrading the facility with a gymnasium, accommodation and those sorts of things. As a charity, it is supported by us initially but the plan is that, over time, they have to develop funding sources from other areas so they can become self-sufficient. The original plan was that they would get to that position in five years. We were thinking of income from activities they perform and from charitable contributions, whether that be corporate contributions or wherever it might come from.

**Senator SCULLION:** Were you aware of any changes to the compensation for the NCIE board?

**Mr Gemmell:** Yes. The ILC board took a decision late last year to change the composition of the board. It is reviewed annually. They changed the composition of the board and some new members were appointed. It was agreed in that context that there would be remuneration available to NCIE board members. The remuneration struck was based on Remuneration Tribunal rates paid to board members. We looked at the cultural institutions as being the rough equivalent.

**Senator SCULLION:** What did that turn out to be per board member?

**Mr Gemmell:** About \$14,000 per annum.

**Senator SCULLION:** What was your advice? Did you prepare a paper for the board? That seems extraordinary given that it is running at a \$1 million loss. For a lot of charitable organisations, the norm is no remuneration. Given that the NCIE has been running at a loss, what was the rationale for the remuneration? Did you provide a paper for the board? What was the advice to the board to decide that we should spend more money on remuneration?

**Mr Gemmell:** The rationale relates to people having to dedicate their time to the organisation. It was quite important, we thought, to get this facility running professionally with people who were prepared and able to dedicate their time. To assist that, we felt it was

appropriate to offer remuneration. It is open to all participants not to accept that remuneration. We thought we would get a more professional organisation if people were given some compensation for the time they are going to have to dedicate to it. Some of the people on the board are successful businessmen. This amount will not come very close to remunerating them for their time; it is pretty modest. We did do an analysis of what an appropriate rate was, based on the Remuneration Tribunal rates. At the end of the day, the ILC is underwriting all of that; if that increases their loss, we pay it. That is an appropriate decision for the ILC to make.

We thought that would enable better quality people to join the board and it was all round better arrangement than asking people to simply dedicate their time. If anybody does not wish to accept the money they can donate it to NCIE and it would be gratefully received.

**Senator SCULLION:** I understand that about 2½ years ago the NCIE CEO authorised a donation of around \$12,000 from a charitable trust that is losing \$1 million a year as a contribution for a statue of the great boxing champion Lionel Rose to be erected in his hometown of Warragul in Victoria. Do you have knowledge of that?

**Ms Lindsay:** Yes, I do.

**Senator SCULLION:** What authority and delegation did that CEO have to provide that donation, gift or whatever you want to call it?

**Ms Lindsay:** This is a matter between the CEO and his board about action that has been taken as a result of that decision. He did act outside of his authority with regard to that decision.

**Senator SCULLION:** I understand that the former co-chairs, Ian Ferrier and Sam Jeffries, did the right thing. They were board members and when they found out they instructed the CEO to repay the money. Has that been done yet?

**Ms Lindsay:** I am not aware what instruction was given to Mr Glanville.

**Senator SCULLION:** Has he repaid the money?

**Ms Lindsay:** No, he has not.

**Senator SCULLION:** I understand that not long after that Mr Ferrier was removed from the board and Mr Jeffries was demoted from his role as the deputy of the board. Are you aware of any submissions from or lobbying by the CEO to the ILC chair to remove Mr Ferrier and demote Mr Jeffries?

**Mr Gemmell:** The NCIE board appointments are reviewed annually by the ILC board—that is the normal and ongoing process as set down in the constitution of the NCIE. The decision about changing the membership of the board was taken late last year. Yes, Ian Ferrier, amongst others, was not continued and Mr Jeffries, who had been the co-chair, did continue on the board but not as co-chair. I cannot comment on any lobbying. It would surprise me if there wasn't lobbying—we are talking about Indigenous affairs, so I imagine there was quite a bit. But I certainly wasn't lobbied.

**Senator SCULLION:** The board is responsible for this subsidiary. To a lot of people \$12,000 has been given away without delegation and only two board members challenged that—and you may have not have knowledge of it although I am surprised that is the case as I have knowledge of it. Of those two board members, one was removed and the other was

demoted. I am not sure if you are willing to undertake to have an internal investigation about this, but I, as someone outside, would see it as smacking of corruption. Someone could see it as wrongdoing: they clearly do not have a delegation for it and the two people who complain about it get slapped. You do not have other information you can provide, but would you undertake to investigate this matter? You are obviously aware of it.

**Mr Gemmell:** No, I was not aware of the statue issue at all.

**Senator SCULLION:** Ms Lindsay was.

**Mr Gemmell:** I am not sure I would correlate quite as closely as you have the issue of the statue with the change in the membership of the board. We can have a look at the issue and see what we can find out.

**CHAIR:** Senator Scullion, you are aware this is an issue for the board.

**Senator SCULLION:** Yes, indeed, but if you can pass these concerns on to the chair of the board, I would appreciate it. I have not made up these concerns; these are raised by the Indigenous community and they are a reflection of their concerns about the probity of these matters. I appreciate what you said and would appreciate it if you could get back to me with that response on notice.

I would like to table a letter from Ron Morony dated 13 September. It is stated he has no objection to IBA providing to the Senate a copy—

**CHAIR:** I take it we are moving off ILC and to IBA.

**Senator SCULLION:** Yes, indeed we are. I have some other questions on notice in regard to the impact of the cancellation of Qantas flights and Ayers Rock. Thank you very much, Mr Gemmell.

### **Indigenous Business Australia**

[11:45]

**CHAIR:** I welcome the officers from the IBA. Because of time constraints we only have 10 minutes for questions on the IBA.

**Senator SCULLION:** As I indicated, I table a letter from Ron Morony dated 13 September 2012, saying he has no objection to IBA providing to the Senate a copy of a letter Mr Morony sent to the board at the time of his termination of the CEO—we have already been through that. Mr Fry wrote to me saying he was prepared to provide a copy of that letter, but first he would like to write to Mr Morony seeking his express permission to do so. Of course, I accepted that and I will also table that letter. Did the IBA approach Mr Morony about this? If so, when was that?

**Mr Bator:** Yes, we did write to Mr Morony to seek his consent to the release of his confidential letter to the IBA board. And yes, he agreed to the release of that letter.

**Senator SCULLION:** I understand you also asked Mr Morony to indemnify the IBA. That wasn't a part of our conversation about what you had to satisfy yourself about. What was the purpose of that request?

**Mr Bator:** He signed a deed with IBA which covered the letter and the disclosure of the letter to other parties or any kind of detrimental comments that he would make of IBA now or

of IBA in the future. He signed a binding arrangement that that letter would remain 'in confidence' into the future.

**Senator SCULLION:** Are you able to provide the letter?

**Mr Bator:** Are you asking me to—

**Senator SCULLION:** I am. This is about the provision of a letter from Mr Morony on his resignation, which I understand provides a range of advice to IBA. I would like to have that made available to the committee. This process has taken place and you have written to Mr Morony. Are you going to provide us with the letter?

**Mr Bator:** I can provide the letter.

**Senator SCULLION:** Excellent.

**Mr Bator:** The important thing is that IBA has considered the issues raised in the letter. Whilst we are ready to put the letter forward, as requested, I think some comments should be made about the letter and the context of the letter.

**CHAIR:** Can we get the letter first?

**Senator SCULLION:** I haven't seen the letter and unless there are questions on notice I won't be able to talk about this letter or the issues within it until the next set of estimates. We have come to this stage in pulling teeth where we have actually got the letter, but I am not sure how useful it would be for you to put it in context. I am more than happy to start this conversation again, given the time. I hope you don't mind my moving from this, but we have very little time so I won't be dealing with the letter in this session—I will deal with it at the next set of estimates.

**Senator SIEWERT:** Before we move on, could we have that letter plus any other relevant correspondence?

**Senator SCULLION:** The only other relevant correspondence I will be tabling is the letters I have said come from—

**Senator SIEWERT:** I mean from the IBA. That letter is the response, is that correct?

**Senator SCULLION:** Yes.

**Mr Bator:** IBA has not provided a response.

**Senator SIEWERT:** So that is the original?

**Mr Bator:** That is the letter.

**Senator SIEWERT:** And there has been no response since then?

**Mr Bator:** There has been no response to that letter.

**Senator SIEWERT:** To Mr Morony.

**Mr Bator:** To Mr Morony's letter. We have written to Mr Morony and sought his consent to release the letter, but IBA has not been given the opportunity to comment on the letter. Presumably the letter is now on the public record and IBA has not been able to comment as I would have liked to comment.

**Senator SIEWERT:** There is no relevant correspondence other than the letters we have been through?

**Mr Bator:** That is correct.

**CHAIR:** I am happy for this discussion to continue while I take some advice about what was said about the letter being in the public sphere and no response from IBA being available to a significant letter which has at least 20 pages.

**Senator SCULLION:** To assist, Mr Bator, I ask you on notice to provide a response to contextualise the letter. The committee would be grateful for that.

**CHAIR:** Mr Bator, out of session I will take some advice and talk to the committee. This letter will not be made public until I have received that advice, because I am very concerned that there will be no discussion on the letter because we have not had a chance to read it. I will take some advice from the secretariat about the process for publication and when and how it will become public. This advice will be taken in the next couple of days, so until it is finalised this letter will go no further than the committee. We will work with Senator Scullion about what happens next.

**Mr Bator:** Thank you very much.

**Senator SCULLION:** I move to an issue associated with Tjapukai. I have been keenly interested in this establishment for some time. On 1 June last year, Mr Fry told an estimates hearing about additional investments IBA was making in Tjapukai. He said the board had approved \$12 million in capital expenditure, \$2 million in working capital and \$4 million for the next number of years to 2014-15. He went on to say that from 2015 to 2023 there is a consideration of an additional \$19 million. In your response to question on notice 474 you indicate Tjapukai's value is around \$1.4 million. Is that correct?

**Mr Bator:** That would be correct.

**Senator SCULLION:** How is it that you will invest a minimum of \$18 million in a business that you have valued at \$1.4 million?

**Mr Bator:** The board has made a decision that that investment requires a substantial upgrade in order for it to be a profitable investment and for it to continue to have high numbers of Indigenous employment. It is an older establishment which requires an upgrade. It is a significant employer of Indigenous people within that region. We have gone through a comprehensive process of design, looking through who might be able to provide the very latest and best structure and facilities to make sure that that is a very successful tourist facility in that part of Australia.

The value of that asset is probably because of the condition that it is currently in, rather than the potential that the land and the environment holds, and the increasing presence of Chinese and Japanese tourists that are starting to come through that particular venue—which will be increased through the improvement of facilities and amenities that are there.

**Senator SCULLION:** Is it true that the IBA administration, in considering this, advised in a board paper against this additional investment in Tjapukai?

**Mr Bator:** The board has robust conversations about all of its investments and whether or not there will be value for money. That is a proper function of the IBA board. In my experience, they do that with all the investments to see whether they are going to get value for money and a return on investment. We received, and the board considered, many different options and projections around Tjapukai, and they made a decision that this was a sound investment that would return an improved investment over time, and maintain the high levels of Indigenous employment that Tjapukai currently provides.

**Senator SCULLION:** I have visited Tjapukai on a number of occasions and I still have some very serious concerns about the nature of the investment. An \$18 million investment is a huge investment, and I guess we will have to wait and see.

If I could move quickly to the Medina Vibe—one of your investments. I understand the main purpose of investing some \$50 million in the Medina Vibe Hotel was to generate Aboriginal jobs. However, you advised in your answer to questions on notice that there were one or two Indigenous employees, but none at the moment. Thirty per cent of the population in Darwin is Indigenous, so how many non-Indigenous staff are employed at the Medina?

**Mr Bator:** I do not have that information just in my head. What I can tell you is that the board and my staff have been working very closely with the company that provides the hotel facilities. We have also been working with local Indigenous employment providers and we want to turn that around. We do not feel that the type of outcome that you are referring to is appropriate, with only one or two Indigenous employees. We would like to see more. There is nobody more strident in wanting that outcome than the IBA board, and it has been given to us as a task to make sure that we can turn it around.

**Senator SCULLION:** There are two things. You do not have an Indigenous partner—normally, as you have told me before, you like to have an Indigenous partner in this process. You have bought out the previous Indigenous partner and you are looking for another one. How are you going with that search?

**Mr Bator:** That search is progressing. At the moment we are still going through various options and the opportunities that exist. I cannot currently say who that might be, but it is not from want of trying.

**Senator SCULLION:** I understand.

**Mr Bator:** It is work which is underway.

**Senator SCULLION:** I go to the Medina quite often and there are a lot of staff there. As you say, I am happy to take that on notice. We have a lot of Aboriginal people who are being trained, particularly in hospitality, as you would be aware, around Darwin, and I find it completely extraordinary that you cannot find an Aboriginal person—given the record of the ILC in Ayres Rock. They have focused on it and they have achieved it. I will watch very closely.

**Mr Bator:** We are working with the ILC on this issue to try and understand how they have been successful; to try and work through their training facility in order to see whether we can encourage the rotation of staff who are trained there into the Medina. It is certainly a high priority.

**Senator SCULLION:** I certainly would like to see staff from Darwin trained there. In any event, we will keep an eye on those numbers.

**CHAIR:** Thank you very much to the officers from IBA. We will be in contact with you early next week.

#### **Office of the Registrar of Indigenous Corporations**

[11:59]

**CHAIR:** We now have the officers from ORIC for five minutes. I apologise for the limited time you have, but other questions went on.

**Senator FURNER:** I have a few questions for ORIC and FaHCSIA. I want to take you to some concerns that have been expressed in the media—one such example would be the ABC on 1 February—about the use of funding Jawoyn Association Aboriginal Corporation, so we might start with ORIC. Are you aware of those concerns about this organisation?

**Mr Beven:** Yes, on 16 January this year a complaint was made to my office in relation to the Jawoyn Association Aboriginal Corporation.

**Senator FURNER:** Have concerns been raised with you as the regulator?

**Mr Beven:** Yes.

**Senator FURNER:** How are you responding to those concerns?

**Mr Beven:** As with any complaint, we are going through our usual assessment process in relation to that complaint, but as you would appreciate those inquiries are ongoing, so I am not in a position to make any further comment so as not to prejudice those inquiries.

**Senator FURNER:** I understand. I have similar questions to FaHCSIA. Are you aware of the concerns of this organisation?

**Mr Dillon:** Yes.

**Senator FURNER:** Does FaHCSIA provide any funding to this organisation?

**Mr Dillon:** My understanding is that we have provided minimal funding, but there is a small grant in recent years.

**Senator FURNER:** Over recent years?

**Mr Dillon:** I do not have the detail at my fingertips.

**Senator FURNER:** Are you satisfied by how that funding is being used with this organisation?

**Mr Dillon:** I might defer to my colleague Felicity Hand.

**Ms Hand:** We have provided funding in previous years, and there is a small amount of funding being provided to the organisation. FaHCSIA too takes the allegations that have been reported in the media and elsewhere seriously, and to that end we are conducting our own compliance inquiry into the organisation.

**Senator SMITH:** I might just read my questions and you can take them on notice—that would be great. It relates to some allegations that have been made in regard to the Western Desert Aboriginal corporation. What work has been undertaken by officers to examine allegations made by Mr Bruce Hill regarding the Aboriginal corporation? What findings were made? Was a brief of evidence prepared? At what point or date did ORIC decide not to pursue investigating the allegations made by Mr Hill?

**Mr Beven:** Just for clarification, there are a number of organisations by the name of Western Desert.

**Senator SMITH:** You are quite right: the WDPAC.

**CHAIR:** Thank you, Senator Smith; that was very good of you. Again, Mr Beven, I do apologise for the limited time.

[12:03]

**CHAIR:** We will now move to the officers from Health, and my apologies to them for keeping them waiting. There will be questions from Senators Siewert and Fierravanti-Wells. I have been assured we are going to go down the list as it is printed, so general financial matters to start with. I take it that you are starting with that, Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS:** Yes, I am. My first question is to Mr Learmonth. You were present the other day at Health. Can I just assume that the same indications that were given by Ms Halton in relation to the Breeze list, if I can put it in those terms, will carry over to outcome 8?

**Mr Learmonth:** Yes.

**Senator FIERRAVANTI-WELLS:** Thank you. On 21 October 2011 a couple of very useful attachments were tabled to this committee. They were entitled 'Australian government Indigenous Expenditure—Indigenous specific component of mainstream programs 2010-2011' and 'Australian government Indigenous expenditure—Indigenous specific programs 2010-2011'.

I wonder whether an update of those attachments could be provided to the committee.

**Mr Learmonth:** We can do that for you.

**Senator FIERRAVANTI-WELLS:** That was very helpful. It means therefore that those questions I was asking the other day about programs, subprograms and initiatives et cetera in outcome 8 will be covered by those two attachments. That should be sufficient reference to those. In terms of general financial matters, is it appropriate to ask about the Indigenous marathon program here?

**Mr Learmonth:** We have someone who can answer that.

**Senator FIERRAVANTI-WELLS:** Do you have a copy of the recent submission to the ATSI Joint Standing Committee inquiry into the benefits of sport in improving Indigenous health outcomes with reference to the Indigenous marathon program on page 2?

**Mr Smyth:** No, I do not.

**Senator FIERRAVANTI-WELLS:** I will give you a copy. I have a spare one. On page 2 it says IMP is not a sports program, it is social program. Shouldn't it really be a health program? Where does it sit?

**Mr Smyth:** It actually sits as part of the chronic disease program in terms of its funding but it is to develop and provide training resources, support for certificate IIIs and IVs in Indigenous healthy lifestyles. It also enables some of the participants to be able to transfer their skill sets across to the Indigenous healthy lifestyle workers. It looks to create leaders in communities, people who actively participate in their community to encourage further health lifestyle behaviours. It is just broader than just taking people to New York to undertake the marathon. It is about social and behavioural change as well.

**Senator FIERRAVANTI-WELLS:** It was technically funded under the chronic disease umbrella but it is really a social change program.

**Mr Smyth:** It is primarily around health but it also has greater opportunities to leverage some of those activities in broader community activities.

**Senator FIERRAVANTI-WELLS:** Has the program delivered the social change that was anticipated and how are you measuring that?

**Mr Smyth:** There is anecdotal evidence to suggest that it is making a difference in communities. It is creating leaders and mentors. The original tranche of athletes that were selected are now working very collaboratively in their communities to effect some of those behavioural changes that are more healthy lifestyle related.

**Ms Krestensen:** As Mr Smyth has said, we have had quite a lot of good anecdotal feedback about the project and the way in which the runners have become role models for their communities and have modelled healthy lifestyles. We have actively promoted the link between the broader chronic disease initiatives such as the tackling smoking initiative and healthy lifestyle teams to draw on those role models.

The sorts of examples we have is that squad members have become healthy lifestyle advocates for their families, communities and regions. One example is one of the runners, who works very closely with Healthy Lifestyle workers in and around the Alice Springs area. He is taking a very active role in promoting healthy messages about those particular communities. The employment prospects of quite a few of these kids has also been quite good; they have moved on to fields which seem to be related to the health arena. Their progress in completion of their cert III and cert IV is something we are monitoring very closely as part of the project, given it does straddle that sport and health divided.

**Senator FIERRAVANTI-WELLS:** It does. Ms Krestensen, if I take it just from that document, there are about 20 in the 2011 squad and then another 10 or so. In relation to the participants, are you measuring through participation rates? Is that one of the criteria or is it really just based on anecdote more than anything?

**Ms Krestensen:** We do not have a formal evaluation of the project at this stage; that is something we are considering. There is a separate evaluation being undertaken, quite independent of government, through a University of Sydney project. We are closely monitoring both the number of runners participating in the project, the extent to which they work with our broader initiatives and, importantly, the extent to which they are completing the cert III and cert IV requirements and that they are encouraged and supported to do so. As you mentioned, I think we had four runners in 2010. In 2011 we had 11 runners. In 2012 we had a team of 12, of which eight were prepared to run but, because of hurricane Sandy, of course, they got to New York to find that the marathon had been called off the day before—so, as you might have seen in the media, they instead participated in some of the volunteer activities happening in New York at the time. But we are very keen, even though it seems to be focusing on elite-athlete issues, to ensure that the health aspects of this are promoted as much as possible through the project.

**Senator FIERRAVANTI-WELLS:** Thank you. I might just ask a couple of general questions in relation to future Closing the Gap health funding. I apologise if this question has been asked by Senator Siewert, because I know she asked some questions earlier. If it has, just indicate for the record, thank you. I would like to know progress that the Commonwealth has made towards forming an agreement with the states and territories in relation to the next phase of Closing the Gap health funding beyond this financial year.

**Ms Killen:** The National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes, as you know, expires at the end of this financial year. One of the requirements within that agreement is that the parties to the agreement undertake a review during this financial year. That review is currently underway. I would anticipate that the outcomes of that review would inform decisions by government on whether there will be a further National Partnership Agreement.

**Senator FIERRAVANTI-WELLS:** Ms Killen, do you have any undertakings from the states and territories about future funding? Or is that going to be caught up as part of the review?

**Ms Killen:** In relation to the first question, no I do not. But some states and territories have ongoing funding for their activities under the NPA and others do not. My understanding is that many of those that do not are going through their own budget processes. Obviously, it is important that all jurisdictions do continue their commitments in this space, but at this point we are going through the review process.

**Senator FIERRAVANTI-WELLS:** The agreements have processes that you have to go through for the review? Have you set a timetable for that?

**Ms Killen:** Yes, the agreement itself specifies that the review has to happen in this financial year.

**Senator FIERRAVANTI-WELLS:** Yes, I do not have it in front of me.

**Ms Killen:** We are undertaking the agreement in accordance with guidance issued by Treasury.

**Senator FIERRAVANTI-WELLS:** All right. Thank you, Ms Killen.

**Senator SIEWERT:** Can I just ask some questions there. So the review is underway and has to be completed by the end of the financial year. But the agreement finishes this financial year, allocations finish this financial year—what is going to happen come 30 June to those programs that are currently funded?

**Ms Killen:** The Commonwealth's contribution to the National Partnership Agreement does not end at the end of this financial year. Much of the programs within the Indigenous Chronic Disease Package were consolidated into the Aboriginal and Torres Strait Islander Chronic Disease Fund. The guidelines for that fund clearly state that the fund is an ongoing initiative. Those components of the package that were not consolidated into the fund are things such as the flow-on costs to the MBS and the PBS, which obviously also continue; and the PIP Indigenous Health Incentive, which has been incorporated into another of the flexible funds. So the Commonwealth's contribution continues, and that is clearly documented.

**Senator SIEWERT:** As you just said, some states have not made a commitment yet. But, of those that have, what happens to their commitment?

**Ms Killen:** Clearly, that will be a matter for the states and territories. Under the National Partnership Agreement, it is all Commonwealth and state own-purpose expenditure. There are no transfers from the Commonwealth to the states under the agreement. So, clearly, it will be important, as I said earlier, that the states also continue their commitments and activities.

**Senator SIEWERT:** Yes, sorry, I did mis-word that question: I realise you cannot answer for the states. But, for the programs that the states are funding, is it likely that there will be a break in those programs?

**Ms Killen:** I cannot comment on that, Senator.

**Senator SIEWERT:** If they do not commit, though, it is likely that those programs will not be able to continue until there is a commitment process. Is that a correct understanding?

**Ms Killen:** I would imagine so. As I said, I really cannot comment on state government programs.

**Senator SIEWERT:** I understand that you are not in a position to say whether they are committing or not. But is it your understanding that, unless more funding is committed, those programs will not be able to continue until the new funding is committed?

**Ms Killen:** That would seem likely.

**Senator SIEWERT:** Okay, thank you.

**Senator FIERRAVANTI-WELLS:** In question on notice E12-314 I asked about some expenditure in relation to each of the funds, which of course included the Aboriginal and Torres Strait Islander Chronic Disease Fund. So I have the details in relation to spending over the forward estimates. What practical difference has the establishment of this fund made to programs and services? I know it is a broad question.

**Ms Killen:** In the short term, Senator, it has not made an enormous amount of difference, because we have continued to implement activities in line with our agreed implementation plan under the National Partnership Agreement. So that is a document that has been endorsed by health ministers and is on our website. All jurisdictions under the National Partnership Agreement had to agree to develop an implementation plan covering the four years. So we have continued to implement activities broadly in line with that implementation plan. The advantage of the fund is that it has given us a more streamlined approach. Where you may have a small amount of extra funding in one area, and emerging priorities in another, there is that ability now to move it more easily. That will certainly be important going forward, as we start to respond to the need to develop those programs over time.

**Senator FIERRAVANTI-WELLS:** So, as priorities might have been adjusted, there have not been changes to services; there have just been adjustments to priorities?

**Ms Killen:** At this stage, no. At this stage we are still continuing in line with our implementation plan.

**Senator FIERRAVANTI-WELLS:** Thank you. Could I ask some questions in relation to the Indigenous Chronic Disease Package National Monitoring and Evaluation Project. Can you provide an update on the progress of this project, Ms Killen.

**Ms Killen:** Certainly. As we have discussed before, there are two really key parts to this work. One is the National Monitoring and Evaluation Project, which is taking, as it suggests, a national approach to looking at the implementation of the package and looking at some differences around things such as urban, regional and remote. The second part is the Sentinel Sites Project, which is taking a place based approach. That, then, gives us a much more fine-grained look at what is happening on the ground and has shown that there are differences that

are not actually related to urban, regional and remote, which is the way we normally cut things.

So, both projects are going well. I would anticipate that we will be sharing some interim results of the Sentinel Sites Project in the near future.

**Senator FIERRAVANTI-WELLS:** Yes, because the data from the sentinel program sites is coming in from the end of 2012 and the beginning of January 2013.

**Ms Killen:** Yes. So that will be the first one where we will see some interim results with further ones coming later in the year.

**Senator FIERRAVANTI-WELLS:** My next question relates to the expected reporting date.

**Ms Killen:** There are probably two ways of looking at that. We have dates, obviously, within our contracts—KPMG is doing the national one and Menzies School of Health Research is doing the Sentinel Sites—where they need to provide us with their final report. However, these are really substantial documents, covering around 20 initiatives within the chronic disease package. Having received the report we then circulate it to every area in the department that is responsible for the package and they provide comments back, so there is a process of finalising and bedding down that report before we would then provide it to the minister for his consideration before it would be released. So, while I can say that we will have the reports by the end of the financial year, I cannot commit to a release date.

**Senator FIERRAVANTI-WELLS:** No. Just from the website, it looks very clear that there is a lot of material there. Do we have a completion date for—

**Ms Killen:** So you would like the completion date for the project?

**Senator FIERRAVANTI-WELLS:** Yes, please.

**Ms Killen:** The final report for the KPMG project is due in June and the final report for the Sentinel Sites Project is also due in June.

**Senator FIERRAVANTI-WELLS:** Okay, so both due in June—thank you. Sorry, can I just take you back to the sites: the results will be released in stages?

**Ms Killen:** Yes. Each project is giving us a number of reports.

**Senator FIERRAVANTI-WELLS:** And they will be sent progressively to the minister?

**Ms Killen:** Yes.

**Senator FIERRAVANTI-WELLS:** And all of it will be released in June?

**Ms Killen:** I don't know that all of it will be released in June. With some of the earlier ones which were based on small numbers and were very early on, I am not sure there is a lot of value in them. But certainly the final reports will be provided to the minister.

**Senator FIERRAVANTI-WELLS:** Thank you. Can I ask some questions in relation to the Central Australian Renal Services?

**Senator SIEWERT:** Are we moving to dialysis now? Because I thought we were going to work our way through.

**Senator FIERRAVANTI-WELLS:** No, we won't—sorry, Senator. It is in the wrong position. I will ask that later, Senator Siewert. I have one other question on Aboriginal medical service funding. Ms Killen, is that your area?

**Ms Killen:** Yes.

**Senator FIERRAVANTI-WELLS:** How many Aboriginal medical service or other recipient organisations have been investigated this financial year to date for suspect financial misconduct with respect to Commonwealth funds or for breach of the terms of their funding agreements?

**Mr Fisk:** Currently, there are 20 organisations which are under review of one type or another. It could be related to financial issues or governance or management of the organisation.

**Senator FIERRAVANTI-WELLS:** So, you have 20 under review. How many have been shut down or had Commonwealth funding withdrawn as a result of breaches of the agreement?

**Mr Fisk:** I would have to take that question on notice, to have the exact number for you.

**Senator FIERRAVANTI-WELLS:** Okay. If you can, perhaps you could provide me with a list of the 20 under review, or at least indicate if that is available somewhere on the public record. Also, can you tell me how much funding you are currently recovering from these Aboriginal medical services?

**Mr Fisk:** There is only one organisation at the moment from which we are actively recovering funds as a result of misuse of Commonwealth funds. Currently the total under consideration for recovery from that organisation is \$1.08 million.

**Senator FIERRAVANTI-WELLS:** And then you have those that are in the category of being shut down or have had funding withdrawn. Are there any potential recovery prospects there?

**Mr Fisk:** One organisation has been issued with an invoice for recovery of \$183,000.

**Senator FIERRAVANTI-WELLS:** And then potentially there could be more recovery prospects as part of the 20 that you said are under review. Is that correct?

**Mr Fisk:** Yes, that is correct.

[12:26]

**CHAIR:** We will now move to hearing health.

**Senator SIEWERT:** Have you been engaged in discussions around, or involved in, any of the preschool or early childhood programs in addressing hearing health problems with the students? And is there some ongoing process? I know there is ongoing screening work, but is that directly related to children who are attending either preschool or early childhood centres?

**Dr Spencer:** We are in dialogue with our colleagues at DEEWR and FaHCSIA around a range of issues that span the relevant portfolios, and you are aware of the working group—the group of chairs—that has been established to look at a couple of issues around otitis media and supporting young mothers and early childhood education. That group has met and has agreed that they would undertake a mapping of the issues for their sector across those three areas. They are going to be presenting the outcome of that mapping at one of their upcoming meetings, so I do not have a final report for you. What I can say is that we are also having discussions with DEEWR. Under Stronger Futures, for example, in the teaching IP there is work around making sure that teachers are trained to be able to detect and work with children

who have hearing impediments. Perhaps there are some DEEWR people here who could talk to us about that.

**Senator SIEWERT:** No, I do not think the education people from DEEWR are here, only the people working on employment. But thank you for your answer. It sounds like they are going to be meeting in the fairly near future.

**Dr Spencer:** Yes. I am sorry; I do not have the date for you.

**Senator SIEWERT:** Is it intended that the final report will then become public?

**Dr Spencer:** I would have to take that one on notice; I do not know the answer to that question but will endeavour to find out for you.

**Mrs Palmer:** Perhaps I could just say that Dr Spencer has only just taken this work on and so is just becoming familiar with it. You will recall that at a hearing of this Senate committee in the past we also talked about the work we have done to produce materials to support teachers around identifying and supporting students with otitis media. Just recently, in January, I also organised for a new meeting of a slightly different group of officials working in different communities—activities between DEEWR, FaHCSIA and myself—so we can also make sure there is coordination across the communities for children and our other early childhood work that we are doing. So it is all linking across. Our next meeting for that will be in April, and I am going to put otitis media on the agenda for that meeting as well. So we have a number of coordinating groups where we can talk about and ensure that we are linking up and working together in this area.

**Senator SIEWERT:** I appreciate that there is ongoing work there, but have you had any feedback yet about how successful teachers are being, with the new work that is rolling out, at identifying those particular problems?

**Mrs Palmer:** No, I would have to take that on notice. I think at last estimates Ms Schneller spoke at length about the feedback we had had about those materials from the people using them, but not about how they are going in terms of identifying in the classroom as a result of that. So I will have to take that on notice.

**Senator SIEWERT:** Yes, if you could that would be appreciated. Is it something you have thought about putting on the agenda for that officials' meeting to see how you can start monitoring how successful teachers are being at implementing the materials?

**Mrs Palmer:** Their use and practicality, as well as the results from their use, are very important to us. The group I have just convened is very new, so we are still at that scoping stage, and we would be very pleased to take that on board as one of the things we can look at in that meeting.

**Senator SIEWERT:** That would be good; thank you.

**Dr Spencer:** Perhaps I could just add that there has been a qualitative evaluation of the resources for primary school teachers and early childcare workers. There have been 32 in-depth interviews in various regions, and the feedback from that is that the resources are very useful; the feedback is overwhelmingly positive.

**Senator SIEWERT:** That's great. Who did those interviews?

**Mrs Palmer:** I think they were done by CIRCA. I will check to see if I am wrong, but my recollection is that it was CIRCA that did that work for us.

**Senator SIEWERT:** That is great feedback. But: although the materials can be really good and really accessible, if they are not producing the outcomes in terms of teachers being able to identify kids that need that help, and put in place programs, then—

**Mrs Palmer:** Yes. And I have just recalled that we have also spoken with the Indigenous eye unit, because some of the messages in the otitis media material line up with eye health as well, and they do a lot of work with teachers, so we can also talk to them. But we have actually been engaging with Professor Taylor around the ability to bring this work together and to think about it in a very practical fashion, remembering that the key messages for those things line up.

**Mr Davey:** I can confirm that it was CIRCA—Cultural and Indigenous Research Centre Australia—undertaking that research. Field work that we expected to be completed by now has been delayed, sadly, due to a death in one of the communities where we were conducting the research, as well as some illness among the researchers themselves. That work is getting back on track, but we have had a delay. We expect that by June a research report will be available to us.

**Senator SIEWERT:** So it will be ready before October estimates?

**Mr Davey:** Yes. We thought the research in the field would be completed by now, but unfortunately there have been some delays there.

**Senator SIEWERT:** I appreciate that these things happen; you cannot do anything about those sorts of circumstances. Thank you very much; I will look forward to following it up then.

**Senator FIERRAVANTI-WELLS:** I was just going to say to Mr Davey that for him it is not as bad as at the last estimates—you did not look very comfortable last time! I am glad to see that you have recovered and come back to estimates, after last time!

**Mr Davey:** I appreciate your concern.

[12:34]

**CHAIR:** We will move to mental health now.

**Senator FIERRAVANTI-WELLS:** It has been put to me that the Northern Territory currently has no 24/7 supported respite facility for clients and their families. Is that correct? Ms Campion, perhaps you could give me a bit of information on that.

**Ms Campion:** Unfortunately I am not aware of that, and I also cannot comment on it.

**Senator FIERRAVANTI-WELLS:** Would you take that on notice?

**Ms Campion:** It is actually a matter for the territory government, not the Commonwealth.

**Senator FIERRAVANTI-WELLS:** Okay. In relation to workforce issues, some issues were put to me pertaining to baseline training for non-government community mental health sector staff, such as Certificate IV in Mental Health. Is that something the Commonwealth has an interest in? Or is it pertinent more to the Northern Territory government?

**Ms Campion:** I would need to take that on notice.

**Senator FIERRAVANTI-WELLS:** Perhaps I could frame that one on notice for you. I will also include the information that has been put to me, and then you can clarify that for me. Perhaps I could now go to the Partners in Recovery program. Some issues were raised with

me recently in the Northern Territory about the tendering process up there. Some issues appear to have arisen in relation to the lead agency, in relation to protection of intellectual property of consortium members. There have clearly been some issues up there in relation to Partners in Recovery. Are you aware of that? Or have matters been raised with you, particularly about the Northern Territory?

**Ms Campion:** No, I am not aware of any particular issues in relation to the Northern Territory.

**Senator FIERRAVANTI-WELLS:** What about when you have a lead agency and then a number of small agencies? It was put to me that where you have a lead agency and then you have a number of smaller ones they are obviously handing over information et cetera, and the lead agency then may go on and tender for the work, leaving the smaller agency in a situation where it has handed over its information. I guess that is not really an issue as far as the program is concerned, but something more about their own internal arrangements as part of the consortium.

**Ms Campion:** Yes, we are envisaging that as part of Partners in Recovery the successful agencies and their partners will formalise how they work together and issues around IP or whatever else might be sensitive—that they will work through those issues through things like MOUs. Also, importantly, when we are assessing the applications—which is what we are in the middle of doing right now—if an organisation or an application is considered to be successful and we go on to fund it, part of the reason it will be considered to be successful will be the nature of the partnership model that they are proposing. So we would certainly be expecting, when we sign up organisations as leads, that one of the criteria applying to them will be that they maintain the partnership that they have formed, because that was an essential part of their being considered as being successful. So we will be looking to ensure that those partnerships are maintained.

**Senator FIERRAVANTI-WELLS:** So, let's take a particular example. Obviously somewhere like the Northern Territory there is a strong Indigenous component. If you have partners that are Indigenous-specific as part of a larger group and one of them drops out, what then happens to the agreement with that group?

**Ms Campion:** I think it would depend on the nature of why they dropped out. If they dropped out voluntarily, for operational or other reasons, that would be one set of circumstances. But if they dropped out because the lead organisation had not done the right thing by working with them and maintaining that partnership, that would be another set of circumstances. We would need to look at each situation on its merits, if it happened.

**Senator FIERRAVANTI-WELLS:** What happens if you have a situation where, say, a large organisation goes into partnership with smaller groups locally, and those smaller groups then drop out?

Let me give you an example outside the Northern Territory. This was really the context in which it was raised. One of the bidders was from outside, came in and gathered the intellectual knowledge of the local organisations. Then when there was an issue and the matter did not proceed they became the lead organisation, having taken the intellectual property of the smaller groups and then the smaller groups found themselves in circumstances where they were no longer able to operate. They had viability issues and found themselves no

longer able to provide services and then the services were being provided by somebody who is flying in and basically delivering the services. That is essentially the issue that was raised with me.

**Ms Campion:** We have had those issues raised with us. We did a number of workshops around the country prior to the release of the invitation to apply and that was raised on a number of occasions. We have tried to impress upon people, both at those workshops and in all of the material we have produced about Partners in Recovery, that the key word in the program is 'partners'. We have requested a lot of information in our application process and in our assessment of those applications we look very carefully at the nature of the partnerships that have been formed, the level of signup that organisations have made to the application and the commitment they have made to the partnership. We are also proposing that our state and territory colleagues, who are obviously much closer to the regions and some of the organisations that have applied, look at the partnership model that has been put forward to give us advice as to whether they think the key partners in the region are involved, whether they believe there are any key organisations missing—

**Senator FIERRAVANTI-WELLS:** Whether they are up to it? Whether there have been any issues—governance issues or anything like that?

**Ms Campion:** That is right. To give us confidence that what is being proposed for that region is an appropriate and hopefully the best model for the region to form and maintain those partnerships.

**Senator FIERRAVANTI-WELLS:** The invitation to apply for funding closed on 18 December?

**Ms Campion:** Yes.

**Senator FIERRAVANTI-WELLS:** I appreciate that amongst this there is an Indigenous component but perhaps I will put some questions on notice that are more broadly on that program. I am sure Senator Siewert is going to ask in mental health the other questions I was going to ask.

**Senator SIEWERT:** I want to ask about progress in terms of some of the funding projects that have been going on particularly in the Kimberley and where we are up to with ongoing funding for those programs.

**Ms Campion:** We provide a range of funding in the Kimberley. Some of it is suicide specific through the National Suicide Prevention Program. There are two projects there: one is to the Kimberley Aboriginal Law and Culture Centre, which is the Yiriman Project, which you are probably familiar with—

**Senator SIEWERT:** Yes, I am.

**Ms Campion:** and also funding to the StandBy bereavement service, which is the post-suicide service. The funding was for two years, so last year and this year. We are going through a process with all projects under the Suicide Prevention Program to invite currently funded organisations to submit a proposal for an extension because at the moment we also have an evaluation of the program occurring. We are going to look at an extension to currently funded projects while that evaluation is completed and we consider future funding after next financial year.

**Senator SIEWERT:** I will come back to the evaluation process. Are you just offering extensions to existing programs?

**Ms Campion:** Yes, we are not doing a broad invitation to apply.

**Senator SIEWERT:** For what period of time would that be?

**Ms Campion:** It would be for a 12-month period, so it will just be for the next financial year.

**Senator SIEWERT:** So extending beyond 30 June?

**Ms Campion:** Yes, for one more year.

**Senator SIEWERT:** What do organisations have to do to seek that extension?

**Ms Campion:** As I said, we will be writing to them and seeking them to provide to us an indication of whether they would wish to keep the project going. Some are time-limited and some are more obviously about ongoing service delivery, so there will be a mixture there.

If they can indicate to us whether they wish to continue and what they would do during that extension period, we will assess that and then provide them with feedback before the end of March as to whether the funding will continue for another 12 months.

**Senator SIEWERT:** Have you already written to them?

**Ms Campion:** We are in the process of doing that. I can confirm on notice whether the letters have gone out.

**Senator SIEWERT:** Will the criteria for the decision-making process and whether or not they have been successful be included in that letter?

**Ms Campion:** I would need to check that.

**Senator SIEWERT:** Please take that on notice and if it is could you supply the criteria and what level of funding would be offered. Are you saying it has to be just a continuation of existing funding on the same grounds?

**Ms Campion:** Yes.

**Senator SIEWERT:** So they cannot apply for more if they are successful?

**Ms Campion:** That is right. We would be looking for a continuation at current levels for the type of service or project they are currently doing. But obviously if some decide that they no longer want to continue then there may be a bit of extra funding available for us should other organisations be seeking an increase.

**Senator SIEWERT:** Will you be evaluating the outcomes of those particular programs? Obviously you do not want to continue programs that are not successful.

**Ms Campion:** No. As part of managing the current projects we have been assessing performance before making payments so we will have a view already as to the performance of organisations.

**Senator SIEWERT:** So you will not be offering ongoing funding to those organisations you do not think have been successful?

**Ms Campion:** I do not think we would but we do not have concerns of that nature. I am not aware of any concerns.

**Senator SIEWERT:** Are you offering an extension of funding to all organisations that are funded under this program?

**Ms Campion:** Yes.

**Senator SIEWERT:** So you do not have a problem with any of those organisations?

**Ms Campion:** Not that I am aware of but I am happy to confirm that on notice.

**Senator SIEWERT:** So both the standby program in the Kimberley and the Yiriman project will be made offers?

**Ms Campion:** Yes, I am reasonably confident about that.

**Senator SIEWERT:** Do they have to get their submissions in by the end of March?

**Ms Campion:** No, they need to be in before then. We want to give organisations notice before the end of March so that if any of them should not continue to receive ongoing funding they have at least three months' notice of that.

**Senator SIEWERT:** Is it anticipated the evaluation process of the program itself that is being undertaken will be completed in time for a new round of funding for the following financial year?

**Ms Campion:** Yes, to help them form priorities for the financial year after the next one, 2014-15.

**Senator SIEWERT:** So it is not anticipated that there will be any new programs funded until that evaluation is complete?

**Ms Campion:** No.

**Senator SIEWERT:** Does that then tie in with the completion of the suicide prevention action plan?

**Ms Campion:** The suicide strategy will be finished prior to the evaluation. We are thinking that the evaluation will run until about the middle of this year. We are in the final stages of consultation across the Commonwealth with relevant agencies like FaHCSIA for the National Aboriginal and Torres Strait Islander Suicide Prevention Strategy to make sure we have incorporated issues relevant to their responsibilities. It will then be finalised and provided to the minister. We are not very far off with that one.

**Senator SIEWERT:** Will that allow the new program to be consistent both with the evaluation of the existing program and projects and then dovetail into the new strategy?

**Ms Campion:** Yes.

**Ms Killen:** I want to correct something I told you earlier. With respect to the Sentinel Sites Program evaluation, the first draft of the final report is due in March, not June.

**Senator FIERRAVANTI-WELLS:** Thank you. I have some questions in relation to the Port Augusta Drug and Alcohol Rehabilitation Centre and want to follow up on the answer to question on notice E12-166. The answer indicates that the facility has been delayed due to lack of access to a suitable site and service provider and you are working with stakeholders to provide services in the region. How many meetings has the department had with the local community in Port Augusta on this project?

**Ms Campion:** I do not have that information with me, unfortunately. We can take that on notice. The meetings will have been facilitated by our South Australian office, so we will need to get that information from them.

**Senator FIERRAVANTI-WELLS:** My understanding is that there was just one, on 10 June 2010.

**Ms Campion:** We will confirm that.

**Senator FIERRAVANTI-WELLS:** If there was just one meeting, on 10 June 2010, that would hardly represent comprehensive consultation, would it? Given the history of this project, I would have thought that one meeting is not comprehensive consultation.

**Ms Campion:** As I said, we would need to go and check just how many meetings there have been. Can I clarify: was the one meeting you are referring to with the community or with the council?

**Senator FIERRAVANTI-WELLS:** It was with the local community in Port Augusta on this project. Are you aware whether the Port Augusta City Council suggested up to five different sites and offered to help negotiate access?

**Ms Campion:** I am aware that a letter that the council has written questions the statement we have made that a lack of a suitable site has been one of the issues delaying the project, but I am not aware that it has identified five particular sites.

**Senator FIERRAVANTI-WELLS:** Take that on notice, please, and check your records. Did the department meet the council to discuss possible sites and access to those sites?

**Ms Campion:** Again, we will need to check with our South Australian office.

**Senator FIERRAVANTI-WELLS:** Would you?

**Ms Campion:** Yes.

**Senator FIERRAVANTI-WELLS:** And, if there were no meetings, please provide a reason as to why. Given the circumstances and the amounts of money involved, I would have thought it would have been appropriate for at least a departmental officer from your South Australian office to meet with the council in relation to possible sites. Also, I have been informed that the consulting group Arup were engaged to scope the project and commence planning. How much have they been paid for their services?

**Ms Campion:** Sorry, we do not have that information with us.

**Senator FIERRAVANTI-WELLS:** Would you check that this group Arup has been engaged to scope the project and commence planning and how much it has been paid for its services.

**Ms Campion:** We were in negotiation with an organisation. We went into the market to select an organisation to manage this project. We were in negotiation with them for about 12 months. Unfortunately, towards the end of last year they informed us that they did not have the capacity to continue the project. So we have had to, unfortunately—

**Senator FIERRAVANTI-WELLS:** Was that done by a tender process?

**Ms Campion:** It was an invitation to apply process. It was grant funding rather than a consultancy. Unfortunately, as I said, after an extensive period of negotiation they informed

us that they were not able to continue, so we are now looking to go back out to the market and look at funding residential rehabilitation areas in two parts of South Australia.

**Senator FIERRAVANTI-WELLS:** Can you tell me how much has been spent on the entire process since the announcement of the funding in 2007?

**Ms Campion:** We would need to take that on notice. Certainly we did not have any expenditure last year but I do not have figures going back prior to that.

**Senator FIERRAVANTI-WELLS:** Your answer says an allocation of up to \$7 million was announced. Is that the total amount?

**Ms Campion:** That was the funding that was announced in 2008.

**Senator FIERRAVANTI-WELLS:** So you do not know the entire process and how much it has cost thus far?

**Ms Campion:** No. We certainly did not spend anything last year but I do not have the information for prior to that.

**Senator FIERRAVANTI-WELLS:** So that amount would be deducted, I assume, from the \$7 million.

**Ms Campion:** We obviously would be looking at a cost going forward because what has happened in the past is in the past. When we go out to the market, we will be asking for proposals and we will be assessing those proposals based on the normal criteria around value for money et cetera. We will be making an assessment at that time. What has changed since that time too is that we have formed, as you know, the flexible fund. The funding for this project, as with all of our drug and alcohol treatment projects, comes out of the flexible fund. There is actually more flexibility now to adjust funding across different priorities than there was when we had particular programs that were tied to particular purposes.

**Senator FIERRAVANTI-WELLS:** Do I take from that answer that it still may be \$7 million?

**Ms Campion:** It may. We will just need to see.

**Senator FIERRAVANTI-WELLS:** It could be less than \$7 million. Just assume that the entire process has used up \$1 million or \$2 million, that would be deducted and you would be left with \$5 million and you would be going out to the marketplace with only \$5 million but that decision has not been made yet.

**Ms Campion:** No, we will need to look at what proposals we get and make a decision then.

**Senator FIERRAVANTI-WELLS:** In December 2012, the Office for Aboriginal and Torres Strait Islander Health advised the council would no longer be required to be built in Port Augusta and that in addition two regions would now be catered for—the north-west and the south-east. Considering the original funding was to address drug and alcohol misuse in remote communities, do you consider the south-east of South Australia to be remote?

**Ms Campion:** The funding was originally part of the Closing the gap Indigenous drug and alcohol services measure which is now part of the fund. When we said that we were going out to the market for two regions in South Australia, that did not mean that the original allocation of funding needed to cover the two. We were funding another residential rehabilitation service in South Australia at Kalparrin which was defunded last year. That is in the south-east of

Adelaide. When we go back out to the market we will be looking to cover drug and alcohol treatment services and those two parts of South Australia.

**Senator FIERRAVANTI-WELLS:** So money will still be used for drug and alcohol but not for the purpose of misuse in remote communities which was its original intention?

**Ms Campion:** Certainly for the one around the Port Augusta region that will be consistent with its original intention.

**Senator FIERRAVANTI-WELLS:** Therefore, you would have to confine the location presumably to one that caters to misuse in remote communities, wouldn't you? Isn't the issue here about the location? If you are going to put in the south-east of South Australia, is that consistent with remote communities?

**Ms Campion:** No. The funding we have available is in the flexible fund. There is a lot more flexibility in how we allocate it and in the south-east we were previously allocating funding to a service that we are no longer funding. That funding is now available to be allocated to another service in the region and that is what we will be going out to the market for in that region.

**Senator FIERRAVANTI-WELLS:** Considering that the government at the time stressed its commitment to closing the gap, and that it has been five years since this centre was to be built, when are we likely to see it and when are we likely to see that commitment maintained?

**Ms Campion:** We are hoping to go to the market as soon as we can. We only found out late last year that the organisation we were negotiating with could not proceed. That is unfortunate. We already have the documentation from our last approach to market and we will be updating that and broadening it to cover the other location that we are looking to.

**Senator FIERRAVANTI-WELLS:** Given its five years, are you going to give this matter some priority?

**Ms Campion:** Yes.

**Senator SIEWERT:** Can we move on to dialysis? We have a limited amount of time left on health. I wanted to follow up on the Central Australia Renal Study and some of the initiatives that were announced when that was released, as well as the commitment of \$13 million for the construction of accommodation in Alice Springs and Tenant Creek for renal patients. It looks like the new NT government has advised that it is not able to meet the recurrent cost on this facility.

**Ms Palmer:** That is correct. Minister Tollner has advised Minister Snowdon that the Northern Territory government will not be accepting and using that money for renal-centric accommodation.

**Senator SIEWERT:** What does that mean for the future of those particular projects?

**Ms Palmer:** We are looking at options and providing advice to the minister about that at the moment.

**Senator SIEWERT:** Do those options include continuing to build it or is this project going to fall over?

**Ms Palmer:** The Northern Territory government needs to provide recurrent funding to run that, and they have indicated that they will not, so they will not accept the money to run that project. We are looking at alternative options.

**Senator SIEWERT:** What is the timeline? I realise I am putting you in a tricky position—that usual position of, 'You can't tell me,' et cetera, but let's talk about timelines.

**Ms Palmer:** We are working as quickly as possible to finalise our advice on options to Minister Snowdon so he can make decisions within his time frame. He is very keen in this area as well. We are doing it as quickly as we can.

**Senator SIEWERT:** What happens to the \$13 million that was put on the table? Is that money still allocated for that?

**Ms Palmer:** Some of it was already returned to Treasury because it was not used in the first year. We have had some of it returned now.

**Senator SIEWERT:** Does that mean you can get it back? And how much?

**Ms Palmer:** It has not been used in the area for which it was intended and it has been returned. I think it was \$2 million.

**Mr Fisk:** It was \$3 million, and it has been returned to consolidated revenue, so it is no longer available for that project.

**Senator SIEWERT:** So now we are down to \$10 million.

**Mr Fisk:** That is correct.

**Senator SIEWERT:** Why was it not used at the time? Was that because you were having trouble with the NT government previously or just because the time frame was difficult to meet?

**Mr Fisk:** It was a result of the Northern Territory government being unable to commit to progressing the project in that first year. There was a number of negotiations which, unfortunately, did not proceed.

**Senator SIEWERT:** So a \$13 million project is now down to \$10 million, as well as not having recurrent funding to run it because the NT will not contribute?

**Mr Fisk:** That is correct.

**Senator SIEWERT:** What happens to the patients who would have been using that facility? I realise that is a rhetorical question. If it goes ahead it is obviously not going to be built in the time frame that was originally proposed. That is obvious.

**Ms Palmer:** Correct.

**Senator SIEWERT:** Can I follow up on the process of where we have gone to since the final report for the renal study was released, and the ongoing process that was articulated at the time.

**Dr Spencer:** As you recall, the Central Australian Renal Study was released and there were seven areas where state and territory governments could take some action. The one area that the Commonwealth has been trying to progress is the mechanism for governing and coordinating services, but has met with little success.

Since last estimates, we have met with officials once. Unfortunately, the NT was not available for that meeting, however, they did provide a draft renal cross-border agreement framework for discussion. At that meeting, given that the NT were not present, the discussion was just with Western Australia and South Australia. They both indicated that they felt that progressing a formal agreement was going to be very difficult. South Australia in particular

were very clear that they were quite happy with the current arrangements and were not looking for change. That is as far as we have been able to take this. We have been focusing on infrastructure projects.

**Senator SIEWERT:** It has really been one step forward, two steps back in this process, hasn't it? When was that meeting held?

**Dr Spencer:** It was held in October last year.

**Senator SIEWERT:** Did the other states feel that they did not want to sign up to the process in the draft discussion paper that the NT provided?

**Dr Spencer:** That is right. They felt that progressing that as a formal agreement was going to be difficult. Patient travel costs and accommodation were raised as issues that they felt were not able to be addressed adequately in the draft agreement, and needed to be resolved before agreement could be progressed.

**Senator SIEWERT:** That seems to me to be part of the process of reaching agreement. Was there any decision to progress discussions on how they could resolve the issues, such as patient travel costs, in the process of forming an agreement?

**Dr Spencer:** No, not to my knowledge.

**Senator SIEWERT:** Has a decision been made that there will be no agreement?

**Ms Palmer:** It is difficult to know. In my discussions with the Northern Territory department of health, they have made it very clear that this is not a matter for the Commonwealth, and that this is a matter between the states. So far, our attempts to get further information has only got to that point.

**Senator SIEWERT:** Even though you have got money on the table for infrastructure?

**Ms Palmer:** Correct.

**Senator SIEWERT:** As I said, it is one step forward and two steps back. I need some basic data here.

**CHAIR:** Can the data questions go on notice?

**Senator SIEWERT:** Yes.

**Senator FIERRAVANTI-WELLS:** Can I summarise? Other than monitoring progress, can you confirm that the Commonwealth has no further formal role to play here?

**Dr Spencer:** I think the role of the Commonwealth is to look for projects where we can support the states and territories in renal service delivery, and we focus mainly on infrastructure such as accommodation, and in some instances in the past we have provided renal chairs into facilities. The issue of course is the ongoing cost. While we can always provide infrastructure, we need to be able to support renal service delivery and get the state to be agreeable to that.

**Senator FIERRAVANTI-WELLS:** I want to start with workforce issues, particularly with Indigenous aged care in northern areas. In areas such as the Northern Territory, you have got issues of transience, few bonds, a culturally diverse workforce and, obviously, the need to deliver culturally appropriate care.

The combination of these factors provides difficulties in terms of viability. How are these high costs and viability issues being addressed—and how will they be addressed—under the proposed changes under Living Longer Living Better?

**Mr Scott:** I can have a go at talking about this. These responsibilities primarily sit in the ageing and aged care division. We have Mr Vincent here with us today from the Aged Care Programs Branch. Unfortunately, he also does not direct responsibilities for some of those, but we will do our best and then take other things on notice.

**Senator FIERRAVANTI-WELLS:** Do you want to take that on notice, given the time?

**Mr Scott:** That is fine. The viability supplements are obviously key in supporting the delivery of services in those sorts of challenging regions. The department runs the service development assistance program to help bill capacity which can also help with some of the workforce challenges in remote region. If you are happy, we will take the remainder on notice.

**Senator FIERRAVANTI-WELLS:** I was particularly surprised to learn that with workforce shortages in the Darwin area that up to 90 per cent of their staff are on some form of visa or otherwise, which I found quite an interesting statistic, particularly when you are trying to run a residential aged-care facility.

**Mr Scott:** I am not aware of that statistic, Senator, but we can have a look at it.

**Senator FIERRAVANTI-WELLS:** Thank you. In relation to Aboriginal and Torres Strait Islander workforce on page 69 of the report on the operation of the Aged Care Act, specifically in the Indigenous space, is this the only measure that assists to address workforce issues?

**Mr Scott:** Which measure in particular?

**Senator FIERRAVANTI-WELLS:** At page 69 of the report on the operation of the Aged Care Act 2011-12, there is reference to the Aboriginal and Torres Strait Islander workforce. One of the main measures or the only measure or—

**Mr Scott:** We will have to take that one on notice. I am aware of that particular measure. We also have the Aged Care Workforce Flexible Fund, which provides funding across a number of workforce initiatives. My expectation would be that the funds through the workforce fund would also be available for Indigenous workforce—

**Senator FIERRAVANTI-WELLS:** Would you like me to put any questions in relation to that on notice in relation to that particular fund that you have just spoken about?

**Mr Scott:** I would appreciate that; thanks.

**Senator FIERRAVANTI-WELLS:** At page 9 of the operation of the Aged Care Act, there is a table, table 1. In terms of getting figures, most specifically for Aboriginal and Torres Strait Islanders, in relation to a breakdown of that, is that better put on notice? I am trying to get a handle on the number of people that require care who are of Aboriginal and Torres Strait Islander background—I can see you nodding, Mr Scott; are you inviting me to put more specific questions on notice?

**Mr Scott:** We were just getting into the ball park where Mr Vincent may have something sensible to say about it.

**Senator FIERRAVANTI-WELLS:** Mr Vincent always has something sensible, Mr Scott.

**Mr Scott:** I will clarify that for the record: we have somebody here who may be able to provide you with some advice.

**Senator FIERRAVANTI-WELLS:** Mr Vincent will get a complex.

**Mr Vincent:** In terms of the table on page 9, I would not be able to give you are breakdown of exactly what that meant in terms of Indigenous supply; however, Aboriginal and Torres Strait Islander people are a special needs group under the Aged Care Act. ACPAC, Aged Care Planning Advisory Committee, provide advice to the department in the lead-up to each ACAR, aged care approvals round, in relation to need in various regions.

As a result of this advice, Aboriginal and Torres Strait Islander people, or services targeting people from those communities, are from time to time targeted as a priority for a region.

**Senator FIERRAVANTI-WELLS:** I will put more specific questions on notice in relation to figures. I am conscious of the time.

**CHAIR:** That is good, Senator. Thank you very much to the officers from aged care. We will break now until 1:45 when we come back with employment and economic development.

**Mr Learmonth:** Excuse me, Chair. If I may, we have some brief answers to some of Senator Fierravanti-Wells' questions on Aboriginal medical services, defunded and recovered, if that assists?

**CHAIR:** We are not breaking yet—we have got some late answers. Do we have those answers?

**Mr Fisk:** There are three organisations the department has ceased funding in the current financial year. All of those organisations have come at the low end of funding as a result of the organisations becoming insolvent. With regard to recoveries, I mentioned previously that we are currently recovering \$1.08 million from one organisation and \$183,000 from another. I also mention that we in negotiation with one organisation over a potential of up to \$2 million in recoveries and, through a deed of arrangement with the administrator of an organisation we formerly funded, we have a recovery of \$3.2 million under way.

**CHAIR:** Thank you, Mr Fisk.

#### **Proceedings suspended from 13:17 to 13:55**

**CHAIR:** Sorry to keep you waiting. We will reconvene. We are going into employment.

**Senator SMITH:** I have two sets of questions that are broadly related. These follow representations that I had from the Southern Aboriginal Corporation which is based in Albany in the south of Western Australia. I am keen to get an update on the moratorium on the new IEP contracts that was put in place in June 2012.

**Ms Taylor:** I will get Ms Wood to give you the details of those. If I can explain about the IEP. At the moment, the situation with the IEP is an excellent situation in that the program has seen unprecedented demand over the last 12 months, and, at the moment, the commitments for the funding in IEP are nearly fully expended. However, as projects come on and off, there is more money freed up over the period of time. But, under the way in which the government operates with the FMA Act commitments, it is a staggered process as far as committing to further funding. That is a result of the demand for the program and the success

of the high quality of applications that we have had for funding under this project. It is a fairly flexible funding pool, and there is a range of projects that have been funded in the past with excellent outcomes, and for the past financial year we have exceeded all of the outcomes in IEP. Regarding the actual detail on the program and, if we can, that particular applicant, we may have to take that on notice. Ms Wood can give some further detail.

**Ms Wood:** As Ms Taylor explained, the program is seeing an increase in demand, and this has been building, I think, probably, over the last 18 months. It is one of the reasons why we saw such great outcomes last year for the program. We have targets for employment and training commencements under IEP, and last year we exceeded our target. Our target was 28,350, and we exceeded it by 25 per cent and had 35,591 commencements. That is a sign of demand for the program and the competition for IEP funding. IEP funding is project based. It is not an entitlement. It is certainly not recurrent or ongoing funding. The idea is that IEP is useful to help develop new models and develop innovation, but it is not a long-term funding source. Because we have seen such competition, I think it is helping drive up quality and outcomes. So that is a really strong positive.

Because of the real increased competition and increased stream of quality projects coming through, we have moved to a national prioritisation of projects. We have been through all the projects that have come into all DEEWR state offices, because generally the engagement on IEP with organisations or individuals happens at the state office level. We have looked at all projects nationally to prioritise them, and what we have established is a priority list for projects for future funding as funding becomes available. As Ms Taylor indicated, the structure of IEP, the fact that it is project-based and the way that we fund, generally has funding tied to outcome. A project might set out to recruit 100 people into training and employment, and then achieve 13 in 26-week outcomes. If, for example, they only actually manage to recruit 80, then once we have passed the recruitment end date for that project, the resources for the other 20 places can come back into the pool.

As projects complete, any unspent funds can come back into the pool. It is a very dynamic process, and there will be funding coming online as we progress through the financial year. I do not have the details of that particular organisation, but we can take that on notice. What we are saying to stakeholders is, if we have assessed the project and we think that it has merit, it will be on our priority list. That is what we are advising people. There will be some that we assess, and have to advise the proponents that we will not be supporting it. Being on the priority list will not guarantee a project funding this financial year, but it is enabling us to continue to fund projects as we have funds available.

**Senator SMITH:** There are couple of points arising from that evidence. The target of 28,350 is a national target, but do you set yourself state and territory targets within that?

**Ms Wood:** The formal target, which is in our portfolio budget statement, is the national target. We look at performance over time at a state level, but there are not formal targets for the state-level program.

**Senator SMITH:** Do you have the priority list for future funding available?

**Ms Wood:** No, I do not have that.

**Senator SMITH:** Can you provide it to me on notice?

**Ms Wood:** Yes. We will have to take it on notice.

**Senator SMITH:** I would be keen to understand how many Western Australian projects are in the priority list. This issue goes to the Southern Aboriginal Corporation, who have made representations to me. They have had a very strong record of success, and, in their words, 245 sustainable jobs over the last three years, they have built a lot of trust with Indigenous communities and also with those seeking employment. Their concern is that that trust is now breaking down because they are experiencing some difficulty getting a proper line of sight in terms of what future funding opportunities might be available to them. What is the response to the Southern Aboriginal Corporation?

**Ms Wood:** The conversations we have with all people funded under IEP are that it is project based funding and it is never guaranteed beyond that. We do talk a lot to organisations about ensuring that they are looking at a range of opportunities and a range of ways to ensure sustainability of the work they are doing. That is something that we encourage all the time. Organisations do not necessarily take action on those conversations. Where we are with IEP, as I have said, we are in a competitive environment and so will be about where our project sits in the overall priority listing. There are a range of factors that we have to take into account and the extent of previous funding has to be one of them when we are looking at projects as well.

**Senator SMITH:** Does the unemployment or participation rate experience in a particular region or area factor into whether or not projects might find themselves on the priority list?

**Ms Wood:** As I said, there are a range of factors. We do look at where the need is. The need will include where there are high levels of unemployment or low levels of employment participation generally, and where there are labour market opportunities. Obviously, IEP is a program that really is attempting to connect the demand side with the supply side, so we will be working where there are real employment opportunities. There will be those kinds of factors, including the location, the opportunities and the need, and then there will be factors that go to the organisation, the quality of the project, the quality of the strategies in place around it and the level of confidence we can have that that will be delivered. There is a broad mix of things that have to play into that decision making.

**Senator SMITH:** Based on the evidence that the Southern Aboriginal Corporation has shared with me, they have a strong record of success over many years, building lots of trust in the community and an area of high need, and I might go to that point. I am advised here that according to December 2012 DEEWR results showed that the great southern regional development area, where Albany is, had an overall increase in the unemployment rate for working age Indigenous persons in the region of some eight per cent, taking it from 16.9 per cent to 24.9 per cent between the ABS census data period 2006 to 2011. There is a lot of trust, there are successful providers, and it is an area of high need. I am very keen to make sure that the Southern Aboriginal Corporation gets an appropriate hearing from the department in terms of their particular projects, and I take a very keen interest in what that priority list will look like particularly for Western Australia. I will leave that with you.

My second point goes to the 59 remote regions that have been identified under the Remote Jobs and Communities Program, to be introduced in July 2013. You have a graph that picks the 59 areas and it struck me, and perhaps you can provide this on notice or in discussion, the justification for excluding the Great Southern area, especially given the unemployment and participation rate statistics that I have shared with you and there are more in regards to

Katanning and Wagin and those areas. But taking areas where there are significant large-scale mining and resources projects, and we know through a variety of means that mining companies and others are doing a lot around Indigenous employment, they are identified as areas where the remote program will participate. So I am hoping for you to provide a bit of a justification why is it that everything south of Perth is excluded but here, where we have high employment opportunities and high levels of participation, it is actually part of that. So I am looking for a bit of a justification for that.

**Ms Milliken:** The footprint that is the Remote Jobs and Communities Program footprint draws on what was classified as remote and non-remote for the mainstream employment services, so Job Services Australia and Disability Employment Services over recent years in their programs. Then last year we consulted nationally, with the announcement of the Remote Jobs and Communities Program, the RJCP, and talked with communities within regions about the remote jobs area. We remained essentially with the footprint that we had although at that time we were considering 65 remote regions. The result of those conversations was 59 regions with some movement of boundaries in between and the inclusion of all of the Alice Springs town camps within the remote footprint. But essentially it goes back to that consideration that with Job Services Australia and Disability Employment Services and those locations that are non-remote the factors taken into account were things like the labour market, the availability of services for those locations and the support that was available for jobseekers. So it is historic in that sense for that part of Western Australia.

**Senator SMITH:** So focusing on the labour market and the availability of service providers, I would have thought, just from my own experience in Western Australia, that those would be high in the north of the state where we are benefiting from significant resource investment and very, very low based on some of the evidence that I have shared here. My final point is this and really all I am asking for is some greater attention to be given to issues that might be raised through the state office by the Southern Aboriginal Corporation. If we look at the Albany LGA, the Katanning LGA, which is in Western Australia's Wheatbelt, the Great Southern RDA, the unemployment rate for Indigenous persons of working age in those particular areas are these: in Albany it was 13.4 per cent in 2006 and was 19.7 per cent in 2011; in Katanning it was 17.9 per cent in 2006 and was 27.8 per cent in 2011; and in the Great Southern it was 16.9 per cent in 2006 and was 24.9 per cent in 2011. That compares with the West Australian statewide result of 14.3 per cent in 2006 and 17.9 per cent in 2011 and the Australia-wide figures of 15.6 per cent in 2006 and 17.2 per cent in 2011. Those will not come as a surprise to you because they are DEEWR statistics but for me they demonstrate the point, given the Southern Aboriginal Corporation came to me, that they deserve, I think, a much more intense hearing from the department about the needs of Indigenous people seeking employment opportunities in the Great Southern.

**Ms Milliken:** Thank you, and we are happy to talk with them and also work with our state office in talking with them.

**Senator SMITH:** Yes, please; thank you.

**Mr Pratt:** Not reflecting on that corporation's merits at all, the remote jobs program operates in the areas you have identified, and in those areas which are not considered remote of course there are the mainstream programs, Jobs Services Australia, the Disability Employment Services, the Indigenous Employment Program. It is not as though there are not

services and resources available for job seekers in those locations, it is just a different model that is applied.

**Senator SMITH:** I accept that it might be the case and I think you will find that the Southern Aboriginal Corporation is well aware of those other factors that might be available to them and, more importantly, to Indigenous people looking for employment opportunities. Anything that you can provide to me would be much appreciated.

**Ms Taylor:** Certainly. We will also provide some information both to you and them about other portfolio opportunities and some of the training fund through the department of innovation, particularly the National Workforce Development Fund, which may be available as well. We will provide that information, Senator.

**Senator SMITH:** Excellent, thanks.

**Senator SCULLION:** You have indicated at previous estimates that the report into the VTEC model was complete, but at that stage you indicated that you had not actually briefed the minister on it and that you may be able to make it available at another estimates time. Can you please update the committee on the status of that report or review?

**Ms Wood:** Yes, Senator. As we reported at the last estimates, the review was completed and the consultant's report received by the department in September, and that is still being considered. That is as far as we can go with an update.

**Senator SCULLION:** So it has been provided to the minister's office from the department?

**Ms Wood:** Yes, Senator.

**Senator SCULLION:** So just to clarify that, if I ask you to provide the details of that, is it somehow protected because the minister has not seen it yet? Are you able to tell us all about the review and what it found?

**Ms Wood:** Not at this point, Senator. The question about making public the details of the review is the question for the minister.

**Senator SCULLION:** I will tell hardly anyone! We had this at the last estimates. At the last estimates you said, 'Look, the minister has to find time in a very busy schedule and we cannot share this very important taxpayer-funded review with the Australian people.' We are at the next estimates now. I know it is difficult for you guys to hurry it up a bit, but this is a really important area. We are looking at the areas of transitioning people from unemployment to work, and it has been a very challenging area. We have had a part of the mining industry, putting in considerable funds, and that has been matched with IP funds, I know. It is a very exciting area and you have to commend Twiggy and FMG, they have done some fantastic work there. But I express my disappointment. We are just going to have to wait again and it is very frustrating. Perhaps I will independently pen a letter to the minister asking whether they have had a peek at it and whether they can give us an indication. If I ask you, you are not going to be able to ask the minister when it is likely to be out—isn't that correct?

**Ms Wood:** That is right, Senator.

**Senator SCULLION:** Okay, I will do that. I know we have had some similar questions with regard to IEP funding. I am just looking for information about why that funding stopped—perhaps the rationale. I understand, and correct me if I am wrong, that the IEP

funding for the Coles and Woolworths Indigenous employment programs ceased—and I understand that they are not one but two organisations—is that right?

**Ms Wood:** As we have said before, IEP funding is project based, so the funding will run for the course of a project for the activities agreed as part of that project. There would be a contract that has an end date. Depending on a whole range of factors, which we started to talk about earlier, we may consider another project with that organisation. But it really will depend on a range of factors and it will also depend, as we have seen, on the level of demand and competition for funding, the quality of projects, the outcomes that can be delivered and the extent to which the organisation has been funded already.

Coles is certainly one organisation that has had considerable IEP funding over the last few years—I think around 10 contracts. We work with some of those big organisations in different ways: we may fund them directly or we might fund a provider that works with them on whatever their Indigenous employment strategy is—whether it is supporting them with pre-employment training or on-the-job training and mentoring, so a range of things. An organisation like Coles has had, since 2009 when the new IEP commenced, in excess of \$3 million in support from IEP, so we have done a number of projects with it. As I have said, we cannot guarantee that there is ongoing funding. We would like to see organisations—particularly larger businesses like Coles and Woolworths—really take the opportunity to use the IEP funding to develop the models and to actually test how models work in their context, in their sector or within their organisation, and then look at how they would embed that in their broader workforce strategy and build that into the normal way they go about their business in terms of recruitment, employing people and career development within the organisation. There is no guarantee of any ongoing funding for those kinds of organisations, and we do like to see them investing—

**Senator SCULLION:** Is it reasonable to say that organisations should see this—and probably did see this—as seed funding to be able to develop strategies for Indigenous employment, the seed part being that they should take up the responsibility of their heavy lifting, particularly some of the larger organisations like Coles and Woolworths. Is that about right?

**Ms Taylor:** That would be a fair assessment. Some of the funding from IEP has gone to assist those organisations with some of their more corporate infrastructure and developing that—so coordinators, assisting them in getting their reconciliation plans up, cultural awareness training and those sorts of things that lay the foundation—and then we would expect the organisations themselves to be able to sustain that effort.

**Senator SCULLION:** I know there is a recruitment peak in the grocery industry, if you like, pre-Christmas. That is when a lot of recruitment starts in terms of its cycle. It has been put to me that the funding stopped just before that recruitment cycle. There are a number of things I can take from that if you would be able to help me with why that decision was made. Is there any specificity to when the funding was cut then, or was that a function of the original contract that, for example, might have started at the same time?

**Ms Wood:** The point at which the funding ended would have aligned with the contract that was negotiated with the organisations. There would not have been any consideration of other factors; it was just that that was what was agreed, the project had run its course and the activity was completed.

**Ms Taylor:** So I would not say that it was a cutting of funding; it is a ceasing of a contract. Semantics, I know.

**Senator SCULLION:** I understand much better the notion of corporate entity issues. Perhaps a smaller organisation—something like the shearing school at Brewarrina or Merriman. What is the status with that?

**Ms Wood:** The shearing school at Brewarrina is a project that has had funding under the IEP for several rounds now: three contracts since 2010 for six intakes of participants into the shearing school. The project at the moment is one of those projects that is being assessed by the department as part of the national prioritisation and is one of the projects on our priority list for potential funding if funds become available this financial year. I know there have been discussions with the project partners there about sustainability for the shearing school, and that was one of the reasons why there was a deliberate decision to reduce the quantum of funding offered for the last contract as an exit strategy from reliance on IEP funding. That has definitely been front of mind in terms of what is sustainable for the shearing school beyond IEP funding—and obviously that could draw on a range of other government programs. It could also draw on fee-for-service arrangements with potential employers. The advice to the shearing school at this point is that they have been assessed, it is a project that has had some success and is a project that we have put on the priority list, but we cannot guarantee that it will receive funding this financial year at this point.

**Senator SCULLION:** Just as an observation, the shearing schools outcome is very different from the Woolies and Coles outcome. They do not get up in the morning and say, 'One day we will sell enough apples and chops to be able to make our training program bigger.' The organisation is a training program. In some ways you could argue that maybe they did not belong in the IEP in any event, but it works really well, it is Indigenous, and that is all it is going to do. The applicants are unlikely, in my view, ever to be able to, in an unsubsidised sense, get entry to survive the full cost of training. I would be interested, perhaps on notice, to have a look at those other programs. Perhaps you could list some of the other programs that may be available to them. I assume you are in constant conversation about their future.

**Ms Taylor:** Certainly, we are happy to do that.

**Senator SCULLION:** Thank you. In the Remote Jobs and Communities Program, I have had a letter. It is one of those letters that you get. It probably reflects not a massive concern but a bit of an underlying concern about the nature of the corporations that are likely to receive the status to provide those programs. This particular letter talks about the normal stuff—corruption, nepotism, theft and a whole range of things that you would not normally give someone a particular job for, but sometimes these are the only show in town. Sometimes that is historical. In terms of dealing with these challenges as part of the tender process—and this is a slightly different area from what one would normally have to work in—do you have any particular aspects to ensure the security of the people who enter the programs that are being run by these organisations? That is what I am interested in, because if the organisations have a hiccup then it is invariably the people down the road who are relying on the old IEP to survive. So are there any particular screening processes about probity and those sorts of things when the tender process is done or is it just a capacity?

**Ms Taylor:** I will ask Ms Milliken to take you through the whole assessment process, but it is a very extensive assessment process that includes a whole range of elements including probity elements. We are in the middle of that process at the moment, so we can give you the general information. Also, part of the selection criteria is around demonstrating things like connection to community, capacity to deliver and making sure they have appropriate governance and financial viability and that they are an organisation that has the capacity to deliver the range of services. Previously, we had JSA, DES, CDEP and IEP all rolled in. So it is a selection criterion that is quite thorough, and I would say it is a very strenuous assessment process. I will ask Ms Milliken to detail that for you.

**Ms Milliken:** Ms Taylor has mentioned the selection criteria for the program, which go to demonstrated connection with or acceptance by the community as well as their capacity to provide activities and their capacity to work with the different clients they may have—Indigenous Australians or people with a disability, for example—and also their capacity to work with employers and industry and undertake economic development in those regions. So applicants for RJCP have needed to complete an application with responses and claims against all of those criteria, and the department has been assessing those with FaHCSIA. We have been using our staff from the relevant states—so New South Wales, Queensland, the Northern Territory, Western Australia and South Australia will have remote locations—who are familiar with the regions and familiar with the organisations in those regions and key stakeholders to undertake the assessments against the criteria.

Once that has been undertaken, we can use all of the information that we have about an organisation when we are assessing their application. It is not limited to the claims against the criteria. They may have submitted referee reports, but we also have our knowledge of those organisations if they are a current Job Services Australia, IEP, DES or CDP organisation, or other programs that FaHCSIA and DEEWR are familiar with. So we know what has been happening with those organisations in terms of, for example, financial viability in the recent past or performance. We undertake a comparative assessment of the applications and also consider value for money.

For potential candidates, we undertake a financial viability assessment afresh. We also validate potential applicants' claims with communities, and Ms Taylor referred to that. So we will be going back to key stakeholders and organisations in regions and asking them questions about their familiarity with the organisations and their acceptance in the community—that may be where some of those matters you raised arise. Also, where we recognise that an organisation may need some capacity development in governance or financial management then through the capacity-strengthening phases, when we are actually assessing the application—through that evaluation period—or once we have contracted with organisations and offered them the funding agreement, down the track we actually provide some capacity strengthening for them to be able to manage the program. We receive inputs not only from the applicants but also from other referees and our knowledge of regions before we make a decision or make a recommendation to the minister about organisations being offered funding agreements.

**Senator SCULLION:** I have a question in the same area, about Indigenous Youth Careers Pathways. Did you have a number of traineeships that you targeted, or that you allocated?

**Ms Wood:** The program itself was funded for four years to 2014 with a target of 6,400 commencements into school-based traineeships. So that is the overall target for the program over the four years. Obviously, in allocating business both in the first year and now through a competitive tender process to 2015, we have looked at how many places by region and by provider.

**Senator SCULLION:** Out of those commencements, how many completed the traineeship?

**Ms Wood:** There were 1,060 placements at 30 November 2012; people did commence in the school-based traineeships at different times throughout the year. There were 1,060 placements across 230 schools. We do not yet have details of completion. A lot of the school-based traineeships are two years—some of them are 12 months and some of them are two years—so we do not yet have data on completion, but we have 1,060 commencements.

**Senator SCULLION:** Have you had any feedback on the quality of the organisations that were selected?

**Ms Wood:** We had a consultation process last year in setting up for the tender to 2015. In the course of that we spoke to a range of stakeholders. The project was already running in its transition year at that point. We have had some positive feedback, and from what we have observed there are some very good providers. We are seeing some good uptake in placements, so we have had some pretty positive feedback. In the early stages of the program we are seeing good signs of the quality of providers that we have contracted to deliver IYCP.

**Senator SCULLION:** Thank you.

**Senator SIEWERT:** I just want to put on the record that I have been dealing with something else, so I am not sure what has been asked. So instead of boring you and asking the same questions, I intend to look at *Hansard* and any other questions I have I will put on notice. I do have a couple just generally around figures that I would not mind asking. You gave in answer to some questions I asked previously around the figures of people cycling in and out of employment a figure against streams, which was really useful. Are you able to give me that against Indigenous and non-Indigenous criteria?

**Ms Taylor:** I would have to take that on notice.

**Senator SIEWERT:** I know you would.

**Ms Taylor:** Yes, I think we can.

**Senator SIEWERT:** That would be really useful because the figures were quite telling in the number in streams 3 and 4 that have come back into the process. I would like to know if that is reflected for Aboriginal and Torres Strait Islander people as well.

**Ms Taylor:** I will take that on notice.

**Senator SIEWERT:** That would be really appreciated, thank you. It was easier for me to explain what I wanted there. That is why I did not put it in writing.

**Ms Taylor:** That is fine.

**Senator SCULLION:** Since we seem to have a little more time, I have some more questions on the RJCP process. How far through the time line for the adoption are we?

**Ms Taylor:** We are currently in the assessment phase. If I can work back a bit, the program commences on 1 July. We are in the process of assessing the applicants. There will be recommendations made to the minister, who is the decision maker. I think we said last time that there may be a rolling series of announcements because there might be different categories of provider selected. There might need to be capacity building done and brokering arrangements done, but there may be some who are very clear preferred providers. We are expecting—I am checking with my probity person to tell me if I can say this or not—that series of announcements to commence in March. In February to April the outcomes of the funding application process will be announced. Over this time as well, as we mentioned, there will be capacity strengthening and there will obviously be a training component for any provider who has not had experience with some of the systems that have been developed. But the answer to your question is between February and April.

**Senator SCULLION:** I have noticed when having discussions with some of the stakeholders that there seems to be a lot of tension and a lot of stress about I assume the time lines that are all rolling in now. Have you had much feedback about potentially extending the time line? Apart from everyone feeling stressed about it, have there been calls to try to extend the time line because they are running out of time?

**Ms Taylor:** Not to my knowledge, but Ms Milliken may have that. In the planning stages we are looking at what assistance needs to be provided to providers so they can get up and running by 1 July. That will vary depending on who the provider is, whether they have experience, whether they are already in the area, whether they are already located there, et cetera. We are ready, if you like, to provide the level of assistance that will be necessary, depending on the type of successful provider, that will get them ready for 1 July.

**Ms Gumley:** There have been some CDEP organisations that have had some concerns. But, I think in line with what Ms Taylor said, we will be working with each provider in each region to make sure there is a smooth transition with both the DEEWR and FaHCSIA teams to make sure that that set-up arrangement is fast-tracked, that they have every support available to them and that people understand when those dates for release are.

The other thing we should add is that RJCP is not a tender process as such. What Ms Milliken outlined to you is a discretionary grants program which allows us to have the flexibility to build that capability of providers as we go through that process.

**Senator SCULLION:** Of the applicants, how many are still currently trading as employment services?

**Ms Taylor:** I do not think we will be able to tell you that at this point of time.

**Senator SCULLION:** Even in a general sense, are many still trading as that—just as an indicative response—or you could take it on notice.

**Ms Taylor:** I will take it on notice. It goes to identifying, perhaps, who has applied.

**Ms Milliken:** I might add that current providers of existing programs—Job Services Australia, Disability Employment Services and CDP—whether or not they have applied to be Remote Jobs and Community Program providers and whether or not they are successful in that, would normally be expected to continue to provide the current programs until 30 June. For those who are not continuing, as for those who are successful, we will be working with them on the transition to RJCP.

**Senator SCULLION:** You provided answers at previous estimates regarding community action plans. I recall that you wanted community action plans in place, in line with what Ms Taylor has indicated, by 1 July 2013. There was a requirement for 85 per cent of the communities to have action plans and that was progressing, or some words around that. Is that the target? As long as the plans have commenced in 85 per cent of those communities, is that target then met? It is a bit confusing. I am just trying to be clear about how I understand that target.

**Ms Gumley:** The community action plans are one of the FaHCSIA components of the jointly managed program. Community action plans will be one of the things that providers will need to do in their first year, so they will not have their community action plan finished before the beginning of the program. We do expect that once announcements of providers are made, given that we expect that the providers who are selected will have good links with those communities, they will be able to make an early start on the community action plans and that those plans will be progressed through the year. They will draw in the priorities from across the region for all of the communities in that region.

**Senator SCULLION:** Ms Gumley, you or it may have been somebody else, indicated that you were preparing some guidelines for those community plans. How are they travelling?

**Ms Gumley:** Those draft guidelines are to be released soon for public feedback, along with the guidelines for the Community Development Fund, which is the other FaHCSIA component. It may well be that the 85 per cent that you referred to is the key performance indicator in our portfolio budget statements for the CDEP community action plans, which are a similar type of plan. Under RJCP they will have a stronger jobs-first approach. They will also be across a region as opposed to a community. Certainly, some of the issues that will be picked up in the CDEP community action plans as part of the transition to the new program will be woven in.

**Senator SCULLION:** What was the nature of your discussions and consultations with the communities in formulating those guidelines?

**Ms Gumley:** There has been extensive consultation on RJCP throughout the development of the program, and then about the implementation details. That has included the community action plan and the Community Development Fund. We have drawn on what communities and organisations have told us is important, included those in the draft guidelines and we will shortly put those up on the departmental website and the RJCP website for public feedback.

**Senator SCULLION:** I understand also you may have two major funding rounds and then, I think, a contingency of a round or a fund.

**Ms Gumley:** Yes.

**Senator SCULLION:** Do you have some figures for the rounds and then the contingency as to how much will be allocated?

**Ms Gumley:** At the moment it is just the annual allocation. In the first year of the Community Development Fund, and it will also be the first year for the RJCP, we will not quite have all of our community action plans in place. With proposals from the Community Development Fund, we thought we would do those two rounds in the first year. The first round would see the amount that we get in terms of the quality and number of applications.

The minister would then be making decisions about how many of those would go forward. There may well be some regions which might need some assistance in working through proposals and settling priorities for things that might go into the Community Development Fund. The second round of funding would give us flexibility to do that. The third contingency one that you mentioned really gives us the flexibility to be able to meet emerging needs or something that might come up, perhaps like a national disaster.

**Senator SCULLION:** Would you be able to provide an update on the CDEP numbers? I know there are the active participants, but there are also the grandfathered wage participants. Can you give me a bit of a breakdown on the current numbers?

**Ms Gumley:** At the moment we have 10,581 active participants, and 3,676 of those participants are on wages, with the balance of 66 per cent on income support.

**Senator SCULLION:** Sorry, is that out of the 10,000?

**Ms Gumley:** Yes.

**Senator SCULLION:** It is quite a long phase-out period for the CDEP wages component and for grandfathered participants. Do you have an idea around the comparative analysis between the current rate of grandfathered participants choosing to move onto wages and those moving into income support? What are the numbers?

**Ms Gumley:** Could you clarify that for me? Would you like to know the number of those that are choosing to move into income support?

**Senator SCULLION:** As I understand it, there is a current rate of grandfathered participants. Are they choosing to move to wages because they have been grandfathered, or are they moving to income support? They are either staying in the CDEP system or they are saying, 'I am now moving to some other sort of an income support.'

**Ms Lindenmayer:** We are seeing the number of grandfathered wage participants drop slightly, and over time there has been an increase of those on income support. We do not track them once they go off wages, but we assume there is a number that move to income support or employment.

**Senator SCULLION:** It would just be useful, because we have statistics and parts of these numbers inform those statistics. It would be useful to know whether the grandfathered ones are actually getting a job or going to some income support. That would be useful now. If you could take that on notice, I am not sure if you can have a look at that and see if you can provide it, but it does not sound like you can.

**Ms Gumley:** Unfortunately, we do not have the same level of post-program monitoring that the DEEWR programs have. We are not able to track CDEP participants once they move into employment or study. Perhaps there might be some tracking done, because over 90 per cent of our job seekers are registered with Job Services Australia, so they might be picked up through that tracking arrangement. But for CDEP on its own, no.

**Ms Taylor:** What we can take on notice to look at, as Ms Gumley said, is that the large proportion of people on CDEP, whether on wages or not, are registered with a JSA provider, so we might be able to give you some information. Clearly, if they are not registered with a JSA provider and have moved to employment then we will not be able to, but we might be

able to give you some information about outcomes for groups that have moved off through a JSA process. So I will take that on notice, if you like.

**CHAIR:** Is there anything more from the employment area?

**Ms Taylor:** You indicated you wanted information about the AEC today. Otherwise we can take that on notice and give that to you?

**CHAIR:** Was that from you, Senator Scullion?

**Senator SCULLION:** Say again?

**Ms Taylor:** Sorry, Senator, the question about the AEC. There was some detail you expected to be answered today. Do you want us to do that now or take it on notice?

**Senator SCULLION:** We were going to be provided answers from everybody at 2.45. Someone was going to provide them, so perhaps we should leave it till then.

**Ms Taylor:** Yes, Mr Pratt is going to give an update.

**Senator SCULLION:** A mass moment of helpfulness.

**Mr Pratt:** Given we are at that point, it might be helpful for DEEWR colleagues to answer those questions and then we will move to the FaHCSIA related ones.

**Ms Wood:** The first question was: what funding did DEEWR provide for the Australian Employment Covenant. We have provided in total \$7,038,000 to the Australian Employment Covenant under a number of contracts that were completed in March last year. Is that the information you wanted?

**Senator SCULLION:** Yes, I think so.

**Ms Wood:** The next question was around how positions were filled. Although we do not have a formal funding arrangement with the Australian Employment Covenant and there is no formal reporting, in September last year they gave us an informal update that they had filled 11,441 jobs out of the employer commitments. The question was: how many of those were filled as full time, part time, permanent and casual. We do not have that level of detail from the Australian Employment Covenant, so we are not able to assist with that. I am not aware that they have actually collected information to that level of detail.

**Senator SCULLION:** We could probably do it ourselves, but it might be useful to find out if that is the case. If they are collecting themselves, they seem to be pretty cooperative. They may be doing that now; I am not sure. Would it be okay to find out on notice?

**Ms Taylor:** We will take it on notice and have a conversation with them about that.

**Senator SIEWERT:** How many of those were 13-week and 26-week outcomes?

**Ms Wood:** The information that the AEC have provided to us is about 26-week outcomes. Of the 11,441 placements they identified, in September they had 3,785 reported 26-week outcomes. They also reported 1,721 exits from the program. You will have also seen retention figures talked about in the media. The reported outcomes at 26 weeks, the AEC have explained to us, are for a subset of the 11,441 placements. It is for those employers that are able to and willing to report to the AEC on those 26-week outcomes—so not all employers are reporting to them. They did report 3,785 26-week outcomes out of that total of 11,441.

Senator Scullion, I guess that was the other part of your question: how many of these individuals are still in that employment. That is the information we have about that: 3,785

were in 26-week outcomes. We do not have information about anyone that might not have made it to 26 weeks; we only know that there were 1,721 exits.

**Senator SIEWERT:** Through other job programs you actually do measure 13- and 26-week outcomes.

**Ms Taylor:** We do.

**Senator SIEWERT:** Why wasn't this program required to do that?

**Ms Wood:** The arrangement we had with the AEC when we had a funding arrangement did include 26-week outcomes. Generally, we have 13- and 26-week outcomes at the point at which there is a payment for the provider as an incentive to work with that person to get to that outcome. With the AEC, our funding after the establishment phase was for job commitments and then 26-week outcomes—we did not have a 13-week outcome. So that was the information we had and that was the information that they set up their own systems to collect from employers.

**Senator SIEWERT:** The point you just made was that they could not get the information off some of the employers.

**Ms Wood:** That is right.

**Senator SIEWERT:** It seems to me that, through your other programs, you do require that information, but in this instance that did not occur.

**Ms Wood:** Under our contract with the AEC, if they wanted to make claims for those outcomes they needed to provide us with detail of the employment placement. So we only had it for the 26-week outcomes; we did not have it for the 13-week outcomes, but the AEC needed to establish arrangements with the employers to get that reporting and they were not necessarily able to do that with all employers.

**Senator SIEWERT:** So they did not claim then for—

**Ms Taylor:** Exactly. But there are a number of covenant employers that we fund through IEP separately and we have the information about that as well.

**Senator SIEWERT:** Could you table that?

**Ms Taylor:** Certainly.

**Senator SIEWERT:** Thank you.

**Ms Wood:** Senator, your last question was about whether DEEWR made any funding contribution to GenerationOne. No, we have not provided any funding.

**Mr Pratt:** Madam Chair, we have a number of questions that we are able to answer now; however, the questions relating to income management we propose to take on notice. There is some overlap between those and the discussion at the mainstream estimates yesterday.

**Ms Edwards:** I am hopeful that I can answer five of your questions, Senator Scullion, and then I want to make some clarifying comments about a sixth question. These are not numbered unfortunately so hopefully you can identify them. The first is: 'I understand a review was undertaken into the Aboriginal Land Rights Act recently. When will the report be made publicly available? Will a report be made available and when?' We presume that you were referring to the review of part 4 of the Aboriginal Land Rights Act, which are the mining provisions. That part 4 contains the exploration and mining provisions. You will recall that

the statutory amendments were made in 2006 and they took effect in 2007. Those provisions included a requirement that there would be a review conducted after five years. We think this is the review you are referring to. The Aboriginal Land Commissioner has been requested to conduct the review and he is doing that at the moment. The review is to be submitted to the minister by the end of March this year. It is required to be tabled in both houses of parliament. I trust that one is sorted.

**Senator SCULLION:** Thanks.

**Ms Edwards:** The second question was in relation to the Remote Indigenous Energy Program. Your question was: 'How many diesel generators have been replaced?' The answer is none at this stage. The program is set to be rolled out next financial year, although there is a lot of initial work proceeding at the moment. We will deliver it next year and the following financial year.

**Senator SCULLION:** What sorts of things are included in the initial work? I understand this is a question on notice—

**Ms Edwards:** There has been an open selection process with some organisation selected to deliver. They are commencing fieldwork in March with a view to delivering systems in the next financial year.

The third question has to do with the Larrakia Development Corporation. The question was: 'Does the Deloitte review of the NLC include the Larrakia Development Corporation?' The answer to that is that it is an NLC review. We understand it to be focusing on the governance and the operations of the NLC but it will certainly at least touch on and deal with issues to deal with the Larrakia Development Corporation. You asked if the report is finished. The answer is no; it is still being conducted. You asked if a copy would be available for the committee. It is an NLC review, but we certainly expect the findings of that review to be available to the committee and probably publicly. Exactly what is provided will depend a little bit on whether there is personal information and so on in the report. We will deal with that when we get closer.

**Senator SCULLION:** Thank you.

**Ms Edwards:** The fourth and fifth questions relate to the application to establish the Katherine Regional Land Council. We think those questions have now been superseded by events yesterday. The minister made a decision that she was not satisfied by the application that the proposed land council could conduct the functions of a land council. So our understanding is that these questions are no longer current.

The sixth question I do not think I can answer today, but we want to clarify it so that when you get the answer it will meet your expectations. This question is to do with who owns and manages housing. You asked about Commonwealth ownership and management, states and Indigenous housing corporations. I want to clarify with you about ownership and management. For example, as you know, in the Northern Territory the vast majority of remote houses are actually located on Aboriginal land trust land and therefore the ownership is with the land trust whether or not they are then leased to someone else. So a large number of the properties, particularly in the Northern Territory, will not be captured by any of your three categories.

For example, the Commonwealth owns and manages a very small number at most by Australian circumstances. State and territory ones would depend on the state and territory and how they arrange it. Housing corporation organisations' ownership of houses is mostly limited to the cities and towns where there is ordinary freehold that might be owned by an Aboriginal corporation as opposed to somewhere on Aboriginal land where there may have once been an Aboriginal organisation managing. We thought it would be worthwhile to draw that difficulty of definition to your attention to see whether you want to think again about that.

**Senator SCULLION:** I think you have answered the question for me. The other aspect of the question is none of us own anything on Aboriginal land by the nature of the lease unless you have some sort of special arrangement or a new lease. It is very hard to demonstrate that you own something.

**Ms Edwards:** They might be owned by the land trust, leased to the Northern Territory government—as in the case of vast majority of houses there—and managed by them as social housing for the period of the lease. The short answer is most are owned by the land trust in the Northern Territory at least, a few by the Northern Territory government because of the special arrangements—it might be crown land or something—a handful by the Commonwealth perhaps and the rest by the states and territories. The question would really relate to the towns and cities outside the Northern Territory so perhaps we might leave that question at that for now.

**Senator SCULLION:** I can recall a state and territory housing agreement in 2006 or 2007. I was there. The Commonwealth at the time decided to hand back the Commonwealth houses to state and territory Indigenous housing more generally. For the Territory component, when the Commonwealth handed it back the Territory said 'no thanks'. The Commonwealth said at the time it would bring them back to public housing standard. The Territory said well that is okay then. So I am trying to understand the post that agreement environment. For the Northern Territory, your answer gives me a better idea and I thank you for that. But in the other jurisdictions the Aboriginal Lands Act may not apply. I wonder: do we own those assets after that arrangement? Was it eventually handed over? Are we still in the middle of that transition? Do we forget about it?

**Ms Edwards:** Probably the best way to address your question is to look at the Indigenous community housing organisation reforms that are happening to a higher degree in the towns and cities. Perhaps we could answer the question as an update on how that process is going or performing in that sector, how they are managed and so on. That would at least give you much of the answer to that question.

**Senator SCULLION:** Obviously I need to go to the Territory government to find out what is going on.

**Ms Gumley:** The other states often have an agreement that might not be for ALRA land. For instance the deed of grant and trust communities in Queensland have a land trust specific to the community and they too would own the properties but do a similar long-term leasing arrangement. So while states and territories have different land tenure legislation specific to their jurisdiction, they have put in place similar long-term leasing arrangements in remote housing. Under the reforms to the Indigenous community housing organisations, which unlock 404 million Commonwealth dollars to upgrade the community based housing, they have the ability to remain in their ownership but still retain long-term ownership. In the New

South Wales model they have an arrangement where the Aboriginal housing office provides a long-term leaseback arrangement so they take on a long-term lease in a similar way to public housing but it is a community housing entity.

**Mr Dillon:** I have some further information for you on the revocation instrument you raised this morning. As the explanatory statement indicates, that instrument was revoked following a Commonwealth-wide review conducted by the Department of Finance and Deregulation. The explanatory statement refers to the report on the review. We are seeking confirmation from the Department of Finance and Deregulation as to whether they have any concerns in releasing the report. We hope to be able to sort out a response in the next few days. What I can advise is that the report was finalised in late 2010 and that FaHCSIA has revoked a number of instruments in response to the report, not just the one that you raise.

**Senator SCULLION:** I look forward to seeing the report.

**Mr Pratt:** The only other thing I would say is that for all of the questions we will liaise with the secretariat to make sure that those on notice are covered off.

**Senator SCULLION:** I have a general question. I had a short discussion with Ms Edwards in regard to a better and clearer understanding of the processes of royalty payments. I am not sure if it is possible, Mr Pratt, to be able to organise a brief rather than running away and writing things down. It might be easier for somebody in the department to explain how it is supposed to work. I have had a lot of difficulty finding out even the names of the royalty associations, how they operate and what they are supposed to operate under. If you had somebody who had an in-depth knowledge of that it would be very useful.

**Mr Pratt:** Why don't we see what is possible?

**Senator SCULLION:** If you can, that would be very useful.

**CHAIR:** Thank you for all of those answers. We now move to the final segment, Indigenous housing.

**Senator SCULLION:** Would you be able to provide me with an updated list of the township leases and the housing precinct leases?

**Ms Edwards:** I think we last met in October and, as you know, that was heading into the wet season. Our progress since that date has been slow—we have been executing leases that were already agreed, and so on. No new agreements have been reached, until today. I understand from our officers in the field that two additional leases were agreed in Ali Curung and Engawala as a result of the commencement of renewed negotiations after the wet season. So, the list that we provided last time is up to date with the addition of those two agreements.

**Ms Moyle:** In relation to whole-of-township leasing, there are still six communities covered by three whole-of-township leases—that is the Groote Eylandt communities: Milikapiti, Wurrumiyanga and Ranku—and we have opened conversations with Pirlangimpi and Gunbalanya about whole-of-township leases.

**Senator SCULLION:** Do you have any areas where you have found some intransigence or difficulties in negotiating a lease, where they have basically said 'no'?

**Ms Moyle:** The Commonwealth made offers for whole-of-township leases to the Northern Territory RSD communities in May last year. From that, we remain open to discussing whole-

of-township leases at any stage where interest is expressed. That is why we are having conversations now with Pirlangimpi and Gunbalanya, because interest was expressed.

**Senator SCULLION:** I am going to be cynical—I will try to couch this in such positive terms as I can. I suspect the change in the policy, and I am not expecting you to reflect on that, was out of frustration, that, 'We have got as much as we can; we have asked; we have negotiated; there is no point going out there every Wednesday and annoying people.' There are some pretty good social reasons for doing that as well. Given that it is another Commonwealth agency it may be difficult for you to comment on this. Most of the negotiations prior to that were run by the land council, which has a statutory role. On the ground, I had some confusion about whether they were selling or telling them not to buy them. So, as a fresh start, if you like, you have gone to all of those that have not signed up and said, 'If you're interested in signing up and if you are interested in the provision of public housing, then we are happy at any stage to come in and have a discussion.'

**Ms Moyle:** Senator, just before you go on, I must say I have my geography wrong. It was definitely Ali Curung but, just to be clear, I am not sure what the second community was that agreed today. The process of doing lease negotiations is perhaps a little more complex than the way you have characterised it. Officers like Ms Morrow talk to the land councils daily, to their legal officers and other people, about what is going on. We also have both leasing officers and housing officers, together with Northern Territory housing officers, attending not all but very many of the consultations. Sometimes they say they do not want officers there and so on. Our message is always: 'What we really want to do in this community is to improve the level of housing. Part of the housing is to put in investment and also to have improved property and tenancy management. That requires a lease; we want to talk to you about it.' We generally say, 'We will come back and talk to you, or think about it again'—all that sort of stuff.

It is a very iterative process. At the moment, in the NLC region—you might recall from last time and previous times—virtually all of the places proposed for works are already under or have agreed to leases. In the central region, it has been a more iterative number of consultations, which is a little bit to do with the communities, the practices of the land council and other reasons. A lot of those places said: 'Look, we really want you to come back and talk to us again'. For a lot of those places, it has really come back again and so we are going on our second or perhaps even our third round of discussions with those communities.

**Senator SCULLION:** The other land council involved in the second round of discussion?

**Ms Edwards:** The land councils are always involved in discussions. It is a statutory role for them.

**Mr Sowry:** The second community that Ms Edwards is referring to is Imangara.

**Senator SCULLION:** There have been some positions put by some communities who have said that they are not all that happy with this and they want you out tomorrow. They are not necessarily the views of the community, I am saying that is the case. Obviously there are Commonwealth assets in some of those communities. What have you done to secure the future of those Commonwealth assets and what conversations have you had with communities about that?

**Ms Moyle:** There is only one community where the discussions have finished and that is Daguragu, where the community said that they did not want the government engagement coordinator complex there. That lease has been terminated and that asset has been removed to Kalkarindji and services are delivered from there. Ampilatwatja have also said clearly that they are not interested in providing a lease. However, permissive occupancy is continuing there while the Commonwealth discusses with the land council, the traditional owners and itself to figure out how the services can continue to be delivered in Ampilatwatja.

For all of the other communities, there may have been an offer that has not been accepted by the community, but they are very interested in seeing another offer. We are proceeding to consider that position, and there are some outstanding lease negotiations. There are about 11 assets in total that could have a lease secured but have not yet. Some of that is because the communities want to see another offer and some of it because they are still considering the offer and would like to have further information or consultation. That is proceeding and, while that is proceeding, the land councils have said that they are comfortable with the permissive occupancy continuing. That has not been upset in any case.

**Senator SCULLION:** For the benefit of those who might not have lived and breathed this stuff, like you have, Ms Moyle, is it the case that, conventionally, people have come in and built a police station, a hospital and a service centre, and those sorts of things, in the community because the community demanded they wanted services? Over that period of time—because we do not have the convention of the Westminster system of land tenure—it has been a conventional tenure and that has been okay, and the traditional owners invariably tell them where they can put it or where they cannot put it. But beyond that, there is no actual ownership of the land the buildings are on. Unlike some of the demountable processes associated with housing and GBMs, they are not able to be moved, so the issue is now that somebody has decided to ask where the lease is. There is not the conventional issue associated with the assumption that if you build a building, a police station and that sort of thing, you will have that in perpetuity. Are the Commonwealth assets on the remaining places of the same sort of nature: 'If you do not want it, we'll pick it up and take it away'? Is the majority of that material of that sort of nature?

**Ms Moyle:** The majority are. The government engagement coordinator buildings are generally demountables. Whether it is economic to move them is the question. Given their age, they would have to be assessed in each case. But for government engagement coordinators that is generally the case. There are other assets on Indigenous land that might be fixed that have been built by grant funding or directly by government. That would need to be pursued on a case by case basis. I have to point out that in relation to community living areas, it is not possible to deliver leases, given the current form of tenure on which those communities sit. At the moment, we have to rely on that permissive occupancy.

**Senator SCULLION:** I appreciate that. I have a question on behalf of Senator Payne, who was not able to be here, on legacy dwellings. Do you intend to replace or upgrade all of the 1,300 remaining legacy dwellings?

**Ms Moyle:** I assume that you mean dwellings for public housing or community housing?

**Senator SCULLION:** You are looking at me with somewhat glazed eyes! I did try to preface my question by saying that I probably do not know as much about this question as I should, because it is not one of mine.

**Ms Edwards:** We will pass this one to Mr Sowry in just a minute. Before we do that, I might continue a tradition: we have a package of material for you in relation to NPARIH and progress that has been made. Also, given that you expressed interest in Hermannsburg last time, there is some information about the advances being made there. With the agreement of the committee, this shows the advances in new houses and refurbishments. You will have seen the minister's press release which says that we have now exceeded the overall refurbishment target for the whole of the program, which we are very pleased about. It also provides some charts that it might help you to refer to.

**CHAIR:** Thank you for that submission. Is it the wish of the committee that the documents be accepted as evidence? There being no objection, it is so ordered.

**Mr Sowry:** With regards to legacy dwellings, after the last estimates question on notice 229 asked a similar question. In our normal reporting framework we do not typically collect data with regard to legacy dwellings. But in relation to the intent of the question: there are about 5,000 dwellings in remote Indigenous communities across the Northern Territory that are coming under the management of the Northern Territory government. The program, thus far, has addressed some 3,000-odd houses in rebuilds, refurbishments and the addition of new houses. It is the intent of the Stronger Futures housing program to address those remaining legacy dwellings, as they are referred to, to bring them up to the Residential Tenancies Act standard. Particularly in some of the smaller communities, the initial focus is to provide additional durability and amenity upgrades to those—that was addressed by Ms Gumley at the last estimates.

**Senator SCULLION:** Thank you. Perhaps while we are talking about those refurbishment issues, there was a question on notice that you took, I think it might have been from Rachel, with regard to the tenancy agreements: how many had not actually been signed and so people had returned to their place of dwelling, where there was no relationship between the owner of the building and all those sorts of things. Can you give us an update on whether or not that has been remedied?

**Ms Edwards:** We certainly can. Again, I will turn to Mr Sowry in a minute to give you the details. There has been a lot of progress made. We discussed these issues last time, and since then we have gone back and had a hard look. There were concerns about some rent payments not being matched to people and things like that. We all know that when you go and do a direct payment that sometimes it can get lost. Some employers were not attaching rent payments to the right person, and we have gone back and talked to Centrelink to make sure that all of these payments are, in fact, linked. We have looked all those sorts of issues, and Mr Sowry can give you the figures. But we have a very high level of tenancy agreements or occupancy agreements in place—so, documented residents in houses—and also now a very high level of those have been entered into the Northern Territory management systems, so they are fully computerised and are able to be dealt with. There has been a lot of progress there. Mr Sowry, would you like to provide the detail?

**Mr Sowry:** In response to that question on notice, you had a subsequent media release that there were 158 without tenancy agreements. I guess the fine print of that question on notice gave a breakdown of that figure of 158, of which about 73, or half of that number, were complete but were still in the transition stage from practical completion to being handed over. That is where tenants are under the Intensive Tenancy Support Program, which is the process

of signing them up to a tenancy agreement, and there were five that were practically complete that had not been handed over to the tenancy team for that purpose. There were 73 handed over, but they were covered by occupancy information documents. The occupancy information document is essentially what covers legacy houses, so it is sort of linked to the previous question. It is, essentially, the provision of a per-head payment for each income-earning adult in a house. That is a housing maintenance levy, which is the old poll tax arrangements that you would probably be familiar with. That occupancy information document is the agreement of the landlord's responsibility so that the tenants pay the levy and receive a service. Being specific in terms of a tenancy agreement with Residential Tenancies Act written in capital letters is one element, but then there is the occupancy information document, which is also a tenancy agreement—in, I guess, small letters—

**Senator SCULLION:** So the occupancy information document only relates to what we call legacy dwellings?

**Mr Sowry:** Yes, that is right, or houses that if they have been refurbished have not been accepted as at the Residential Tenancies Act standard by the asset management officer. It is a somewhat subjective process with the asset management officers, but, in instances where that has occurred, sometimes it is things like the glazier has not been able to get out to install new windows or make repairs, so that is done at a later stage, but the main body of work is done. Or it might be that some additional work through repairs and maintenance may pick up the shortfall.

**Senator SCULLION:** You talked about the tenancy support program. My motivation for asking these questions is that there seems to be very little understanding—in fact, almost no understanding at all—of the roles and responsibilities in so many of the houses in so many of these communities. Ali Curung is a perfect example and I think we all saw an opportunity, when people returned to houses or moved to new houses, for tenancy agreements. For many of these people English is certainly not their first language and an understanding and experience of the nature of these legal documents has not normally been extensive in those areas. Can you tell us briefly how the tenancy support program works. People get shuffled out of the house because it is going to be refurbished, but someone says to them, 'It's okay; you'll be able to move back in.' What happens around that? Are there translators? What are the arrangements?

**Mr Sowry:** A lot of that work is done by community housing officers who are local to the community, so they are Indigenous employees. The intensive tenancy support process has six elements and covers off things about the nature of tenant and Territory housing responsibilities, money management and so on. The process includes looking at living skills in the handover, to a limited degree, and going through the manuals of the warranties of items et cetera. So it is somewhat similar to mainstream housing. Would you repeat the other element of your question?

**Senator SCULLION:** Is the use of interpreters a mandated process?

**Mr Sowry:** No, it is not mandated, although there is a suite of communications products developed and used by Territory Housing that covers off on 15 Indigenous languages—and that can be things like talking books, talking posters—and there are a range of fact sheets et cetera that are in language. As I said, a lot of the work is done by the community housing officers as well as the tenancy management officers, and if they do need language support

then there will be the utilisation of interpreters. Over the last couple of years the NT Department of Housing has increased the capacity and capability of the Aboriginal Interpreter Service, which is within that department. In terms of Indigenous employment in property and tenancy management, just to give you an idea, the targets under the program for property management are 40 per cent, and tenancy management—which would be doing that intensive tenancy support—is 50 per cent. The achievement at the moment in property management—against a target of 40 per cent—is 62.3 per cent, and for tenancy management—where it is a 50 per cent target—it is 80.3 per cent. Hopefully that gives some indication of the Indigenous language capacity of that process.

**Ms Edwards:** I might just add, because I am glad you raised the issue, the enhanced tenancy support and tenancy management arrangements are a fundamental part of the reforms that the NPARIH has brought. It is certainly something we take very seriously. We require the Northern Territory to have those sorts of arrangements in place as part of the national partnership, because that is part of the recognition that improving asset life and people's capacity, and putting capacity in them, to perhaps move to home ownership or whatever in the future are an essential part. We take it very seriously, and we know that it is something that we need to continue to focus on—and ensure the states and territories focus on—going forward.

**Senator SCULLION:** I do not pretend for a minute that this is an entirely different environment from most people's understanding, but I cannot recognise some of the ones that have been refurbished a year ago. They are unrecognisable as standing out from the environment as even slightly better than when we started. It is not a reflection on any of the work you are doing, but it just does not seem that there are any of the normal compliance regimes. Normally, when you move into a house, in the first three months someone comes and annoys you, and then six months later somebody will come and do a house inspection—and as young blokes we used to all get terrified and clean up the beer cans and all that sort of stuff. In all of my discussions with the occupants, I have found that they do not have a clue. Some do—they remember signing something—but there does not seem to be any change. They have still got lots and lots of people living in the houses. That is just feedback; I am not trying to be negative. It just seems, in terms of feedback, that the arrangements under which they occupy a house—understanding that this is not just their house, that it belongs to someone else notionally, and that the arrangement is that you pay money but you have to look after these things, and in exchange for the payment of the money there are other people like the government that have to look after other things like the septic and sewerage—are a concept that is still in many cases foreign to many of the people who I speak to who are occupants.

**Ms Edwards:** It is a big job; there is no question that it is a big job. Where we came from, there were no tenancy arrangements, no secure tenure, no clear responsibility for repairs and maintenance—those are the various things that, through NPARIH, are being put in place gradually. As I say, we are putting great focus on it. The fact that some people remember signing something is actually, you would know, quite an advance and we need to keep at it. In lots of places we are making great inroads. It is a high priority for us and we are going to make sure the states and territories are held to account for it.

**Mr Sowry:** In terms of these elements of the Intensive Tenancy Support Program, the six topics that are covered are: understanding the tenancy agreement, transitional arrangements, managing money and resources, managing visitors and overcrowding—which touches on what you just raised—household orientation and functionality—and that is the manuals and so on—and maintaining a safe, healthy and hygienic home. In terms of context, we are four years into the 10-year program. Territory Housing have been doing a lot of work to improve this, and it is becoming an area of much greater focus for them, because we are getting feedback of the successes and the gaps in that process.

**Senator SCULLION:** The thing about most agreements, including tenancy agreements, is that there is a notion: 'If you don't, something will happen.' We always grouch that nothing ever happens to the council when they do not sink the septic and those sorts of things, but in mainstream society there is a compliance element to all this: if you have breached or if you do it again or if you do not remedy that then you will be either evicted or moved out, or any of those sorts of things. One would hope it does not get to that, but have you had any circumstances or are you aware—you may have to take that on notice—of circumstances where people in the remote communities are evicted from their houses for noncompliance?

**Mr Sowry:** No. I am only aware of one eviction, and that was in an Alice Springs town camp.

**Ms Edwards:** But, having said that, of course compliance is an important part of the program and it is something that the Northern Territory government, and all the states and territories, are required to do. Again, it is part of this big change for residents. We do not want to see anybody evicted from their home either, but having regular inspections and ensuring people are complying and, over time, learning more and more about what their obligations are—at the same time as, as you say, ensuring that government's obligations to repair things happen—is part of the movement.

**Senator SCULLION:** In terms of responsibility for that, I take it that on the tenancy agreement you have had some sort of joint response but, once that is finished, the responsibilities of the Northern Territory government in effect, and whoever they offset that to—I do not know—will be to manage the tenancy programs, provide compliance programs and those sorts of things.

**Ms Edwards:** Correct.

**Senator SCULLION:** Do they have any reporting? I know that is part of the arrangement. Do they report back to the Commonwealth about—

**Ms Edwards:** Yes, they do. The tenancy management arrangements are one of the key things that we talk about at joint steering committees and so on. It is a work in progress, as we say, but we are increasingly interested to know, as houses are built and refurbished and people move back in, that those are kept up to scratch. We do not underestimate the job of it, but it is something that we focus on and will focus on more into the future.

**Senator SCULLION:** Perhaps on notice you could respond to this: there is a contract, so there is an inspection. The first inspection is at three months, and the next is this March. I take it there are no bonds involved, but could you perhaps give me some of those highlight issues that they report on. I am not sure whether we would be able to get access to those reports as they come to hand.

**Ms Edwards:** I think it is a system in development.

**Senator SCULLION:** Yes, I appreciate that.

**Ms Edwards:** So whether it is up to the types of inspections you and I had as students and so on I do not know. But we are moving forward and we can provide you with what we are reporting on at the moment.

**Ms Gumley:** Could I also add that this is not a funding agreement that the Northern Territory government are doing on a fee-for-service basis on behalf of the Commonwealth. This is the Northern Territory government's responsibility for their public housing system, and their public housing system now has housing in remote NT and in town. So the performance of their public housing system is reported to their citizens through their report on government service delivery, along with other states' and territories' public housing systems. So they are responsible for the delivery of those services. On their website they have all of the material about their tenancy agreements and the requirements around terms and conditions for tenants. They do provide performance-reporting information back to the Commonwealth in annual status reports each year, as do the other jurisdictions, which give us confidence about how they are moving along that reform trajectory. But really this is their responsibility for their public housing, as it is in Darwin and in Alice.

**Senator SCULLION:** It is just always easier for me to speak to you, Ms Gumley, than to speak to the Territory government, irrespective of what colour is in management at the time. That is the reason for my questions. But I understand it is early days. As they come to hand, I think they will just be useful indicators to see how this whole process is going.

Thank you for the material that you have got from the national partnership program. There are some headline figures. I am not sure if they are in there at all, but by jurisdiction how much of the funding has actually been expended?

**Ms Gumley:** In relation to capital funding?

**Senator SCULLION:** What sort of other funding is there?

**Ms Gumley:** Under the national partnership we have funding for property and tenancy management, employment and related accommodation, capital funding and Indigenous community housing organisations.

**Senator SCULLION:** I will have the capital funding first.

**Ms Campbell:** For the capital works the total paid to date is \$1,000,707,400. That is for the total improvement in NPARIH. For New South Wales it is \$80.709 million, for the Northern Territory it is \$908.35 million, for Queensland it is \$239.421 million, for South Australia it is \$84.112 million—sorry I am struggling—for Tasmania it is \$8.169 million, there is nothing for Victoria for capital works and for Western Australia it is \$310.639 million.

**Senator SCULLION:** Thank you, Ms Campbell. So would you be able to tell me from the same groups how much has been spent but not committed? By 'committed' I mean it has been committed by contract but has not been expended. Is that possible? Are we talking the same things?

**Ms Gumley:** No, Senator. That would really be information that is with state governments.

**Senator SCULLION:** I see, yes.

**Ms Gumley:** We pay them once they have put the houses on the ground on mast and base payments.

**Senator SCULLION:** If that is the case, how much then has neither been spent nor committed?

**Ms Gumley:** How much is available—

**Senator SCULLION:** I was trying to break it up. If it were the case the states, we can't know; it is a sort of a lump in the middle that they are playing with. So apart from what you have already told me has been expended, is the remainder—so whatever remains—there? So it will be simply that we will have to find that out from the states? Is that right? I was going to ask about what has not actually been committed or expended at all.

**Ms Edwards:** The partnership is over 10 years and as states deliver on what they have promised to do—build houses, do refurbishments and do other sorts of reforms—they are paid. So all of the remaining funds in the partnership are awaiting further delivery by the states and further payments to them. Now with their contracting arrangements within that, they may have committed funds but we pay them once they have delivered.

**Senator SCULLION:** Okay, so what is the sum of the sum of the funds that are in that circumstance, that they have not been paid to the states because they have not completed or done the works yet?

**Ms Edwards:** So the balance—

**Senator SCULLION:** over forward estimates.

**Ms Edwards:** It is at \$5.5 billion over the 10-year program, and Ms Campbell has outlined the amounts that have already been paid to the states. So the balance is available and allocated notionally among states but of course is dependent on the competitive bids process and so on to be paid to the states and to the Territory when they meet milestones.

**Senator SCULLION:** The Northern Territory say that they are funded—I think under those arrangements they get this—to the tune of some \$1.7 billion under the national partnership.

**Ms Edwards:** In the Northern Territory—

**Senator SCULLION:** Just in the Territory. I think there is some addition to that. I know there was some crossover and in addition there was about \$230.4 million on top of that or separate to that which was under the SIHIP arrangements or for the period of time till SIHIP got taken over, so there was a larger sum for that. Is that about right?

**Ms Edwards:** So \$1.7 billion for the Northern Territory, subject to performance of course.

**Senator SCULLION:** Yes.

**Ms Edwards:** And then there is the additional Stronger Futures investment of \$230 million. I think you said 0.4. Is that right, Mr Sowry?

**Mr Sowry:** If I could clarify it, Senator: I think you got Stronger Futures and SIHIP confused there. SIHIP was an initial investment of \$672 million back in 2008. That is now incorporated into that figure of \$1.7 billion under the national partnership agreement. Now,

with the implementation of the Stronger Futures initiative, that is the \$230.4 million that you refer to.

**Senator SCULLION:** Okay, thank you. The Northern Territory government said if one of the key objectives of the National Partnership Agreement on Remote Indigenous Housing is to alleviate overcrowded remote Indigenous communities this will not be achieved under NPARIH in the Northern Territory. It is all pretty depressing stuff. It goes on to say that 1,300 additional homes and an additional \$1 billion would be required to achieve it in dealing with the overcrowding issues that they see in the Northern Territory.

After the investment we have received, how would you explain that it does not appear, and certainly they do not seem to be thinking, that that has dealt with their overcrowding at all?

**Ms Edwards:** The first thing to say is that we all know that NPARIH, and SIHIP before it, came after decades of underinvestment, a huge problem with overcrowding and so on. It is definitely true to say that we have made major inroads just with the numbers of new houses. I think 780 houses have been built to date under the program in the Northern Territory alone. Mr Sowry may have detail of that, but in some places it has made a major difference to overcrowding. We do not for one second shy away from the hugeness of the job of housing people in the remote Northern Territory with a growing population and all of that sort of thing. We are always looking for ways to make savings and to do extra. The Stronger Futures investment is an important addition to the amenity of houses in particular, and we are also looking at ways to increase private investment, homeownership and opportunities for people. But it is a huge job, and one that is long overdue, but we are four years into a 10 year program and making major inroads. So we are aware of the problem and we are also aware that we are doing, we think, a lot to assist residents of the remote Northern Territory.

**Mr Sowry:** I would just add that where the program to date has added additional housing, which is in the remote service delivery communities, the average increase in bedrooms—whilst we talk about the addition of houses, the real detailed measure is additional bedrooms to communities—

**Senator SCULLION:** I appreciate that.

**Mr Sowry:** It is around a 28 per cent additional increase on average. When you look at your community of interest, Wadeye, the additional houses that we put in were an increase of 53 per cent in housing, and that has added an additional—

**Senator SCULLION:** But that was an additional 53 per cent on top of what was originally planned for the housing.

**Mr Sowry:** From before the program?

**Senator SCULLION:** Yes.

**Mr Sowry:** The program has added an additional 53 per cent of houses, so I think it has added 105 houses to the community. That has resulted in an increase of 223 bedrooms, which is over a 40 per cent increase in bedrooms to that community. You are very familiar with it. That in itself certainly has had an impact on the overcrowding.

**Mr Dillon:** I have some experience as an ex-Chief Executive of Territory Housing. Another way of looking at this, for example, would be that in 2002-06 the Commonwealth put \$40 million per year into remote housing in the Territory, and the Territory put in \$20 million.

If that ratio were to be extended out to today, the Territory government would be putting in something akin to over \$0.8 billion over 10 years. They are a sovereign government, and they have a responsibility to meet the needs of their citizens in the social housing space.

**Mr Sowry:** I would also add, as we have said before, that in the five years prior to the program it added 75 houses per year on average. We have been adding, on average, after 3½ years of construction delivery 223 houses per year with a peak in a calendar year of about 356, which was in the last financial year.

**Mr Pratt:** So three to four times the rate.

**Mr Sowry:** Correct, yes.

**Senator SCULLION:** Just around this space, it might even have been this government's data, but in 2008 there was some estimate that some 9,000 additional houses were required. I think that was across the board. Now, the current forecast to 2018 is that we are going to need 9,000 houses. I am sure that we are not just catering for population increase. It seems that, even with the massive amounts of money, we are only just keeping track with the amount of houses that are being delivered. That is what the statistics appear to say.

**Mr Sowry:** What is the source of the forecast?

**Senator SCULLION:** I do not have the source of the forecast but in 2008 there was an estimate that 9,000 additional houses would be required to eliminate overcrowding in Indigenous housing. On the current forecasts, by 2018 there will still be a shortfall of 9,000 houses. I have not sourced either of those. I just assumed you would know where those forecasts were from.

**Mr Dillon:** This is why NPARIH focuses on structural reforms and in particular why it focuses on land tenure reform. These remote communities are the only part of Australia where there is absolutely no private sector investment in the housing market. There is no home ownership and there is no housing market; therefore, everything falls to the social housing sector. That is untenable going forward over the next 20, 30 or 40 years. Yes, there can be a social housing sector, but surely we aspire to a situation where there is more than social housing in these places.

**Senator SCULLION:** I do not think you will get disagreement from me or from probably most people in this place on that. That is something that seems to be taking a very long time to do. I know in relative terms it is a recent initiative, but I agree that a fundamental part of that is that we need to have the mix that we find in a normal community.

I have a couple of technical questions about SIHIP. I understand that there used to be a lot of solar hot water systems. I am being quite general here. They are quite afraid and they probably do not need to be, but somebody has come to me with this information and I have had a look. The houses used to have solar hot water systems on them, but the refurbished or new houses have electric hot water systems. I wonder what rationale is for that.

**Mr Sowry:** I came prepared for this question two years ago, I remember that. We generally install thermal units, so they are electrical units but they use a system that is cheaper to run and operate than solar units. Solar units require quite a bit of maintenance. In some communities there is the habit of throwing rocks on roofs, which is not particularly good for solar panels. The thermal heating units that are used are a green eco-technology, so they are not the standard unit. Although they are electrically powered, it is at a low rate.

**Senator SCULLION:** I was trying to expose that a cheap electric heating system will cost you \$300 and a cheap solar system will cost about \$4,000, but one costs more to run than the other. If you could provide me on notice with the technical stuff you came up with two years ago that will allow me to send that information on.

**Mr Sowry:** Yes.

**Senator SCULLION:** It may not be appropriate to be asking you this question given the answer to some of your other questions with regard to who is responsible for the maintenance of the houses. I have also had reports that when somebody does move out of a house, through an eviction or whatever else, they have to do a refurbishment because of the lack of adhesion to anything and the broken parts. I have had stories of it being up to \$50,000 to make it liveable. I had the question organised because I thought you may have been able to provide a higher level of amenity, but now I understand it is the Territory government's process. Have you any information about when somebody moves out whether it costs an awful lot of money to bring it back to a level that would meet the standard that would be accepted by the Territory asset person or whoever it is? Do you have any information in terms of what sorts of costs are involved?

**Mr Sowry:** As you say, it is a Territory housing management issue. I am not aware anecdotally of any instances where there have been transition costs of that order.

Certainly, some of the costs post the rioting that occurred in Wadeye late last year and some of the damage to those houses was quite high. I cannot say that I am aware of anything of the order of \$50,000, which is effectively a completely new refurbishment.

**Senator SCULLION:** I have one last question that I was going to ask briefly about, and this was the only place left to ask it. It was about the hostel in Weipa. We did all the other stuff the other night, and I went there but this was not there. It is a FaHCSIA one, rather than a DEEWR one. You learn something every day about who owns what assets. They might look exactly the same, in exactly the same areas, but belong to different jurisdictions. I wonder if you could provide me with some answers to some questions on the Weipa hostel?

**Mr Matthews:** Sure.

**Senator SCULLION:** How many students are currently living at the Western Cape College Residential Campus?

**Mr Matthews:** The enrolments for this year are, at the moment, 51.

**Ms Edwards:** Senator, I think Mr Matthews may not have been around when we had notification earlier today that it is actually 55 now.

**Mr Matthews:** Yes, there is the issue that it is bouncing around a little bit. As you would probably appreciate, it is the start of the school year. One of the things that has been impacting on the enrolments and the attendance at the college at this stage has obviously been a lot of the rains and the flooding in those communities and simply getting people from community in. It is in the early 50s, which is a pretty good result at this stage of the year.

**Senator SCULLION:** You have said: 'This is opening, ring us up, tell us who you are and where you are coming from.' You have built a 120-bed place, you have taken 15 from the previous hostel, so there is a fair bit of capacity, I would have thought. I am not suggesting that, even in February, the excitement of returning to school has abated, but I would say that

is probably it. What about the remainder of the capacity? Is there some discussion with being able to make that capacity open, for example, to an adjacent jurisdiction with the same challenges?

**Mr Matthews:** The facility is operated by the Queensland department of education. They are operating it and obviously they run the school, the Western Cape College. I do not know if you have been to Weipa but it is a very large, extremely well-run, extremely well-resourced school. I do not think the Queensland education department would accept that, having got around the early-50 mark for enrolments at this stage, that that is where they are going to end at the end of the year. They are obviously intending to work with the communities through the course of the year. One of the advantages of having Queensland's education run it is, of course, that they run all of the schools through the communities in the Cape and through the Torres Strait. So it is the engagement they have through their network in-community. They have roving school engagement officers that go through communities, and the principal and the operator of the campus have been out over, probably, the last couple of months in-community talking to families, talking to communities about it, and we would expect that that would continue over the course of the year. The occupancy was always forecast to increase over the years and, by about the fourth year mark, it would get up to around the full occupancy rate. It is not intended at this stage that we would look for students from other jurisdictions to be going into there, but, ultimately, if there were some issues, it would be something that would be considered. But at this stage it is not on the cards.

**Senator SCULLION:** Do you expect the capacity to eventually be filled after further recruitment?

**Mr Matthews:** Yes, we do. We think that there is a pretty sizeable student cohort across the Cape and the Torres Strait that is not engaged in school. Simply, in some of the schools, as you probably know, there are fairly limited opportunities in communities for secondary education. To that extent, there is a pretty strong opportunity, we think—and that is the reason it was built around that number—to get the students into the facility.

**Senator SCULLION:** Thank you very much, Mr Matthews. I appreciate that. Ms Edwards, my last question would be to you. I have not had, obviously, time to read it since you provided it. I wonder if you would be able to provide me with a breakdown, perhaps on notice, of the number of residents of Hermannsburg Ntaria who are employed through the building program?

**Ms Edwards:** We can probably provide that now, can we?

**Mr Sowry:** It will not be in there, Senator, that particular figure. At the moment it is 18.

**Senator SCULLION:** It is ongoing at the moment, isn't it? It is still happening?

**Mr Sowry:** It is due to be completed at the end of May down there. You are welcome to go and have a look at it and see the refurbishments. The development that has occurred in the program is quite substantial. Over the course of the works, 37 having been employed. At this time of the year there is always a little bit of volatility in the attendance figures due to football carnivals and post-Christmas visitations et cetera. As at 31 January there were 18 local employees. There are apprentices that have been picked up in the community.

**Senator SCULLION:** I will look through this. I will be delighted to be in the community shortly. I am going to get around and have a look at how that is all going. Thank you very

much for that. I really do appreciate it. I still have a number of questions on notice I will provide for you. They are very numbery ones. You will love them.

**Senator SIEWERT:** I want to follow-up a couple of issues around Ntaria. When the committee was there last year there was some concern about the proposed location of some of the houses being located in a culturally sensitive and inappropriate place. Was that issue dealt with?

**Mr Sowry:** Yes. I guess the little scrapbook that was put together by the alliance indicates the extent of the community engagement that is undertaken. A part of our normal process involves community engagement. Whilst there is leasing that occurs, the alliance works very closely to establish the housing precinct leases in terms of restricted work areas that might be impacted by the locations of the houses. One of the advantages of the alliance model is that it does have an inherent employment and workforce development and community engagement capacity. They work very closely with the elders and traditional owners in the community to negotiate access to and the boundaries of work areas so they do not impact on the restricted areas, ALRA land et cetera.

**Senator SIEWERT:** Was the particular location of some of the houses the problem?

**Mr Sowry:** Unless I knew specifically which you were referring to—

**Senator SIEWERT:** All I can say is that they are the ones behind here and the ones behind there so I may have to put it on notice.

**Mr Sowry:** I have been to the community a couple of times recently and there were no issues in the location of houses.

**Senator SIEWERT:** Are you producing booklets and graphs for other projects as well? Or is it just a Ntaria?

**Mr Sowry:** With Ntaria, that was an initiative of the community engagement team there. I was impressed with the fact that they provide for visitors and tell the story. Similarly, whether or not other communities provide a synopsis in that form, the levels of community engagement are very high. In Numballal for instance, there are about 24 employees. There are six women in a 'gleam team' that do house preparation and cleaning and there are three teams of trainees, the Billabongs, the Saltwaters and the Muddy waters. They compete against each other in how well they do their work in the refurbishments. That is all part of the greater community engagement that occurs.

**Mr Pratt:** As a point of clarification, we do not actually put this together.

**Senator SIEWERT:** That is what I understood from the answer.

**Mr Sowry:** That was produced by the alliance.

**Mr Pratt:** We have an answer to a question asked by Senator Siewert.

**Senator SIEWERT:** Is that about the project funded in Kununurra?

**Ms Gumley:** It was a project that included something which was called a chill out space for young people as well as a particular piece of research in that area. It sought responses from the large number of young people that were street present in Kununurra at night time. There were about 60 to 80 young people on the street on any one night in the month of August 2010.

The report was not released because there were some sensitivities in the report. Those sensitivities were taken up with the relevant authorities in that area. The key thing from it was that it drew attention to the fact that there were issues for young people in Kununurra at night. Some of it comes because they did not have a suitable home environment, because they were bored or because they preferred that more open environment. That has significant consequences for young people in that itinerant or homeless lifestyle. It affected their school attendance, healthy living and eating patterns, and it led to some criminal activity, substance abuse et cetera. In short, the report goes to making better use of the local hostel as a type of overnight accommodation and crisis accommodation—and there were some reports undertaken, as I mentioned, with the relevant authorities; making sure that the crisis centre stayed open overnight; providing better support to families at risk; and educating parents as to how they can take better responsibility for their children, particularly at that age range.

Since the release of the report there has been a local Indigenous community reference group established. They have been working with government and non-government agencies in the area to develop long- and short-term solutions. Since the report there have also been a few changes made on the ground. The current situation has seen a drop in the number of young kids. There will be still be spikes, which come about in school holidays and in the very hot weather. There was something called Operation SHARP, which was undertaken mid-2012 by the Western Australia government. It gave comprehensive case management for kids on the street. It was quite successful, with the numbers dropping off considerably.

Aboriginal Hostels Limited provides a school hostel to high school students from across the region. The occupancy of that is a bit patchy depending on—

**Senator SIEWERT:** It goes up and down.

**Ms Gumley:** Yes. It depends a bit on whether there is a better party going on in town. WA Police and the DCP, the Department for Child Protection, which has responsibility for the homelessness initiatives in WA, delivered the Get Up 'N' Go project, which is a collaborative service with an emphasis on getting kids back to school. FaHCSIA has more than \$1.8 million of funding in youth programs in the region. We have youth coordination positions with both the Shire of Wyndham East Kimberley and the Shire of Halls Creek. The Commonwealth also provided \$195 million for the broader package of the East Kimberley Development, which goes to addressing many of the housing and infrastructure issues that came up in the report.

**Senator SIEWERT:** Do all the action points you just read out correspond with some recommendations that were in the report?

**Ms Gumley:** Yes, that is my understanding.

**Senator SIEWERT:** Are the sensitivities because they were young people?

**Ms Gumley:** Yes.

**Senator SIEWERT:** It was a fairly candid survey, is that right?

**Ms Gumley:** Yes. I have not seen the detail of the survey myself, but my understanding is that they had some personal details of young people who needed to be accessing support services.

**Senator SIEWERT:** Were the recommendations contained in that shared with the state government as well in order for them to respond?

**Ms Gumley:** Yes. Going to that local Indigenous community reference group, it has state government, federal government and local NGOs involved. Without having the exact detail of the report, they have all understood what has needed to happen in terms of getting better support services, making sure crisis accommodation is there and working collaboratively to make sure young people do not fall through the gaps in services.

**Senator SIEWERT:** Are the programs you have just articulated ongoing?

**Ms Gumley:** I would not be able to give you a full, detailed list. I have a list of investments but I am not sure whether they are ongoing or not. I would need to take that on notice.

**Senator SIEWERT:** I know you cannot respond for the Western Australian government, but do you know if the programs they have put in place are ongoing rather than short term? If you could include that information that would be appreciated.

**Ms Gumley:** That information is probably best sourced from the WA government. They have the details of their programs and will be more accurate than me commenting on it.

**Senator SIEWERT:** Sometimes, like Senator Scullion—in fact, probably even more often—it is harder for us to get information out of the state government than it is for you, so if you are aware can you include it?

**Ms Gumley:** Certainly.

**CHAIR:** Thank you to Mr Pratt and to the officers. We appreciate your support always. Thank you to Senator Farrell and, as always, to Hansard.

**Committee adjourned at 16:00**

The Senate

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Community Affairs  
Legislation Committee

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Aboriginal and Torres Strait Islander  
Amendment (A Stronger Land Account)  
Bill 2014

March 2015

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# MEMBERSHIP OF THE COMMITTEE

## 44<sup>th</sup> Parliament

### Members

Senator Sue Boyce, Chair (to 30 June)	Queensland, LP
Senator Zed Seselja, Chair (from 1 July)	Australian Capital Territory, LP
Senator Rachel Siewert, Deputy Chair	Western Australia, AG
Senator Carol Brown	Tasmania, ALP
Senator Nova Peris OAM	Northern Territory, ALP
Senator Linda Reynolds (from 1 July)	Western Australia, LP
Senator Zed Seselja (to 30 June)	Australian Capital Territory, LP
Senator Dean Smith	Western Australia, LP

### Participating members for this inquiry

Senator Claire Moore	Queensland, ALP
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# ABBREVIATIONS

ALRC	Australian Law Reform Commission
ARR	Ayers Rock Resort
ATSI	Aboriginal and Torres Strait Islander
ATSI Act	<i>Aboriginal and Torres Strait Islander Act 2005</i>
ATSIC	Aboriginal and Torres Strait Islander Commission
DoF	Department of Finance (Australian Government)
DPMC	Department of the Prime Minister and Cabinet (Australian Government)
IBA	Indigenous Business Australia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	Indigenous Land Corporation
Land Account	Aboriginal and Torres Strait Islander Land Account
LI Act	Legislative Instruments Act
NCA	National Commission of Audit
NQLC	North Queensland Land Council
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
TSRA	Torres Strait Regional Authority



# **LIST OF RECOMMENDATIONS**

## **Recommendation 1**

**2.39 The committee recommends that the Senate not pass the Bill.**



# Chapter 1

## Introduction

1.1 On 24 June 2014, the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 (Bill) was introduced into the Senate as a private Senator's Bill by Senator Rachel Siewert.<sup>1</sup>

1.2 On 26 June 2014, the Senate referred the Stronger Land Account Bill to the Community Affairs Legislation Committee for inquiry and report by 2 September 2014.<sup>2</sup> The Senate granted extensions of time to report until 29 October 2014<sup>3</sup>, 3 December 2014<sup>4</sup>, 4 March 2015<sup>5</sup>, and then until 25 March 2015.<sup>6</sup>

### Purpose of the Bill

1.3 The Bill seeks to amend the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) to strengthen Indigenous control over the Aboriginal and Torres Strait Islander (ATSI) Land Account (Land Account) and the Indigenous Land Corporation (ILC) by:

- introducing a clearer purpose for the Land Account, specifying that it is a compensatory mechanism in acknowledgment of past injustices and dispossession of traditional lands and acknowledging the special relationship indigenous people have with their land;
- preventing the Land Account from being utilised for any purpose other than the land-related benefit of indigenous people;
- strengthening indigenous control over the Land Account and the ILC;
- introducing strong new measures requiring the ILC to comply with the highest standards of corporate governance, transparency and accountability; and
- introducing measures to ensure the Land Account increases in value to meet future land acquisition and management needs into the future.<sup>7</sup>

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1 *Journals of the Senate*, No. 35—24 June 2014, p. 976.

2 *Journals of the Senate*, No. 37—26 June 2014, p. 1013.

3 *Journals of the Senate*, No. 45—17 July 2014, p. 1240.

4 *Journals of the Senate*, No. 59—2 October 2014, p. 1582.

5 *Journals of the Senate*, No. 70—27 November 2014, p. 1893.

6 *Journals of the Senate*, No. 79—2 March 2015, p. 2202.

7 Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014, Explanatory Memorandum, p. 3.

## Conduct of the Inquiry

1.4 Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website.<sup>8</sup> The committee also wrote to 40 organisations and individuals, inviting submissions by 29 August 2014. Submissions continued to be submitted after that date.

1.5 The committee received 20 submissions for the inquiry, which are listed at Appendix 1. All submissions and the transcript may be accessed through the committee's website.

1.6 The committee held a public hearing on 13 February 2015 at Parliament House in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2, and the *Hansard* transcript is available through the committee's website.

## Background

### *Aboriginal and Torres Strait Islander Act 2005*

1.7 In 2005, the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished through the repeal of the *Aboriginal and Torres Strait Islander Commission Act 1989*. ATSIC's functions and responsibilities were transferred to two organisations—the ILC and Indigenous Business Australia (IBA)—which are operated under the ATSI Act.

1.8 The ILC is funded through an annual disbursement from the capital-preserved Land Account.<sup>9</sup> The Land Account was established for ATSI people that could not benefit from processes under the *Native Title Act 1993* or other legislative land claim/land acquisition mechanisms.<sup>10</sup> The Land Account is a Special Account as provided for by section 20(10) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and defined under the ATSI Act.<sup>11</sup> This account is the sole source of income for the ILC and is used to assist indigenous organisations to acquire and manage land 'so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders'.<sup>12</sup>

### *Historical context for proposed changes*

1.9 Recent events have highlighted potential deficiencies in the current legislation—in particular, the ILC purchase of the Ayers Rock Resort (ARR), and recent reviews of the ILC and IBA.

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8 See: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs)

9 *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), s. 192X.

10 Central Land Council, *Submission 10*, p. 3.

11 ATSI Act, s. 192W. The ILC and Land Account were established under the *Land Fund and Indigenous Land Corporation (ATSIC) Amendment Act 1995*.

12 ATSI Act, s191B; Indigenous Land Corporation, *Annual Report 2012–13*, p. 21.

### *Acquisition of Ayers Rock Resort by the Indigenous Land Corporation*

1.10 On 15 October 2010, ILC acquired a package of Central Australian assets including the ARR from GPT Limited for \$292 million. These assets were purchased on behalf of the Wana Ungkuntja Aboriginal Corporation which represents indigenous communities in the Uluru region. This followed negotiations between ILC and GPT Limited from December 2008 to October 2010.<sup>13</sup> Prior to the purchase, the Hon Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs) and Senator the Hon Penny Wong (Minister for Finance and Deregulation) expressed concern to the ILC about the acquisition process.<sup>14</sup>

1.11 In May 2013, the new Chair of the ILC Board, Dr Dawn Casey, wrote to Minister Macklin raising 'serious questions about the decision to acquire ARR and establish Voyages' and 'concerns in relation to the financial exposure of the ILC to the ARR project, including its deteriorating financial performance relative to acquisition forecast performance'.<sup>15</sup>

1.12 In November 2013, Mr Mike Dillon, Chief Executive Officer of the ILC, outlined the impact of the ARR acquisition on the ILC:

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- 13 McGrath Nicol Corporate Advisory, *Ayers Rock Resort Review—Final Report: Indigenous Land Corporation*, December 2013, p. 5,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/About%20Us/Files/05%20Released%20Documents%20Part%204.ashx> (accessed 23 July 2014).
- 14 See: The Hon. Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs), letter to Ms Shirley McPherson (Chair ILC), dated 22 September 2010, pp 1–2,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/Media/Voyages/ILC%20correspondence%20with%20former%20Ministers%20Macklin%20and%20Wong%20-%20Ayers%20Rock%20Resor.ashx> (accessed 24 July 2014). Ms Shirley McPherson (Chair, ILC), letter to the Hon Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs), dated 23 September 2010, pp 1–9,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/Media/Voyages/ILC%20correspondence%20with%20former%20Ministers%20Macklin%20and%20Wong%20-%20Ayers%20Rock%20Resor.ashx> (accessed 24 July 2014). Ms Shirley McPherson (Chair, ILC), letter to the Hon Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs), dated 23 September 2010, p. 2,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/Media/Voyages/ILC%20correspondence%20with%20former%20Ministers%20Macklin%20and%20Wong%20-%20Ayers%20Rock%20Resor.ashx> (accessed 24 July 2014). Senator the Hon. Penny Wong (Minister for Finance and Deregulation), letter to Ms Shirley McPherson (Chair, ILC), dated 29 September 2010, pp 1–2,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/Media/Voyages/ILC%20correspondence%20with%20former%20Ministers%20Macklin%20and%20Wong%20-%20Ayers%20Rock%20Resor.ashx> (accessed 24 July 2014). Dr Dawn Casey (Chair, ILC), letter to the Hon Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs), 14 May 2013, pp 1–3,  
<http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/Media/Voyages/ILC%20correspondence%20with%20former%20Ministers%20Macklin%20and%20Wong%20-%20Ayers%20Rock%20Resor.ashx> (accessed 24 July 2014).

[T]his transaction is going to impact for at least 15 or 20 years on the ILC's core statutory functions—our land acquisition and land management functions. Of a budget of \$50 million each year, which comes from the land account, around \$15 million or so goes on our internal processes. Of the \$35 million available for our core functions, at least \$20 million will have to go to paying off this debt, the interest and the principal.<sup>16</sup>

*Recent Reviews of Indigenous Land Corporation and Indigenous Business Australia*

1.13 On 2 December 2013, the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion commissioned Ernst & Young to conduct a review into the ILC and IBA, and recommend how to improve the effectiveness of these two bodies.<sup>17</sup> A report was provided to the Minister on 17 February 2014 and released to the public on 3 May 2014.<sup>18</sup>

1.14 This review highlighted two broad options that would help to improve the purpose and governance of these organisations—a reconfigured stand-alone option (option 3) or new entity recommendations (option 4). Option 3 has five recommendations that focus on changes to the ILC's purpose, finance and capital, governance and strategy, indigenous enterprise development, and land tenure. Although some of the review's recommendations exceed the provisions of the Stronger Land Account Bill there is clear overlap between some of the Ernst & Young recommendations and the Bill.<sup>19</sup>

1.15 After releasing the report, the Minister stated:

I will continue to consider future options and will consult on this matter with relevant stakeholders.<sup>20</sup>

1.16 The National Commission of Audit (NCA) recommends that the ILC and IBA merge to 'achieve efficiencies, avoid duplication (these organisations already share a

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16 Mr Mike Dillon, *Proof Estimates Hansard*, 22 November 2013, p. 39.

17 Media Release, Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, 'Review into Indigenous Business Australia and the Indigenous Land Corporation', 2 December 2013, [http://minister.indigenous.gov.au/sites/default/files/media/2013-12-02\\_ilc\\_iba\\_review.pdf](http://minister.indigenous.gov.au/sites/default/files/media/2013-12-02_ilc_iba_review.pdf) (accessed 7 August 2014).

18 Ernst & Young, *Review of the Indigenous Land Corporation and Indigenous Business Australia*, 17 February 2014, [http://www.dpmc.gov.au/publications/docs/EY\\_final\\_report\\_review\\_of\\_ILC\\_IBA.PDF](http://www.dpmc.gov.au/publications/docs/EY_final_report_review_of_ILC_IBA.PDF) (accessed 7 August 2014).

19 Ernst & Young, *Review of the Indigenous Land Corporation and Indigenous Business Australia*, 17 February 2014, pp 62–63, [http://www.dpmc.gov.au/publications/docs/EY\\_final\\_report\\_review\\_of\\_ILC\\_IBA.PDF](http://www.dpmc.gov.au/publications/docs/EY_final_report_review_of_ILC_IBA.PDF) (accessed 7 August 2014).

20 Media Release, Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, 'Ernst & Young review ILC/IBA', <http://minister.indigenous.gov.au/media/2014-05-03/ernst-young-review-ilciba> (accessed 7 August 2014).

common chair) and be more convenient for clients'.<sup>21</sup> The Audit also recommends that the Land Account 'should be maintained to provide a stable revenue stream to fund indigenous land acquisition and management activities'.<sup>22</sup> Minister Scullion confirmed this:

I specifically excluded the Land Account from the Ernst and Young review because it is not the Government's intention to change this iconic Indigenous fund.<sup>23</sup>

*Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014*

1.17 In 2013, Dr Dawn Casey (ILC Chair) and Mr Mike Dillon (ILC CEO) conducted a review of the ILC and its governance during the 2010 acquisition of the ARR. Dr Casey has conveyed the Board's concerns about alleged failings during this time to the Government.<sup>24</sup> Further to this, the ILC Board noted in its submission that:

The Stronger Land Account Bill substantially reflects a Draft Bill released by the ILC on 24 March 2014, and endorsed in principle on the same day by a group of senior Indigenous leaders, including a number who were involved in the native title negotiations of the 1990's.<sup>25</sup>

1.18 Upon introducing the Bill into Parliament, Senator Siewert expressed concern as to whether the Government will accept the recommendations of the NCA or Ernst & Young reviews, and whether this will compromise the intended purpose of the ILC and the Land Account.

The Minister for Indigenous Affairs has indicated he is considering a 'major overhaul' of both the ILC and [IBC]. It is unclear why Government would consider significant change that has the potential to weaken the ILC and put the land account at risk...Any new arrangement proposed for the ILC

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21 National Commission of Audit, *The Report of the National Commission of Audit—Phase 1*, February 2014, p. 175, [http://www.ncoa.gov.au/report/docs/phase\\_one\\_report.pdf](http://www.ncoa.gov.au/report/docs/phase_one_report.pdf) (accessed 23 July 2014).

22 National Commission of Audit, *The Report of the National Commission of Audit—Phase 1*, February 2014, p. 216, [http://www.ncoa.gov.au/report/docs/phase\\_one\\_report.pdf](http://www.ncoa.gov.au/report/docs/phase_one_report.pdf) (accessed 23 July 2014).

23 Media Release, Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, 'Ernst & Young review ILC/IBA', <http://minister.indigenous.gov.au/media/2014-05-03/ernst-young-review-ilciba> (accessed 7 August 2014).

24 See: Dr Dawn Casey, (Chair, ILC), letters to the Hon Tony Abbott (Prime Minister), 14 November 2013; Dr Dawn Casey, (Chair, ILC), letter to the Hon Tony Abbott (Prime Minister), 18 December 2013; Dr Dawn Casey, (Chair, ILC), letter to the Hon Tony Abbott (Prime Minister), 8 January 2014, <http://www.ilc.gov.au/~media/ILC/ILC%20Website/Content/About%20Us/Files/04%20Released%20Documents.ashx> (accessed 7 August 2014).

25 Indigenous Land Corporation, *Submission 1*, p. 3.

comes with a risk that funds from the land account will be diverted to non-land commercial purposes.<sup>26</sup>

At the time of writing, the Minister had not announced any legislative changes to the ILC, IBA or the Land Account. On 24 October, 2014, Minister Scullion stated to *The Australian* that he does not intend to make changes to the ILC, IBA or the Land Account.<sup>27</sup> As such, it is not clear which unannounced changes this Bill is seeking to pre-empt.

### **Key provisions of the Bill**

1.19 This Bill seeks to amend the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) as outlined in Table 1 below.

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26 Second Reading Speech, *Senate Hansard*, 24 June 2014, p. 38.

27 Patricia Karvelas, 'Indigenous merger set aside', *The Australian*, 24 October 2014, p. 6. <http://www.ilc.gov.au/IndigenousLandCorporation/media/Items/Content/Media/Media%20Coverage/Indigenous-merger-set-aside-The-Australian-24-Oct-2014-p6.pdf> (accessed 24 March 2015).

**Table 1: Key provisions and purpose of Bill**

	<b>Proposed amendments to ATSI Act</b>	<b>Purpose of amendments to ATSI Act</b>
i.	<b>Insert</b> Part 1, Division 1A—Objects of Part, section 191AB Objects of Part	introduce a clearer purpose for the Land Account, specifying that it is a compensatory mechanism in acknowledgment of past injustices and dispossession of traditional lands and acknowledging the special relationship indigenous people have with their land
ii.	<b>Substitute</b> section 192X Purpose of Land Account	prevent the Land Account from being utilised for any purpose other than the land-related benefit of indigenous people
iii.	<b>Insert</b> section 191XA <b>Insert</b> section 191XB <b>Substitute</b> subsection 191X(3) <b>Substitute</b> section 191L <b>Insert</b> section 193GA <b>Insert</b> section 193IA	strengthen indigenous control over the Land Account and the ILC
iv.	<b>Substitute</b> section 191W <b>Insert</b> section 191X <b>Insert</b> section 191YA <b>Insert</b> section 191YB <b>Substitute</b> section 191Z <b>Substitute</b> section 192F <b>Insert</b> section 192SA	introduce strong new measures requiring the ILC to comply with the highest standards of corporate governance, transparency and accountability
v.	<b>Substitute</b> subsection 193(3) <b>Insert</b> subsection 193(5) <b>Insert</b> section 193G	introduce measures to ensure the Land Account increases in value to meet future land acquisition and management needs into the future. <sup>28</sup>

## **Consideration of the Bill by other committees**

### ***Human Rights***

1.20 The Parliamentary Joint Committee on Human Rights considered that the Bill does not appear to give rise to human rights concerns. The committee noted that to the

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28 Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014, Explanatory Memorandum, p. 3.

extent the Bill strengthens indigenous control over the Land Account and the ILC, the Bill promotes the right to self-determination in Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>29</sup>

### *Scrutiny of Bills*

1.21 The Senate Standing Committee for the Scrutiny of Bills considered that Item 21, proposed subsection 192SA(5), may 'insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.' The committee noted:

Proposed subsection 192SA(5) provides that a determination of a 'code of conduct for Indigenous Land Corporation officers' under subsection 192SA(1) is not a legislative instrument. Such determinations will therefore be exempt from the operation of the disallowance and sunset provisions of the *Legislative Instruments Act 2003* (the LI Act). Given that the code will operate to impose general obligations on Indigenous Land Corporation officers, such a determination would appear to fall within the definition of legislative instrument contained in the LI Act. As the explanatory memorandum does not justify what appears to be a substantive exemption from the requirements of the LI Act, **the committee seeks the Senator's advice as to the justification for this exemption.**<sup>30</sup>

### **Acknowledgement**

1.22 The committee thanks those organisations who made submissions and who gave evidence at the hearing.

### **Note on References**

1.23 Reference to the committee *Hansard* is to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

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29 Parliamentary Joint Committee on Human Rights, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011, Bills introduced 23–26 June 2014, Legislative Instruments received 7–20 June 2014*, p. 1.

30 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2014*, p. 1.

# Chapter 2

## Key issues

2.1 The majority of submissions to the inquiry support the proposed amendments to the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act).<sup>1</sup> The committee received a number of submissions that suggested minor changes, but were nonetheless largely supportive of the Bill.<sup>2</sup> Submitters expressed support for:

- recognising the object and purpose of the Land Account;
- ensuring the Land Account is used only for land-related purposes;
- increasing Aboriginal and Torres Strait Islander (ATSI) control of ILC and the Land Account;
- improving corporate governance, transparency and accountability; and
- increasing and protecting the Land Account's value.

2.2 The committee received two submissions that expressed reservations about the proposed legislation. The submission from the Department of the Prime Minister and Cabinet (DPMC) states:

Many of the proposed amendments are likely to add requirements or processes in relation to the ILC and the Land Account...

Duplication and the imposition of additional process and administration have the potential to add unnecessary complexity and cost and risk causing confusion...

The Department is not aware of the Bill having been subject to any significant consultation process with the Indigenous or general community prior to its introduction.<sup>3</sup>

2.3 The submission from the Department of Finance (DoF) focuses on two issues of concern:

Firstly, there is a potential for the proposed changes to the payment mechanism from the Land Account to the ILC to erode the real value of the Land Account over time.

Secondly, some of the proposed amendments would add complexity in administering the ATSI Act and either duplicate or contradict requirements that already apply under the [PGPA Act].<sup>4</sup>

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1 See, for example: Indigenous Land Corporation, *Submission 1*; Northern Land Council, *Submission 6*; Wunan, *Submission 2*.

2 See, for example: Professor Mick Dodson and Dr Asmi Wood, *Submission 3*; Torres Strait Regional Authority, *Submission 18*; Cape York Land Council Aboriginal Corporation, *Submission 11*; North Queensland Land Council, *Submission 12*.

3 Department of the Prime Minister and Cabinet, *Submission 14*, pp 1–2.

4 Department of Finance, *Submission 20*, p. 1.

## Governance of the ILC

2.4 The committee received evidence from a number of submitters stating that the current governance of the ILC is inadequate. Some of these were quite specific allegations that are beyond the remit of this particular inquiry.<sup>5</sup> The ILC expressed concern with the ILC Board's decision-making process during the purchase of the Ayers Rock Resort (ARR) and the long term protection of the Land Account. Mr Dillon of the Indigenous Land Corporation stated:

It is clear from recent history that there has not been appropriate governance and management within the ILC...

[T]here has been a huge loss from the purchase of [ARR]—over \$100 million—to the ILC. The resort is running very well, but we paid too much and we borrowed too much.<sup>6</sup>

2.5 In additional information provided to the committee a previous director of the ILC, Mr David Baffsky, noted that a 2011 review into the ARR acquisition by KPMG concluded that:

[C]omprehensive and timely due diligence process surrounding the ARR acquisition characterises the ILC performing its functions using sound business principles.<sup>7</sup>

Further Mr Baffsky noted that the losses referred to by Mr Dillon are incorrectly characterised. The losses are better described as impairments to the asset value rather than operating losses. In addition, these impairments will not be realised as the ILC is 'obliged to divest (at no cost)' to the partner Aboriginal Corporation that proposed to purchase ARR.<sup>8</sup>

2.6 In evidence to the committee, Mr Lembit Suur, First Assistant Secretary at the DoF stated that he 'did not see a failure in governance' at ILC and does not see 'that the Bill will strengthen governance':

There was a decision taken by the previous ILC board, which the current ILC board does not support, and there are implications for the ILC's balance sheet and indeed for its ability to disburse funds potentially as a result of that decision...

I am not in a position to judge whether it was flawed decision making or not. What I can tell you is that insofar as the duties of people who were on the ILC board are concerned, matters have been referred to us over the last few years, which we have looked at and taken legal advice on. And it is not

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5 During the hearing, Mr Mike Dillon (ILC) alleged that a former director of ILC did not disclose a substantial conflict of interest during a major ILC asset acquisition. The committee notes that this Bill inquiry is not the proper forum to investigate these allegations. The committee encourages the ILC to pursue these allegations through an appropriate legal process if there is evidence to support these claims.

6 Mr Mike Dillon, Indigenous Land Corporation, *Proof Committee Hansard*, pp 1–2.

7 Additional Information, Letter from Mr David Baffsky, March 2015, p. 1.

8 Additional Information, Letter from Mr David Baffsky, March 2015, p. 2.

apparent that there has been any failure of duty. There is a difference of views about whether or not a particular purchase was prudent at the time or has proven to be prudent with the passage of time. But those sorts of things happen frequently in a whole range of organisations.<sup>9</sup>

### ***Imprecise use of terminology within the Bill***

2.7 It is important that definitions within legislation are precise in order to ensure that the intent of the legislation is reflected. Imprecise terminology is likely to result in uncertainty and unintended outcomes. In evidence to the committee, the DoF states that 'these terms that are proposed in [Items 11 and 13 of] the amending bill are...not terms that you find in publications from the people who usually set governance controls within Australia'.<sup>10</sup>

2.8 Mr Surr elaborated with a number of examples:

It is the phrase 'corporate governance'; it is the term 'transparency'; it is the term 'financial accountability'; and it is the principle of 'ethical procurement'. They are the four terms that appear in those two proposed amendments that I pointed to, and they are the terms that we think are imprecise and cause potential confusion because they are imprecise—not defined anywhere, not explained anywhere and not used broadly in the sense that you can point to something and say, 'When people talk about "ethical procurement", here is its normal meaning,' and therefore you can assign its normal meaning to the bill.<sup>11</sup>

2.9 Further to this, the department suggested a different approach that the ILC might take if it wanted to improve its procurement processes:

If the ILC were interested in linking itself to the ethical behaviour standards in procurement that apply broadly to Commonwealth procurement activity, the proper way to do that is to get itself listed under the PGPA Rules. If the ILC does not wish to be bound by the standards that relate to ethical procurement in the Commonwealth, it is not clear why it is invoking this imprecise term in relation to its procurement activity.<sup>12</sup>

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9 Mr Lembit Surr, Department of Finance, *Proof Committee Hansard*, p. 28. The DoF has responsibility for 'developing policy and providing whole-of-government advice on governance arrangements for the range of Commonwealth bodies' including the ILC. All Commonwealth agencies are governed by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The PGPA Act 'establishes a coherent system of governance and accountability for public resources, with an emphasis on planning, performance and reporting. The Act applies to all Commonwealth entities and companies'.

10 Mr Lembit Suur, Department of Finance, *Proof Committee Hansard*, p. 26.

11 Mr Lembit Surr, Department of Finance, *Proof Committee Hansard*, p.26. See also: Department of Finance, *Submission 20.2*, pp 2–5.

12 Mr Lembit Surr, Department of Finance, *Proof Committee Hansard*, p. 27.

2.10 The DoF submitted that if it had been approached during the drafting of the Bill, the DoF would have provided guidance on these governance issues and assisted with 'develop[ing] arrangements that meet the desired objectives of the Bill'.<sup>13</sup>

### ***Discrimination***

2.11 The issue of the Bill being viewed as discriminatory was raised, as the Bill's additional governance requirements will only apply to an Aboriginal and Torres Strait Islander organisation—the ILC.

2.12 In its submission to the committee, the North Queensland Land Council submits that in relation to item 20 and 21:

[T]he Board of the ILC should not be expected to be more accountable than the Board of any similar Commonwealth agency. The NQLC supports the development of a code of conduct for ILC directors and staff.<sup>14</sup>

2.13 Other submitters contended that these 'additional accountability measures [would not] infringe any discrimination laws' and that the Bill is not 'consider[ed] to be discriminatory or unfair'.<sup>15</sup>

### **Unnecessary and duplicated processes**

2.14 DPMC submitted that this Bill was likely to 'add unnecessary complexity and cost and risk causing confusion'.<sup>16</sup> In its submission, DPMC provided a comprehensive analysis of most items within the Bill, arguing that many of the proposed changes are already requirements of the ATSI Act or of other related legislation.<sup>17</sup>

2.15 For example, item 11 of the Bill would require the 'ILC to operate efficiently and in accordance with good governance, transparency, financial accountability and ethical procurement'.<sup>18</sup> However, DPMC noted section 15 of the PGPA Act requires:

the accountable authority of a Commonwealth entity to govern the entity in a way that promotes the proper use and management of public resources for which the authority is responsible; and promotes the achievement of the purposes of the entity; and promotes the financial sustainability of the entity...

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13 Department of Finance, *Submission 20.2*, p. 5.

14 North Queensland Land Council, *Submission 12*, p. 5.

15 Professor Michael Dodson, National Centre for Indigenous Studies, *Proof Committee Hansard*, p. 23. Answer to Questions on Notice, Torres Strait Regional Authority, p. 1. Also see: Mr Mike Dillon, Indigenous Land Corporation, *Proof Committee Hansard*, p. 3. The Parliamentary Joint Committee on Human Rights considered that the Bill does not give rise to human rights concerns (see Chapter 1).

16 Department of the Prime Minister and Cabinet, *Submission 14*, pp 1–2.

17 See: Mr Lembit Surr, Department of Finance & Ms Nadine Williams, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, p. 28.

18 Department of the Prime Minister and Cabinet, *Submission 14*, p. 10. See also: Mr Lembit Suur, Department of Finance, *Proof Committee Hansard*, pp 25–26.

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the ATSI Act [s.191F(1)] requires the ILC to act in accordance with sound business principles whenever it performs its functions on a commercial basis.<sup>19</sup>

2.16 The DoF raised similar concerns to DPMC, specifically focusing on governance. The DoF submitted that the PGPA Act already 'establishes a coherent system of governance and accountability across Commonwealth entities'. The DoF states that the measures aimed at improving governance relating to the Board proposed in this Bill already exist under the PGPA Act and its framework. In addition, the proposed changes to the ATSI Act may lead to duplication and, in some cases, confusion. For example, item 17 of the Bill requires the ILC to establish an Audit and Risk Management Committee. However, the establishment of such a committee is already a requirement of the ILC under section 45 of the PGPA Act, with the ILC already having such a committee in place since 1997.<sup>20</sup>

2.17 In evidence to the committee, Mr Mike Dillon of the ILC disagreed with the proposition that the Bill would impose duplicative governance structures on the ILC stating that:

[W]hen regulation allows mischief, then clearly you need to take action. And that ought to be a combination of stronger regulation and stronger implementation.<sup>21</sup>

### **Proposed changes to the Land Account payment mechanism**

2.18 In its submission, the DoF presented economic modelling of the proposed changes to the Land Account showing the real value of the Land Account declining by \$20.9 million over ten years. This compares with no change to the real value if the mechanism is left unchanged.<sup>22</sup>

2.19 In a supplementary submission to the committee, the ILC has responded by recommending modifications to Items 3–7 in the Bill as a means to protect the real value of the Land Account. In a further supplementary submission to the committee, the DoF has agreed that 'assuming the target returns are achieved (Consumer Price Index plus 2.6 per cent per annum), these modifications would be likely to preserve the real capital value of the Land Account'. However, the DoF noted that these modifications would not result in the Land Account growing over time.<sup>23</sup> In contrast,

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19 Department of the Prime Minister and Cabinet, *Submission 14*, p. 10.

20 Department of Finance, *Submission 20*, pp 5–8. In its supplementary submission (20.2), the DoF observed that item 7 of the Bill actually restricts the Audit and Risk Committee (ARC) to selecting members from the ILC Board. This is contrary to best practice in which there should be an option to appoint ARC members from outside the organisation and 'is seen as a valuable assurance process'.

21 Mr Mike Dillon, ILC, *Proof Committee Hansard*, p. 5.

22 Department of Finance, *Submission 20.1*, p. 2.

23 Department of Finance, *Submission 20.2*, p. 6.

Professor Michael Dodson, National Centre for Indigenous Studies has indicated that he supports the growth of the Land Account.<sup>24</sup>

2.20 The ILC has also suggested that the Land Account should be managed by the Future Fund Guardians in order to maximise returns on Land Account investment and minimise the probability of capital losses.<sup>25</sup> Mr Mark Thomann outlined the logic behind the conservative investment strategy of the Land Account:

[W]hile the Future Fund has a long-term investment trajectory in that the funds are not required to be drawn out, I think, until 2020, it is the nature of the land account that, while it has a long-term trajectory in being maintained into perpetuity, in terms of the draw-down, there is a requirement to pay the ILC a guaranteed, indexed, statutory amount every year, which is one of the things that informs the conservative nature of the investment mandate in order to both juggle those two requirements to maintain the real value of the fund and provide benefits to Aboriginal and Torres Strait Islander people through the ILC on an annual basis.<sup>26</sup>

The higher returns on investment obtained by other funds managed by the Future Fund reflect different objectives—generally capital growth with no annual drawdown—with a 'greater appetite for risk' in the 'accumulation phase'. However, the Land Account has a different purpose—to preserve the capital and disburse funds annually—and as such, has a more conservative approach to investment which results in lower returns.

2.21 Mr Surr explained that the Land Account is 'explicitly tied to...section 58 of the PGPA Act' meaning that only conservative investment options are available, regardless of which entity manages the fund. Additional legislative changes would be required to modify this requirement. As such, it is not clear that changing the Land Account's fund manager would result in a larger return on investment.<sup>27</sup>

2.22 The committee notes the confusion around the specific changes that should be made to the Land Account, the impact these changes will have on the capital preservation of the Account and its capacity to disburse funds to the ILC in the future. It is the committee's view that the Land Account should not be modified without a more coherent and long term strategy.

### **Suggested modifications to the Bill**

2.23 In addition to broadly supporting the proposed Bill, several submissions suggested minor modifications to the Bill.

2.24 In its supplementary submission, the ILC has identified a number of potential modifications to the Bill. These include:

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24 Professor Michael Dodson, National Centre for Indigenous Studies, *Proof Committee Hansard*, p. 20. See also, section below on consultation.

25 Indigenous Land Corporation, *Submission 1.1*, p. 13.

26 Mr Mark Thomann, Department of Finance, *Proof Committee Hansard*, p. 34.

27 Mr Lembit Suur, Department of Finance, *Proof Committee Hansard*, p. 35.

- narrowing the provisions that require consultation in Item 10 to the key provisions relating to the Land Account; and
- clarifying the definition of 'ILC Officer' in Item 22 to ensure consistency with the PGPA Act.<sup>28</sup>

2.25 Professor Dodson and Dr Asmi Wood, (Senior Research Fellow—National Centre for Indigenous Studies) proposed a number of changes to the Bill, including:

- prohibition of non-land related purchases from the Land Account;
- stronger corporate governance within the Bill in line with a number of Corporations laws including the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- targeting real growth in the Land Account with the use of conservative investment options to protect the principal; and
- provision for the ILC to invest in land over which native title is held to encourage business and employment opportunities for traditional owners. There should be commercial arrangements in place that protect the investment by the ILC and do not jeopardise the status of the Native Title.<sup>29</sup>

### ***Expansion of the remit of the ILC***

2.26 In evidence to the committee, Professor Dodson also suggested broadening the powers of the ILC to include the 'purchase of interests in land' over which native title exists. Professor Dodson posed an example whereby:

[T]he construction of infrastructure in which the ILC could acquire a proprietary interest but without having to incur the expenses of creating Indigenous land use agreements within the meaning of the Native Title Act. Also, we propose the ability to create new estates on land that apply purely to such native title land and which recognise the need for such lands not to be alienated and remain inalienable but for the ILC or its subsidiaries alone to be permitted to invest in such develop[ments] and programs on such land and who are permitted to acquire and own legal estate in real property but interests which are limited to real property interests other than the land.<sup>30</sup>

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28 Indigenous Land Corporation, *Submission 20.1*, p. 2.

29 Professor Dodson and Dr Asmi Wood, *Submission 3*, p. 1.

30 Professor Michael Dodson, National centre for Indigenous Studies, *Proof Committee Hansard*, p. 20

2.27 In addition, the Cape York Land Council submitted that the Bill be expanded to allow the ILC to invest in programs that will build ATSI capacity to manage lands, develop businesses and enable home ownership in remote locations.<sup>31</sup>

2.28 The committee notes that there are a range of propositions to expand the remit of the ILC to benefit Aboriginal and Torres Strait Islander peoples that have not received adequate consultation.

### ***Inclusion of sea***

2.29 In its submission, the Torres Strait Regional Authority (TSRA) states that the sea is as culturally and economically important to some indigenous communities as land. TSRA believes that 'explicit inclusion of 'sea' in the same context of 'land' should be considered within the Bill'. This inclusion would allow the ILC to purchase commercial fishing licences and businesses in the Torres Strait on behalf of indigenous communities providing economic development opportunities. Although this proposition was supported by some witnesses<sup>32</sup>, one witness was inclined to 'be very cautious about it'.<sup>33</sup>

2.30 The Australian Law Reform Commission (ALRC) is currently conducting a review of the *Native Title Act 1993* and will report in April 2015. One of the terms of reference is to confirm 'that connection with the land and waters does not require physical occupation or continued or recent use'.<sup>34</sup>

2.31 It is the committee's view that a significant change to the definition of land—as it pertains to native title—to include sea in the ATSI Act should await the recommendations of the ALRC.

### **Consultation**

2.32 The committee has examined the extent of consultation that this Bill received during its development and prior to introduction into the Senate with most witnesses and submitters to this inquiry being satisfied with the level of consultation.<sup>35</sup>

31 Cape York Land Council, *Submission 11*, pp 2–6. CYLC submits that ILC should provide vocational training to the entities that will manage the land in the future. This will improve local capacity to manage land and businesses more effectively when they are handed over to local ATSI groups. Further support from ILC such as in the preparation of business plans and guidance through development processes would ensure the success of these ventures once handed over. See also, Mr Joseph Morrison, Northern Land Council, *Proof Committee Hansard*, p. 12.

32 Torres Strait Regional Authority, *Submission 18*, p. 5. See also: Mr Mike Dillon, ILC, *Proof Committee Hansard*, p. 1; Mr Joseph Morrison, Northern Land Council, *Proof Committee Hansard*, p. 11.

33 Professor Michael Dodson, National Centre for Indigenous Studies, *Proof Committee Hansard*, p. 22.

34 Australian Law Reform Commission, *Terms of reference: Review of the Native Title Act 1993*, <http://www.alrc.gov.au/inquiries/native-title-act-1993/terms-reference> (accessed 23 February 2015).

35 Mr Dillon, ILC, *Proof Committee Hansard*, p. 5; and Mr John Daly, Northern Land Council, *Proof Committee Hansard*, pp 12–13.

However, a number of submitters and witnesses conceded that consultation could be improved. DPMC expressed concern as to whether the Bill had been subject to consultation prior to its introduction into the Senate.<sup>36</sup> Mr Joseph Elu, Chairman of the TSRA observed that:

We just had the information sent to us, and we put it in front of our members, but there was no sort of formal consultation with ILC...<sup>37</sup>

To our knowledge there has not been any personal consultation up in Torres Strait with this particular bill. As I said, we have had notice of it through PM&C officers; we have talked with them over the phone. And we have put before our board the papers we received. Some of the board members looked at it, and some have said that it is too far away and that ILC never did anything so they are not going to even bother reading this. So, that type of thing is happening. And probably out in the remote areas, unless it is going to affect those people at the community level, they do not take particular notice of what the government sends us.<sup>38</sup>

2.33 Professor Dodson acknowledged that:

With respect to the consultations...we certainly have not discussed it. But I really cannot answer your question about whether there has been sufficient or effective consultation—I suspect the answer is 'No'. I reckon that most Aboriginal people around the country would not know anything about this bill or what is happening.<sup>39</sup>

2.34 In answers to questions on notice, ILC has stated that is 'committed to working with both the [DoF] and the [DPMC] on the development of an appropriate mechanism to secure the growth of the real value of the Land Account'. ILC has also expressed a willingness 'to be further consulted on the appropriate drafting of definitions in conjunction with the [DoF]'.<sup>40</sup>

2.35 It is clear that fundamental aspects of this Bill have not received adequate consultation. The committee notes that during the hearing many witnesses observed that they had not considered proposed modifications to the Bill that other submitters had suggested.<sup>41</sup> It is the committee's view that further consultation is required to ensure that the broader Aboriginal and Torres Strait Islander community understand all proposed changes to the ATSI Act.

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36 Department of the Prime Minister and Cabinet, *Submission 14*, pp 1–2.

37 Mr Joseph Elu, Torres Strait Regional Authority, *Proof Committee Hansard*, p. 16.

38 Mr Joseph Elu, Torres Strait Regional Authority, *Proof Committee Hansard*, p. 18.

39 Professor Michael Dodson, National Centre for Indigenous Studies, *Proof Committee Hansard*, p. 23.

40 Answers to Questions on Notice, Indigenous Land Corporation, p. 6.

41 See: Mr Mike Dillon, ILC, *Proof Committee Hansard*, p. 9; Mr Joe Morrison, Northern Land Council, *Proof Committee Hansard*, p.15; Mr Joseph Elu, Torres Strait Regional Authority, *Proof Committee Hansard*, p. 18.

## **Committee View**

2.36 The committee does not consider that a coherent case for legislative change has been made by the Bill's proponents or that this Bill would address the concerns raised.

2.37 A lack of consultation within the Aboriginal and Torres Strait Islander community has resulted in fundamental components of the Bill remaining unresolved. One of the more important changes—the new mechanism for disbursement of the Land Account—remains unclear. At the committee's public hearing on 13 February 2015, the ILC, one of the key proponents of the Bill, were still considering possible amendments to a number of key provisions in the Bill.

2.38 Evidence from the Department of Finance identified a number of concerns relating to the drafting of the Bill. These include a lack of clarity around key terms and definitions, and the apparent duplication of provisions found in existing legislation. The committee considers it important that legislation of this type is capable of being clearly and precisely interpreted.

2.39 The committee notes that the PGPA Act currently provides uniform governance controls for all Commonwealth agencies including the ILC. This Bill seeks to establish a separate set of governance arrangements for the ILC over and above obligations that already exist for similar agencies.

## **Recommendation 1**

**2.40 The committee recommends that the Senate not pass the Bill.**

**Senator Zed Seselja**

**Chair**

## **Labor Senators Additional Comments**

1.1 Labor Senators support strengthening the Land Account and commend the Indigenous Land Corporation (ILC) for its efforts with this Bill.

1.2 Labor Senators however cannot support the Bill as we have too many concerns about its current form. The Bill adds complexity, duplication and cost to the Land Account and the ILC.

1.3 There has been recent trouble in the governance of the ILC and its decision making in reference to the Ayers Rock Resort. To the credit of the current Board the issues surrounding the purchase of the Resort have been addressed.

1.4 Labor Senators cannot see how the Bill in its current form would have prevented the previous Board from the mistakes it made concerning the purchase.

1.5 The Bill contains some imprecise terms not defined elsewhere. No guidance was sought from the Department of Finance re drafting concerning governance matters.

1.6 Labor Senators note the ILC is committed to work with the Department of Finance and the Department of Prime Minister and Cabinet on appropriate drafting and recommend it does so.

1.7 Labor Senators do not accept the argument that the Bill is discriminatory as it adds further governance requirements to the ILC.

1.8 There is duplication in governance requirements. For example, the Bill seeks to establish an Audit and Risk Committee when under the Public Governance, Performance and Accountability Act 2013 an Audit Committee is required already.

1.9 In respect of the appointment of ILC Directors there is no mechanism in regards to the staggering of appointments. Labor Senators do have some concerns with the loss of experience and lack of continuity of Directors.

1.10 Labor Senators are also concerned with the establishment of a Nomination Committee. Labor Senators are not opposed to a Nomination Committee of eminent Indigenous persons with gender balance taken into account.

1.11 Labor Senators think it however unnecessary, time consuming and adds little value to the nominating process to bind future Parliaments and Parliamentary Committees as to what they must do.

1.12 Further evidence was given, in the course of the Inquiry, albeit disputed, that the Bill in its current form would have an adverse impact on the value of the Land Account. Labor Senators are not in a position to dispute the evidence of the Department of Finance on this matter.

1.13 Labor Senators are attracted to the proposed changes to the Bill outlined by Professor Patrick Dodson and Dr Asmi Wood.

1.14 Further the submission of the Torres Strait Regional Authority to include “the sea” in the same context as “land” has merit.

1.15 In summary, while Labor Senators cannot support the Bill in its current form, the Inquiry has revealed some helpful and appropriate suggested changes to the Bill.

1.16 Serious consideration should be given to these changes and more consultation is needed so a modified Bill can be presented back into Parliament.

**Senator Carol Brown**

**Senator Nova Peris**

**Senator Claire Moore**

# Australian Greens' Dissenting Report

## Introduction

1.1 The Australian Greens do not support the majority report into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 (Bill).

The majority of the submissions made to the inquiry were in support of the Bill. The two submissions that raised concerns were both from government departments; the Department of the Prime Minister and Cabinet, and the Department of Finance.

1.2 The Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 seeks to amend *the Aboriginal and Torres Strait Islander Act 2005* to strengthen indigenous control over the Aboriginal and Torres Strait Islander Land Account (the Land Account) and the Indigenous Land Corporation (ILC).

1.3 The Bill has two core aims, as raised by ILC CEO, Mr Dillon during the hearing:

to protect the Land Account, and to lock it in for future generations of Aboriginal and Torres Strait Islander people, and to ensure stronger corporate governance of the ILC and to lock that in for the future.<sup>1</sup>

1.4 Unfortunately previous decision making has meant that the ILC has found itself burdened by debt, as Mr Dillon drew to the committees attention during the hearing;

I have given evidence before the committee on this topic in the past, so I will not dwell on it, but there has been a huge loss from the purchase of Ayers Rock Resort—over \$100 million—to the ILC. The resort is running well, but we paid too much and we borrowed too much. The ILC currently owes \$200 million on the debt from that transaction. It falls due in next year in 2016. Our present situation is that we are looking at how we might refinance, but there is going to be a gap of how much we can finance at normal interest rates. We will be paying this loan off for 20 years. We are currently paying \$10 million a year, out of our \$45 million, in interest payments alone. Just back-of-the-envelope, if we paid down \$10 million a year of the \$200 million, that would be \$20 million per year for 20 years.<sup>2</sup>

This debt has significantly affected the ILC, in fact, Mr Dillon continues on to say:

It (the debt) is actually going to stop the ILC from fulfilling its statutory functions and nobody seems to have blinked about it. That is our concern<sup>3</sup>

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<sup>1</sup> Mr Michael Dillon, Indigenous Land Council, *Proof Committee Hansard*, p. 1.

<sup>2</sup> Mr Michael Dillon, Indigenous Land Council, *Proof Committee Hansard*, p. 1-2.

<sup>3</sup> Mr Michael Dillon, Indigenous Land Council, *Proof Committee Hansard*, p. 6.

1.5 The Land Account is important and must be strengthened. The Australian Greens welcome the overall positive response to the bill from the majority of submissions and witnesses.

Obviously, the proposal for the future of what is now called the Land Account—and I know there is a discussion about changing that to the Land Fund—is a very important one, and we support the proposition that has been put forward in relation to the bill to secure the future of the Land Account.<sup>4</sup>

Reconciliation Australia believes the measures outlined in the Bill will further protect the Aboriginal and Torres Strait Islander Land Account (the Land Account), and ensure the Land Account is only used for land-related purposes, the way in which it was originally intended.<sup>5</sup>

The authors strongly support the general thrust of this proposed Bill and applaud its object and purpose, particularly those provisions which are aimed at strengthening the governance and accountability measures surrounding the ILC. We also support the broader general intent to incorporate a greater active role of Indigenous people in all the substantive processes related to the acquisition and sound management of land that is purchased under this law.<sup>6</sup>

1.6 The Majority report raises several issues that are addressed below.

### **Proposed Amendments**

1.7 The Australian Greens welcome suggested amendments to the Bill from a number of submissions. The inquiry process is an important one because of the opportunity it provides for improvements to legislation. We are supportive of many of the amendments suggested as they help strengthen the Land Account and ensure the intent of the Bill is realised, further consultation with the sector will be necessary to ensure the best possible outcome.

These amendments are discussed in the majority report and include;  
ILC;

- narrowing the provisions that require consultation in Item 10 to the key provisions relating to the Land Account; and
- Clarifying the definition of 'ILC Officer' in Item 22 to ensure consistency with the PGPA Act.

Professor Dodson and Dr Wood;

- prohibition of non-land related purchases from the Land Account;
- stronger corporate governance within the Bill in line with a number of Corporations laws including the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

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<sup>4</sup> Mr Joe Morrison, Northern Land Council, *Proof Committee Hansard*, p. 11

<sup>5</sup> Reconciliation Australia, *Submission 16*, p.1.

<sup>6</sup> Professor Mick Dodson and Dr Asmi Wood, *Submission 3*, p. 4.

- targeting real growth in the Land Account with the use of conservative investment options to protect the principal; and
- Provision for the ILC to invest in land over which native title is held to encourage business and employment opportunities for traditional owners. There should be commercial arrangements in place that protect the investment by the ILC and do not jeopardise the status of the Native Title.

Torres Strait Regional Authority (TSRA);

- TSRA believes that 'explicit inclusion of 'sea' in the same context of 'land' should be considered within the Bill'. This inclusion would allow the ILC to purchase commercial fishing licences and businesses in the Torres Strait on behalf of indigenous communities providing economic development opportunities.

Cape York Land Council;

- that the Bill be expanded to allow the ILC to invest in programs that will build ATSI capacity to manage lands, develop businesses and enable home ownership in remote locations.

## Consultation

1.8 The majority report raised issues about the process of consultation for the Bill.

1.9 As was mentioned during the hearing the Bill has been adapted from the ILC's exposure draft bill which was put out for significant public consultation, witnesses confirmed that they were satisfied with the level of consultation in regard to the Bill. The ILC outlined its consultation process during the hearing:

The ILC board did liaise with—I do not know the exact number—scores, if not more than 100, Indigenous organisations in terms of our concerns. At the time that the ILC bill was drafted, our concern was with the Ernst & Young review and the potential amalgamation issue. So it, in a sense, rolled into that. But there was extensive consultation in the Indigenous community, and that culminated in a group of Indigenous leaders—Noel Pearson, Lowitja O'Donoghue, Tom Calma and the land councils—coming together in Canberra and, in a sense, supporting the concerns of the ILC around the Land Account. It is incontrovertible that the Indigenous community, generally, have serious concerns about any attempt to water down the status of the Land Account.<sup>7</sup>

1.10 Other organisations including the Northern Land Council also expressed their satisfaction with the process:

I think the ILC has consulted relatively well. People on the ground know what has happening. I have spoken to my constituents about it and they have come up and asked questions about it. I have been open and frank with them, and people are really supportive of the move that is taking place.<sup>8</sup>

<sup>7</sup> Mr Michael Dillon, Indigenous Land Council, *Proof Committee Hansard*, p. 5.

<sup>8</sup> Mr John Daly, Northern Land Council, *Proof Committee Hansard*, p. 12.

1.11 In light of the amendments suggested, there would need to be a similar process of ensuring that the changes to the Bill also have widespread support.

### **Governance Arrangements**

1.12 The majority report questioned the need for a separate set of governance arrangements for the ILC outside of the PGPA Act. The regulatory arrangements proposed within the Bill go further than the PGPA, and are necessary because of the unique nature of the Land Account. Mr Dillon argued for the need for a special set of arrangements:

The first is that past history tells us that the existing regulatory arrangements have not worked. The second is that the Land Account and the ILC are sui generis; they are unique; they are put there for a special purpose. As a result, the Commonwealth has a fiduciary responsibility in relation to its Indigenous citizens. If you are a fiduciary, you put in place special arrangements to ensure that your fiduciary arrangements are complied with. It is not just the same responsibility that the Commonwealth has in respect of all of its citizens—that is, that it is accountable through the ballot box. There is actually this special responsibility that goes back to the bargain that was done between the Commonwealth and Aboriginal leaders at the time of the native title debate, where Aboriginal people gave up rights. A lot of native title rights were extinguished or validated at the time of that and, in exchange, Aboriginal people got this account. That is why there is a fiduciary arrangement, or something akin to a fiduciary arrangement, in place, and that is why you need special arrangements<sup>9</sup>

In light of past experience and given the strong support from Aboriginal and Torres Strait Islander organisations for the Bill we believe that the proposed changes to governance requirements are necessary and justified.

### **Key terms and definitions**

1.13 The majority report has questioned the clarity around key terms and definitions used in the Bill. The Australian Greens agree that the terminology used in the legislation should be clear. The Department of Finance suggested that there were some key issues over definitions in the Bill:

It is the phrase 'corporate governance'; it is the term 'transparency'; it is the term 'financial accountability'; and it is the principle of 'ethical procurement'. They are the four terms that appear in those two proposed amendments that I pointed to, and they are the terms that we think are imprecise and cause potential confusion because they are imprecise—not defined anywhere, not explained anywhere and not used broadly in the sense that you can point to something

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<sup>9</sup> Mr Michael Dillon, Indigenous Land Council, *Proof Committee Hansard*, p. 9.

and say, 'When people talk about "ethical procurement", here is its normal meaning,' and therefore you can assign its normal meaning to the bill.<sup>10</sup>

To address this concern Senator Siewert has suggested explicitly addressing the terms that have caused confusion and defining them within the explanatory memorandum. Mr Suir from the Department of Finance agreed that this would address the concern:

I think it would help those who are reading the legislation and those who are conducting their business under the legislation to understand the expectations that are put on them.<sup>11</sup>

1.14 The Australian Greens agree that these terms should be defined and explained in the explanatory memorandum.

### **Purpose of the Bill**

1.15 The majority report has raised a lack of clarity around what changes to the ILC, IBA or Land Account that the Bill seeks to address.

At the time of drafting this legislation the Government was generally canvassing changes to ILC and IBA, however the Minister has now indicated they are unlikely to continue with changes for the time being. Given the essential nature of the ILC and the Land Account and the issues highlighted during this inquiry, it is important to protect and strengthen the ILC and Land Account into the future.

### **Scrutiny of Bills**

1.16 The Senate Standing Committee for the Scrutiny of Bills raised issues around proposed subsection 192SA. The Australian Greens will seek to include an explanation in the explanatory memorandum that clarifies that the Code of Conduct is merely declaratory of the law.

### **Recommendation 1**

**1.17 That the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 should be amended as identified during the inquiry after extensive consultation.**

**1.18 That the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014 once amended be passed.**

### **Senator Rachel Siewert**

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<sup>10</sup> Mr Lembit Suur, Department of Finance, *Proof Committee Hansard*, p. 26.

<sup>11</sup> Mr Lembit Suur, Department of Finance, *Proof Committee Hansard*, p. 29.



# **APPENDIX 1**

## **Submissions and additional information received by the Committee**

### **Submissions**

- 1** Indigenous Land Corporation (plus a supplementary submission)
- 2** Wunan
- 3** Professor Mick Dodson and Dr Asmi Wood
- 4** Mr Bill Gray AM
- 5** Anti-Discrimination Commission Queensland
- 6** Northern Land Council
- 7** Centre for Appropriate Technology Ltd
- 8** NSW Aboriginal Land Council
- 9** Kimberley Land Council
- 10** Central Land Council
- 11** Cape York Land Council Aboriginal Corporation (plus an attachment)
- 12** North Queensland Land Council
- 13** Goldfields Land and Sea Council
- 14** Department of the Prime Minister and Cabinet
- 15** Dr Lowitja O'Donoghue
- 16** Reconciliation Australia
- 17** Minister Victor Dominello MP
- 18** Torres Strait Regional Authority
- 19** Central Desert Native Title Services Ltd
- 20** Department of Finance (plus two supplementary submissions)

**Answers to Questions on Notice**

- 1 Answers to Questions taken on Notice during 13 February public hearing, received from Northern Land Council, 20 February 2015
- 2 Answers to Questions taken on Notice during 13 February public hearing, received from Indigenous Land Corporation, 23 February 2015
- 3 Answers to Questions taken on Notice during 13 February public hearing, received from Department of Prime Minister and Cabinet, 26 February 2015
- 4 Answers to Questions taken on Notice during 13 February public hearing, received from Torres Strait Regional Authority, 26 February 2015

**Additional Information**

- 1 Additional information, dated 5 March 2015, received from Mr David Baffsky, former Director of the Indigenous Land Council
- 2 Additional information, dated 9 March 2015, received from Mr David Baffsky, former Director of the Indigenous Land Council

# **APPENDIX 2**

## **Public hearings**

*Friday, 13 February 2015*

*Parliament House, Canberra*

### **Witnesses**

#### **Northern Land Council**

MORRISON, Mr Joe, Chief Executive Officer

BUSH BLANASI, Mr Samuel, Chairman

DALY, Mr John, Deputy Chairman

#### **Indigenous Land Corporation**

DILLON, Mr Michael, Chief Executive Officer

HAYDEN, Ms Rebecca, Senior Policy Advisor

#### **National Centre for Indigenous Studies**

DODSON, Professor Michael, Director

WOOD, Dr Asmi, Senior Research Fellow

#### **Torres Strait Regional Authority**

ELU, Mr Joseph, Chairperson

SEE KEE, Mr Wayne, Chief Executive Officer

#### **Department of Finance**

SUUR, Mr Lembit, First Assistant Secretary

THOMANN, Mr Mark, First Assistant Secretary

GRAHAM, Mr Martin, Assistant Secretary

ROBERTSON, Mr Neil, Assistant Secretary

#### **Department of the Prime Minister and Cabinet**

WILLIAMS, Ms Nadine, First Assistant Secretary, Jobs and the Economy Division

McINTYRE, Ms Amanda, Acting First Assistant Secretary

STUART-FOX, Ms Maya, Assistant Secretary



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account)  
Bill 2014**

FRIDAY, 13 FEBRUARY 2015

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

**Friday, 13 February 2015**

**Members in attendance:** Senators Moore, Seselja, Siewert.

**Terms of Reference for the Inquiry:**

To inquire into and report on:

Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014.

## **WITNESSES**

<b>BUSH BLANASI, Mr Samuel, Chairman, Northern Land Council .....</b>	<b>11</b>
<b>DALY, Mr John, Deputy Chairman, Northern Land Council .....</b>	<b>11</b>
<b>DILLON, Mr Michael, Chief Executive Officer, Indigenous Land Corporation .....</b>	<b>1</b>
<b>DODSON, Professor Michael, Director, National Centre for Indigenous Studies.....</b>	<b>20</b>
<b>ELU, Mr Joseph, Chairperson, Torres Strait Regional Authority.....</b>	<b>16</b>
<b>GRAHAM, Mr Martin, Assistant Secretary, Department of Finance .....</b>	<b>25</b>
<b>HAYDEN, Ms Rebecca, Senior Policy Advisor, Indigenous Land Corporation.....</b>	<b>1</b>
<b>McINTYRE, Ms Amanda, Acting First Assistant Secretary, Department of the Prime Minister and Cabinet .....</b>	<b>25</b>
<b>MORRISON, Mr Joe, Chief Executive Officer, Northern Land Council.....</b>	<b>11</b>
<b>ROBERTSON, Mr Neil, Assistant Secretary, Department of Finance .....</b>	<b>25</b>
<b>SEE KEE, Mr Wayne, Chief Executive Officer, Torres Strait Regional Authority .....</b>	<b>16</b>
<b>STUART-FOX, Ms Maya, Assistant Secretary, Department of the Prime Minister and Cabinet.....</b>	<b>25</b>
<b>SUUR, Mr Lembit, First Assistant Secretary, Department of Finance .....</b>	<b>25</b>
<b>THOMANN, Mr Mark, First Assistant Secretary, Department of Finance.....</b>	<b>25</b>
<b>WILLIAMS, Ms Nadine, First Assistant Secretary, Jobs and the Economy Division, Department of the Prime Minister and Cabinet.....</b>	<b>25</b>
<b>WOOD, Dr Asmi, Senior Research Fellow, National Centre for Indigenous Studies .....</b>	<b>20</b>

**DILLON, Mr Michael, Chief Executive Officer, Indigenous Land Corporation**

**HAYDEN, Ms Rebecca, Senior Policy Advisor, Indigenous Land Corporation**

**Committee met at 10:31**

**CHAIR (Senator Seselja):** I declare open this public hearing of the Senate Community Affairs Legislation Committee inquiry into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014. Welcome, everyone here today.

Committee proceedings are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

I welcome representatives of the Indigenous Land Corporation. I understand that information on parliamentary privilege has been provided to you.

**Mr Dillon:** That is correct.

**CHAIR:** I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The Indigenous Land Corporation has lodged a submission—submission No. 1—and a supplementary submission with the committee. Do you wish to make any amendments or alterations to that submission?

**Mr Dillon:** No.

**CHAIR:** I now invite you, if you would like to, to make a short opening statement, and then I will move to questions.

**Mr Dillon:** I would like to thank the committee for the opportunity to appear. I would like to acknowledge the traditional owners, the Nggunawal, past and present. Consistent with the purposes of this bill, I acknowledge the future traditional owners of Nggunawal country.

Minister Scullion has indicated to the ILC board that he would need to be persuaded that there is a 'mischief' to be remedied before he could support this bill. I hope to demonstrate to the committee that there is a significant mischief and that the bill would, if legislated, go a large way to addressing it.

The bill has two key aims: to protect the Land Account, and to lock it in for future generations of Aboriginal and Torres Strait Islander people, and to ensure stronger corporate governance of the ILC and to lock that in for the future.

The ILC's supplementary submission supports a number of further enhancements to the bill. We have recommended that ILC's statutory remit be broadened to cover seas as well as land. We believe that the land fund ought to be administered by the Future Fund and the investment parameters be broadened to increase the investment returns. We think the land account should revert to its original name, the land fund, consistent with the compensatory nature of the original purposes. We have also proposed a revised formulation for the draw-down provisions, which are very technical—and I am happy to talk to those later, but I think the finance department will talk to those later this afternoon.

I would like to set out for the committee why the ILC board believes these amendments are necessary. First, we need to ensure that the land account is protected and prospers for the future. The land account is unique and it is partial compensation for the dispossession of Aboriginal lands. It came out of the native title debate. We need to make it absolutely clear that this is not just another fund or account that is controlled at the whim of government. It was there as part of a deal, a grand bargain, and it should not be accessed by governments just looking for extra cash.

Second, because the funds from the account go through the ILC, those compensatory purposes will only be delivered if the ILC—the organisation with the sole responsibility for spending these moneys—is appropriately governed and managed. It is clear from recent history that there has not been appropriate governance and management within the ILC. The current board has made a large number of changes to improve governance, but they are not locked in and a future board could just revert to the past practices.

I have given evidence before the committee on this topic in the past, so I will not dwell on it, but there has been a huge loss from the purchase of Ayers Rock Resort—over \$100 million—to the ILC. The resort is running very

well, but we paid too much and we borrowed too much. The ILC currently owes \$200 million on the debt from that transaction. It falls due in next year in 2016.

Our present situation is that we are looking at how we might refinance, but there is going to be a gap of how much we can finance at normal interest rates. We will be paying this loan off for 20 years. We are currently paying \$10 million a year, out of our \$45 million, in interest payments alone. Just back-of-the-envelope, if we paid down \$10 million a year of the \$200 million, that would be \$20 million per year for 20 years.

**Senator SIEWERT:** It is a long time frame.

**Senator MOORE:** We might get there then.

**Mr Dillon:** The governance issues are: how could the ILC board have made such a decision? This goes to the governance arrangements that apply to the ILC and the legislation that governs it. We have legal advice from senior counsel—and we have advised the government of this—that the former board members responsible for this transaction, *prima facie*, breached their legal duties in relation to the CAC Act, and that we have a cause of action to pursue this claim against them in court.

We have written to the finance minister and we have suggested to him that, as the regulator in the public sector, he should take action; it should not be up to us to pursue this matter. As a result of that—there has been press comment on this already, so it is already in the public domain—he has agreed to an investigation. But he has asked that Senator Scullion, the Minister for Indigenous Affairs, take carriage of that. The ILC board has significant concerns about that, because we believe that Minister Scullion has a conflict of interest, and I am happy to talk about that in questions if the committee wishes.

To sum up, firstly there are significant concerns with the legislation as it stands. It has allowed a major mischief to occur. We believe the current bill goes a long way to addressing much of that mischief. Secondly, the ILC board believes that it is important that the nature of the account be clarified: that it be recognised and acknowledged by the legislation that it is not just a special account—it is a compensatory account—and that it should exist in perpetuity and the draw downs should be allocated to land based compensation only. The ILC spends that on acquisition and management of land in the Indigenous estate. The Indigenous estate is now approaching 30 per cent of the nation. There are huge land management needs.

To conclude, the board supports the bill. The board is very appreciative of the Greens for putting this bill before the parliament. We think these issues are bigger than any particular government, minister or board. We believe that the Commonwealth has fiduciary duty to Australia's Indigenous citizens to administer this account properly and effectively to deliver Indigenous benefits in perpetuity.

**CHAIR:** In your opening statement you said that the legislation was needed because of a mischief, or alleged mischief, that occurred. But you also said, I think, that you have senior counsel's advice saying that, in fact, that would have constituted a breach of the law. Are you able to just clarify what is wrong with the legislative arrangements. If you are saying that what is alleged to have occurred by the previous board and by the previous operators, if that was in breach of the law anyway what is it that is actually wrong with the legislation that enabled that mischief, or that alleged mischief, to occur?

**Mr Dillon:** This goes to corporate governance of the ILC. There is a duty in the legislation—I think it is section 191F—that decisions of a commercial nature should be taken on sound business principles. In essence, it turns on the question of whether the then directors made a sound business decision. The advice we have is that, *prima facie*, they did not.

But to go to your question, Chair, the processes that supported their decision making were deficient. There have been previous reports undertaken by the ILC—they are on our website, they are public documents—that list over 20 deficiencies. Things like the fact that—and this goes to things remedied in the current bill—the audit committee of the ILC of the time did not take a role in the transaction. In fact, the chair of the audit committee at the time was the chief driver of the transaction within the ILC.

**Senator MOORE:** There was not that separation.

**Mr Dillon:** The members of the audit committee had been members for 12 years. The Auditor-General's provisions say six years maximum. Things like the due diligence that was undertaken was done by Grant Samuel—a very respected firm. The contract required, or allowed, that we would pay them a proportion of the purchase price—one per cent—as their fee. The higher the purchase price, the higher the fee the people undertaking the due diligence received. There were a range of other concerns.

**CHAIR:** I do not want you to go chapter and verse into the concerns. I think you have sort of answered my question. It is really just about the nature of how specifically the proposed legislation would have prevented the alleged mischief that you are referring to.

**Mr Dillon:** Another example would be this bill requires stronger disclosure of potential interest by directors. The McGrathNicol report found that one of the directors—in fact, the director driving the transaction—had a substantial undisclosed conflict of interest. That is a concern. In a sense, there are guidelines around this stuff, but this bill actually makes it a statutory requirement. Yes, we cannot undo what has occurred. That loss has occurred. It will be crystallised at some point. What we can do is ensure that this mischief is never repeated.

**Senator SIEWERT:** You started, Chair, where I was going to start, so I will continue on from there. If I understand what you just said, although there looks like there was a breach of legal duties, it could happen again because—or, in fact, it is open to interpretation given the other failings of the disclosure, or the weaknesses of the current processes because of disclosure, or that if we strengthen all the things that are in this bill it will make it harder for people to breach into the future.

**Mr Dillon:** Exactly, and one of the concerns of the current board is that they have put a lot of effort into strengthening corporate governance, but there is no guarantee that that will stay in place into the future.

**Senator SIEWERT:** When a new board comes in, for example.

**Mr Dillon:** Exactly. As boards turn over into the future. Of course, the board is looking ahead 10, 20 or 40 years—in perpetuity. That is the relevance here. It is not just about what happens this year or next. It is what is likely to happen in the long term.

**Senator SIEWERT:** In terms of that process, the North Queensland Land Council, in one of their comments in their submission, say:

The Board of the ILC should not be expected to be more accountable than the Board of any other similar Commonwealth agency.

The NQLC supports the development of a code of conduct for ILC directors and staff.

There are other comments that talk about not having stronger requirements and, surely, there are already existing rules that people have to stick to. Can I ask your response to those comments?

**Mr Dillon:** Yes. I read those comments too, with interest. The ILC board's position is that the current regulatory arrangements are demonstrably not strong enough. Yes, the ILC and the associated land account is sui generis. It is unique. So perhaps there is an argument that it ought to have stronger provisions. There is a competing principle here about discrimination, which I think the North Queensland Land Council is going to. But I think the ILC position would be that, if that is the case, the corporate sector regulatory arrangements should rise across the board. They are demonstrably not strong enough. When \$100 million goes out the door and nobody blinks and then another \$200 million is borrowed and it cannot be repaid without huge cost to our statutory functions, something is demonstrably wrong. The board is very appreciative that after 12 months of asking and over 11 letters to ministers, Minister Cormann has finally agreed that an investigation ought to be conducted. The board is also concerned, however, that there are no terms of reference and it is not clear who will undertake this. Will it be an independent person? By the way, the minister has indicated that he does not want to do it, he would prefer Minister Scullion to do it. The board has serious concerns about Minister Scullion's independence on this issue and believe that it is a matter, really, for Minister Cormann to pursue, not Minister Scullion.

**Senator SIEWERT:** Can I ask why the board has that concern? Is it because he is the minister that is responsible? I have got a series of questions here, so I will put them all on the table and we will go through them. He was not the minister at the time of the decision. But he is now the minister. So, is it better to have another minister having overall responsibility for conducting that inquiry?

**Mr Dillon:** Yes, all that, but there is more. If it was only that, I think the ILC board could live with it. But the reality is that there is more. In particular, Minister Scullion is on record as having supported the former directors who made this transaction. He has made positive statements in relation to the transaction. It is not clear to us that he was not involved in discussions about this before he was minister. We would certainly like an assurance that he was not if he is going to undertake the investigation. Furthermore, in the light of all this and in the light of the advice from the ILC about the potential issues with these former directors, he has actually taken action to reinsert them into the process at various times. He wrote to us in 2013—he wrote to the ILC chair—and requested that the former chair of Voyages, who was going to come off because his term at the ILC had expired, be reappointed. Under the legislation, the minister has no power to direct, but he requested in writing that one of those former directors be reappointed to Voyages. Secondly, only last month he reappointed another former director to the board of IBA.

**CHAIR:** I will pull you up there. I understand that, where we started, there was some relevance to the bill, but I want to be very careful that this does not become a quasi-investigation into the allegations or into the appropriateness of any investigation that might take place. That is not the purpose of today's inquiry, so I ask you to come back, perhaps through questioning, to the purpose of the bill, what it might do and what it might change. I think we are straying into much broader issues which I do not think are appropriate for us to in any way investigate in any detail here today.

**Mr Dillon:** Thank you, but I think the point here is that the bill specifically is focused on stronger governance measures for the ILC and the questioning was about why we need that.

**CHAIR:** Sure, but it has gone a little beyond that, I would argue, in terms of any potential investigations and the appropriateness of the Minister for Finance and the Indigenous affairs minister. So I just ask you to be a little more relevant to the bill that we have in front of us.

**Mr Dillon:** I will endeavour to do so.

**CHAIR:** Thank you.

**Senator SIEWERT:** Chair, I take your point, but I should flag that I think it is an issue that needs to be pursued.

**CHAIR:** It may well.

**Senator SIEWERT:** I will take it up in estimates. I realise this committee does not deal with estimates in this area anymore, so I do take your point. I also appreciate the time, so I flag that I will follow that up in estimates. However, Mr Dillon, thank you for outlining the issues around governance—that is good.

I would like to move on to the issue that you raised around the land fund. You have made comments about expanding it to sea country. The Torres Strait authority have raised those issues and I intend to pursue them with them. But then you talked about investing only in land. I want to explore the fund that is specifying the purpose for investing in land. I presume you mean land and seas as in the bigger picture.

**Mr Dillon:** Absolutely. I think in the Native Title Act now land is defined to include sea, so it is in that context.

**Senator SIEWERT:** Yes, and that is what I thought you meant. I just wanted to be very specific to make sure we are all singing from the same song sheet and anyone reading the *Hansard* understands.

**Senator MOORE:** That will mean consistency of definition.

**Mr Dillon:** That is right, because many groups along the Australian coastline do have interests offshore—spiritual, cultural and economic.

**Senator SIEWERT:** Yes. I actually think it is a good point that has been raised, but I wanted to make sure that was clarified. Following up on that, the Cape York Land Council suggest—and, I must say, they are not the only ones—that the bill be expanded to allow the ILC to invest in programs that would build Aboriginal and Torres Strait Islander capacity to manage lands, develop businesses and enable homeownership in remote locations. Could I ask for your comment on that specific point. Others talk about the need to training and other broadening.

**Mr Dillon:** On the first two categories, the ILC already does that. Land management is one of our two core functions.

**Senator SIEWERT:** That is what I understood.

**Mr Dillon:** So we are actively involved. For example, through another of our subsidiaries, National Indigenous Pastoral Enterprises, we run a cattle herd of 90,000 head across Australia. We are one of the top 15 cattle producers in the country, and that is putting Aboriginal owned land to economic use. As to homeownership, we have never gone there because IBA has a program to run homeownership. While we talk to the IBA all the time and liaise closely on some projects—a couple of years ago we invested jointly in a banana farm in Cape York—on homeownership we leave it to IBA.

**Senator SIEWERT:** Okay, thank you. For some of these issues I just wanted to get your opinion on record.

I want to go to some of the issues that have been raised by the Department of Prime Minister and Cabinet and by Finance. I know that we have your supplementary submission, but I just wanted to go through a few of them. They make a comment that some of the amendments add requirements or processes that they say duplicate existing processes and administration. In fact, they imply that they are unnecessary, complex, costly, and risk causing confusion. It says:

The department is not aware of the Bill having been subject to any significant consultation process with the Indigenous or general community prior to its introduction.

I would like you to address those comments if you could, please.

**Mr Dillon:** Clearly, the ILC board does not agree with the broad view from PM&C and the Department of Finance that more specific regulatory arrangements are required, and we have addressed each of those in detail in our supplementary submission. So you can go to that detail there—we have a response—but, in the broad, it is clear that when regulation allows mischief, then clearly you need to take some action. And that ought to be a combination of stronger regulation and stronger implementation. We would like to see both of those things happen. In relation to the second issue, which was the consultation—

**Senator SIEWERT:** Part of that is, obviously, directed at me. I do not take that personally, but in terms of the bill it is common knowledge that ILC put out a version for public consultation—it was out there for public knowledge for a long time—and a lot of what we developed is based on what had been consulted on previously.

**Mr Dillon:** That is correct. The ILC board did liaise with—I do not know the exact number—scores, if not more than 100, Indigenous organisations in terms of our concerns. At the time that the ILC bill was drafted, our concern was with the Ernst & Young review and the potential amalgamation issue. So it, in a sense, rolled into that. But there was extensive consultation in the Indigenous community, and that culminated in a group of Indigenous leaders—Noel Pearson, Lowitja O'Donoghue, Tom Calma and the land councils—coming together in Canberra and, in a sense, supporting the concerns of the ILC around the Land Account. It is incontrovertible that the Indigenous community, generally, have serious concerns about any attempt to water down the status of the Land Account. It is clear from the submissions that the committee has received—19 submissions, I think, apart from Finance and PM&C—that they are broadly supportive of what the bill is doing. So I do not think there is a question that there is not a concern in the community about this.

**Senator SIEWERT:** I want to ask about the concern that Finance raises, and that is—

**Senator MOORE:** The money.

**Senator SIEWERT:** The money, and the potential. They say:

...there is a potential for the proposed changes to the payment mechanism from the Land Account to the ILC to erode the real value of the Land Account over time.

That, of course, is in no way what we want to see. I would like your comment on that.

**Mr Dillon:** When your drafters drafted this provision the explanatory memo was very clear. It says you want the Land Account to grow. But I think the technical analysis shows that the provision that is in the bill at the moment, because it does not index one element in the equation, but indexes another, over time would deplete the real value, or could do so. There is no money lost. The beneficiary would be the ILC, but the Land Account itself would deplete. So in our supplementary submission we have proposed a new term of drafting.

**Senator SIEWERT:** That is why you have proposed that.

**Mr Dillon:** I have become aware that we would have to make sure that that is not backdated to 2011. There is a clause there that might backdate it. That would have to be fixed. The bottom line here is that at the moment, to put it in layman's terms for the committee, the Land Account is invested. Any surplus above CPI comes to the ILC and we spend it. So even if we expanded, and went to the Future Fund, and did not fix it and got an extra couple of per cent per year—two per cent extra a year would give us \$40 million a year extra—that would all come to the ILC. The ILC board's view is that that would not be the right result because over time the Land Account needs to grow in real terms, not just in nominal terms. The land needs of Indigenous Australians are growing and the Indigenous estate is growing, so the Land Account—the land fund—needs to grow. Really, that is our fundamental point. I suspect that when you come down to drafting it, you will need some expert advice from the finance department. I understand that they are going to give you some commentary this afternoon.

**Senator SIEWERT:** Yes, they are.

**Mr Dillon:** We have been talking to them.

**Senator MOORE:** I want to go back to the money, because of all the issues that came up—and there was so much shared commitment in the discussion around this process—that was the killer in terms of the commitment to retaining the quality and integrity of the Land Account and what this legislation may do to it. I read the Department of Finance's submission, and I know that your subsequent submission has picked up on that to an extent, but I am interested in the relationship between the ILC and the Land Account because, as you said, all the money is retained in the area, and the proposal of this bill is that anything above the bottom line is now shared between the Land Account and the ILC. Does that have an impact on the operation of the ILC?

**Mr Dillon:** To the extent that the money is allocated to growing the Land Account, that will reduce the annual income of the ILC by the same amount.

**Senator MOORE:** What does that do to what you do?

**Mr Dillon:** In 20 years time, if the Land Account grows from \$2 billion, which it is at the moment, to \$4 billion, the ILC will get a greater proportion of that, so it is in the ILC's long-term interest to grow the Land Account, even though it is not in our short-term interest to see it all go back to the Land Account.

**Senator MOORE:** And what will be the impact on the work you do? I am trying to get on record the impact on what the ILC does. You have already said that you have an ongoing interest issue that is eating away at your annual operating expenses.

**Mr Dillon:** Yes.

**Senator MOORE:** If you go down the path that is recommended in the bill, if there were projects that the ILC thought were of value to work through, could you still access the Land Account to fund those projects with all the processes that you go through with governance and all of those things?

**Mr Dillon:** At the moment, the ILC can only access its annual draw-down, so it cannot go back and ask for extra money.

**Senator MOORE:** Yes.

**Mr Dillon:** That would require legislation. We only get our \$45 or \$50 million—whatever the amount is—and we have to live within our means. That includes all our land acquisition, all our land management, all our staff costs, and all our interest payments and interest repayments.

**Senator MOORE:** So your whole operation—

**Mr Dillon:** The whole operation comes within that amount. This is why the debt is—

**Senator MOORE:** Is so overwhelming.

**Mr Dillon:** so overwhelming. It is actually going to stop the ILC from fulfilling its statutory functions and nobody seems to have blinked about it. That is our concern.

**Senator MOORE:** Mr Dillon, I think there are a few blinks. It is just where we go with it that is critical. I just wanted to put that on record in terms of the process.

**Mr Dillon:** That is right.

**Senator MOORE:** What we did in this process is quite normal. We put the bill up and we put it out for public submission. We are very grateful for the supplementary ILC submission because I think that was a really good process. Since you have done that, have you had discussions with Prime Minister and Cabinet and Finance?—because I think the important thing is to work with all of the parties involved to see how we can get the best result. They gave us a response to the first proposal, and now you have come back with what I think is a very useful explanation of what they said, and what you believe is the justification for the bill. Since that has happened, have you had a chance to have further discussion with either department about their views and how they perceive your response?

**Mr Dillon:** Not specifically, but we do talk to them through various consulting mechanisms that are established in the current legislation. There is one particular issue that has been of concern, and that is that Prime Minister and Cabinet, in one of those discussions, raised the issue of using the Future Fund to manage the land account, and we were on exactly the same page. And they proposed that they hire a consultancy to look into that, because one issue is: what are the detailed investment parameters?

**Senator MOORE:** Sure, because that is a big change.

**Mr Dillon:** Yes. We were quite pleased. We had discussions with them and we were very pleased about that. When they briefed the minister, he basically stopped it. We were amazed; we could not understand it. He just said that until this bill is progressed he is not allowing PM&C to pursue the detailed backroom work to understand how the Future Fund might manage this account.

**Senator MOORE:** We will follow that up with the department this afternoon, Mr Dillon.

**Mr Dillon:** It is extraordinary.

**Senator MOORE:** In the papers before us we were unaware of that. So, this issue, which is in your submission and also in the submission of PM&C—the idea of the Future Fund—seems to be of interest. A lot of the arguments being put by Finance and PM&C are about lack of duplication and the most effective way and not

having duplicate processes. Without having any skill at all in economics, I would have thought that having the Future Fund, which is already set up, would be something to investigate. So we will follow that up with PM&C.

**Mr Dillon:** One of the issues here which I think is of concern to the Department of Finance, and to some extent PM&C, is the risk profile of broadening the investment parameters.

**Senator MOORE:** Yes, absolutely.

**Mr Dillon:** I had a discussion with one of the Future Fund guardians—I will not mention his name.

**Senator MOORE:** Just the very term makes you feel as though they are careful, doesn't it?

**Mr Dillon:** That is right. He made the point to me—it was a he—that it depends on your time frame. If you are investing for this year, you do not invest in equities and shares. If you are investing in perpetuity, the highest risk investment profile is to stay in government bonds and bank deposits, which is where we are. The Future Fund over the last seven years has returned eight per cent per year. We are down at around five per cent. We have done the calculations: if we had been with the Future Fund, over the last 10 years—

**Senator MOORE:** Where would you have been?

**Mr Dillon:** the account would be \$2.5 billion, not \$2 billion. Now, clearly, as the super ads say, past performance does not necessarily apply into the future. We are conscious of that. But when you have a fund there in perpetuity, it makes sense to do something that is a bit more than just short-term risk minimisation.

**Senator MOORE:** We will be following that up. One of my last questions is around the submission provided by Professor Dodson and the very specific number of amendments that his group has suggested, and which he signed off on. Do you have any comments on the ones that have come forward in that submission which is—I will just try and find the number—submission No. 3? It is quite a short submission but it has about eight or nine quite specific suggestions.

**Mr Dillon:** Broadly, we are supportive of his suggestions. A major theme of the bill which we have not talked about is greater Indigenous involvement and control. So there are proposals for a nominations committee—a nominations committee like the SBS and ABC have—and for staggering board appointments et cetera. His comments go to some of the detail around that and ensuring that those costs are covered by government and so on.

In broad terms we support Professor Dodson's proposals. They are really second order. The first-order issues are about getting some form of nominations committee in place, ensuring that the board directors have limited, finite terms and cannot be reappointed forever, ensuring that a minister staggers appointments, and ensuring that the minister not only cannot direct the ILC, but if he makes a request of the ILC, adverts to the fact that ILC is statutorily independent. It is not acceptable, given the sui generis nature of the account and the ILC, that it be seen as a creature of government.

**Senator MOORE:** Consistently in the submissions and throughout the process we have seen the concern that the recommendations in the bill will make operations more onerous for the ILC than any other body in the Commonwealth. I have not looked at the governance of every other body in the Commonwealth, but that is a statement we have heard. You had a discussion with Senator Siewert earlier about that. My understanding of the evidence is that the special nature of the work and the responsibility of the ILC for such an important process as what you hope will be renamed 'the fund' gives the expectation that there will be a higher level. On that basis, it almost could be considered to be positive discrimination in the act, even though we did not go through the Human Rights Commission process. Is that a fair assessment?

**Mr Dillon:** Yes, I think that is correct. The further point I would add is that the tail should not wag the dog. The public policy objectives ought to be set and then you should put in place a regulatory regime to ensure that those objectives are met. You do not set a regulatory regime and then say, 'We can't apply a higher level because the administrators in the Department of Finance don't want to make the appropriate adjustments.' The reality is—and I have been a public servant most of my life—you do not have the uniformity in the public sector that allows some sort of uniform arrangements to be put in place and ticked and flicked. There needs to be judgement applied at all levels of the regulatory regime. I do not believe that the arguments of the finance department and PM&C stack up.

**Senator MOORE:** The other aspect of that is the extra cost of implementing the changes that are recommended in the bill. They have not been costed, but just from the way it has been written there is an expectation from the departments that it may incur extra cost to have this level of scrutiny. Secondly, particularly around the nomination committee, there were concerns about creating another level of engagement in setting up another group with roles. Professor Dodson was particularly concerned to ensure that his process was reasonably

financed. Did you have any idea when you were looking at this what costs would be involved? I am not saying that this government is more concerned about costs than any other; this is not a negative comment. What would be the cost of the changes? I feel sure that in your answer you will balance that against what happened in the ILC before, but nonetheless what do you think the costs would be?

**Mr Dillon:** You are doing my job for me, Senator! The point I would make is that the cost of losing \$100 million into thin air would justify having a regulatory system that works, that is attuned and that is focused on the needs of the ILC and the land account. The reality is that at the time the native title deal was done it was a grand bargain. Aboriginal people gave up rights. They gave up rights in exchange for a number of things. One of them was the land account and the ILC. That was a deal the Commonwealth did. I do not think it is appropriate for the Commonwealth to renege on that deal and say, 'It might cost one or two positions in the Department of Finance to administer something special.' They have a fiduciary duty, in my view. The Commonwealth has a fiduciary duty to administer this account in a way that delivers significant benefits to Indigenous Australians in perpetuity in the most effective way. To say, 'We are a cost-cutting department,' does not stack up, in my view.

**CHAIR:** I would like to bring you back to a question we have had on duplication. There are some things in some of the submissions on both duplication and contradictory requirements between this proposed legislation and existing legislation. Firstly, you answered in broad terms before about duplication, but I might get you to state specifically your view of potential duplication. I think it is item 2 that says the purpose of the land account is to make payments to the ILC and this is replicated in section 192 of the ATSI Act. Is there a reason we are duplicating that particular provision?

**Mr Dillon:** Item 2 basically says that the moneys can only be spent in relation to the payment of any costs of the land corporation or remuneration costs. In a sense, it focuses on linking this just to the ILC. I think the issue here is that the existing provisions of the ATSI Act are not sufficiently clear. Under the current arrangements, if the provisions relating to the ILC's purpose in existing section 191B were to change, or if there was another organisation such as IBA or additional responsibilities were conferred on the ILC, the funds could potentially go to those new functions. So this new provision is locking in—in a way that the current provisions do not—that these funds should stay on land or land and sea related purposes.

**CHAIR:** But isn't that what section 192 of the ATSI Act does now?

**Mr Dillon:** It does, but the point I am making is that if a new function—for example, child care—was conferred on the ILC by legislation then there would be no stopping the land account being used to fund that childcare purpose. So what this provision does—and obviously it can be changed by legislation—is make it much clearer that it is specific to the land related purposes of the ILC.

**CHAIR:** You say that items 11 and 13 require the ILC to operate within principles of good governance and financial accountability, but aren't these already in the PGPA Act in sections 15, 16 and 25 to 29? Is there a reason why we would look to duplicate some of the provisions in the PGPA Act?

**Mr Dillon:** The existing provision is, in the board's view, insufficient because of significant problems we have had. Clearly the Ayers Rock situation occurred. The current provisions did not apply. Yes, you can argue this is belt and braces but, if this is what is required to stop another loss of \$100 million-plus, the ILC asserts that the braces are worth pursuing.

**CHAIR:** But more specifically—that was a fairly general answer—if items 11 and 13 are requiring the ILC to do something which the PGPA Act already does, what is the purpose of that? Those provisions in the PGPA Act, as I understand it, already require you to operate within principles of good governance and financial accountability. I think things like disclosure of conflicts of interest would also be in the legislation. So what is added in those provisions?

**Mr Dillon:** We have dealt with this in our supplementary submission in detail. The reality is that the PGPA Act does not quite go into the detail that this does. Given the special nature of the ILC, we would assert that it needs a specific focus. The reality is that the provisions are additional; they reinforce the sorts of things that the PGPA is attempting to achieve, so I will accept that, but things like disclosure of interests are only there as guidelines. This would make it much more specific for directors. It is focused very much on the fact that we have had this bad experience where this did not occur. It really is a question of belt and braces. Yes, you can argue it is duplication, but it is about reinforcing this issue around good corporate governance being essential for the ILC.

**CHAIR:** You say that it is only in guidelines at the moment. I am not an expert on the PGPA Act, but that is not my understanding. I would have thought that that is a legislated requirement in that act. I could be wrong, and maybe you could correct me on this, but it is not my understanding that that is a guideline in the act; it is actually a legislative requirement in the same way that it would be if this bill were to pass.

**Mr Dillon:** As PM&C have pointed out in their submission, the PGPA Act requires the accountable authority of a Commonwealth entity to govern in a way that:

... promotes the proper use and management of public resources ... promotes the achievement of the purposes of the entity...

Section 16 of the PGPA Act requires the accountable authority to establish and maintain appropriate systems of risk oversight and management and appropriate systems of internal controls. The issue is what systems will the board of the ILC in future put in place? Without proper oversight, those systems can be very loose, because they have been loose in the past. Yes, the PGPA Act goes there, but there is an underlying assumption in the PGPA Act that, because this is in the public sector, somehow self-interest does not apply and the boards of public sector corporations are filled by angels and not devils. The reality is that we just do not buy it, because our experience is that that has not occurred in the past.

**CHAIR:** That is a general point that the PGPA Act, in your opinion, is not strong enough as an accountability framework.

**Mr Dillon:** It is not just my opinion. Former Senator Murray did a report, *Operation sunlight*, and he recommended that the public sector have its own ASIC-like body. For whatever reason, that has not emerged.

**CHAIR:** But I put to you that that is a different argument in the sense that what we have before us here is a specific proposal for one body to have these enhanced requirements. You could make the argument that broadly—and people are entitled to make that criticism—the act overall is not good enough. We should always be looking to improve governance, but this is an argument for discriminatory treatment, whether you call it positive discrimination or otherwise. Why is there such a necessity for discriminatory treatment in this particular instance?

**Mr Dillon:** I think that we have canvassed this earlier, but for two reasons. The first is that past history tells us that the existing regulatory arrangements have not worked. The second is that the Land Account and the ILC are sui generis; they are unique; they are put there for a special purpose. As a result, the Commonwealth has a fiduciary responsibility in relation to its Indigenous citizens. If you are a fiduciary, you put in place special arrangements to ensure that your fiduciary arrangements are complied with. It is not just the same responsibility that the Commonwealth has in respect of all of its citizens—that is, that it is accountable through the ballot box. There is actually this special responsibility that goes back to the bargain that was done between the Commonwealth and Aboriginal leaders at the time of the native title debate, where Aboriginal people gave up rights. A lot of native title rights were extinguished or validated at the time of that and, in exchange, Aboriginal people got this account. That is why there is a fiduciary arrangement, or something akin to a fiduciary arrangement, in place, and that is why you need special arrangements. That is the argument.

**Senator SIEWERT:** Perhaps I could just get some clarification, going back to the issue around sea. Given that we talk about land management, I presume you would include sea management as well.

**Mr Dillon:** Absolutely. It would be a drafting issue, but I would suggest that the way the drafter might do it is define land to include seas, and then everything else would flow.

**Senator SIEWERT:** And then if you have management that could include land and sea.

**Mr Dillon:** That is right.

**Senator SIEWERT:** I just wanted to make sure that I understood.

**Senator MOORE:** On that point, I think it is important that it is a consistent definition of land. If we actually have that, then there is that consistency across the various pieces of legislation.

**Senator SIEWERT:** So, what you are saying is that you would have to amend some of the other—

**Senator MOORE:** Yes, we would just have to have a note to say that we pick up the definition of land, as Mr Dillon put in his evidence, that the definition in the other act is land and sea, because of the process and that that carries across.

**Senator SIEWERT:** I also want to go back to the issues around the amendments. And some of the amendments from Professor Dodson are quite specific. Do I take it from what you said earlier that you would support those recommendations? Some of them are technical.

**Mr Dillon:** In principle, yes, we support the thrust of most of them. We have not actually gone through every submission. I would be happy to go back and then write to the committee with the ILC's views in relation to those, if you like.

**Senator SIEWERT:** I would appreciate that, because, as I said, they have obviously gone through it really carefully, and I would appreciate ILC's view on the specific proposals. You commented on the reasonable and adequately resourced. I suppose that then comes down to a definition.

**Senator MOORE:** It would be very useful to have that. You did say you had general support, but just in terms of the way you had analysed the other evidence, it would be very useful if we could just get that. And I am sorry to put more work onto you.

**Mr Dillon:** No, that is our job.

**CHAIR:** Thank you very much for your time today.

**BUSH BLANASI, Mr Samuel, Chairman, Northern Land Council**

**DALY, Mr John, Deputy Chairman, Northern Land Council**

**MORRISON, Mr Joe, Chief Executive Officer, Northern Land Council**

[11:34]

**CHAIR:** I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Is that correct?

**Mr Morrison:** Yes.

**CHAIR:** I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. The resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. The Northern Land Council has launched submission No. 6 with the committee. Are there any amendments or alterations you would like to make to that submission?

**Mr Morrison:** No.

**CHAIR:** I will now invite you, if you would like to, to make a short opening statement, and then we will move to questions.

**Mr Morrison:** I would like to thank you all for allowing us to appear. We at the Northern Land Council take very seriously the questions and the discussion about the future of what is now called the Land Account, which the Indigenous Land Corporation administers. First I would like to go to a bit of background about the Northern Land Council and why we believe it is important to consider this bill.

The Northern Land Council is an independent statutory authority of the Commonwealth. It was enacted through federal parliament under the Aboriginal Land Rights Act in 1976. We have a council of 78 elected members plus five co-opted, so a total of 83 representative traditional owners across between 36,000 and 38,000 Aboriginal people in the top half of the Northern Territory. We currently employ over 220 people, pertaining to about 60 per cent Indigenous. One of our primary aims is to ensure that traditional owners and Indigenous people and communities understand the nature of development on their lands. That is why we think this is very important in relation to the future of the Land Account.

The Northern Land Council, like the Indigenous Land Corporation, plays a very important role in the lives of Aboriginal people. We have a very longstanding and constructive relationship with the Indigenous Land Corporation. From our own experience with respect to royalties that derive from activity on Aboriginal land in our region going towards the Aboriginal Benefits Account or payments equivalent, we certainly understand the nature of securing lands but, importantly, securing the ability for Aboriginal and Torres Strait Islander people to manage their lands and develop their lands and waters with a secure source of support.

Obviously, the proposal for the future of what is now called the Land Account—and I know there is a discussion about changing that to the Land Fund—is a very important one, and we support the proposition that has been put forward in relation to the bill to secure the future of the Land Account.

**CHAIR:** Thank you.

**Senator SIEWERT:** I want to go to some of the issues that have been raised through your submission and other submissions. Your submission states:

That the Land Account be used only for land management and acquisition by Aboriginal people and insulated from other policy purposes ...

First off, I want to ask: do you support the proposition that has been put by both the Torres Strait Regional Authority, but also ILC now, that it expand explicitly to make sure it is covering the sea?

**Mr Morrison:** Yes.

**Senator SIEWERT:** And presumably then sea management as well?

**Mr Morrison:** Yes.

**Senator SIEWERT:** I think the Cape York Land Council suggested expanding the purposes to also include homeownership in remote locations. I asked ILC the same question and I will ask others the same question. What is your comment on that specific purpose?

**Mr Morrison:** I am not wedded to any particular resource that could be used out of this for home ownership, but there is Indigenous Business Australia as well that could perform that role. If I could just quickly go back to your question about the marine environment, that is something that we would certainly endorse and want on the record. Obviously, through the High Court's decision on Blue Mud Bay, which gives intertidal property rights to 87 per cent of the Northern Territory coastline, we are very much aware that Indigenous people see land and marine environments as one. We very much support that.

**Senator SIEWERT:** So if we put up an amendment to the bill itself, that sounds like it would, obviously, get your support.

**Mr Morrison:** Yes.

**Senator SIEWERT:** One of the issues that has been raised in the submissions and that we talked about this morning with ILC is that this would, in fact, put stronger governance requirements on the ILC and board than is contained in other legislation. What are your comments on that? We had a pretty strong argument from the ILC this morning, but I would really appreciate your comments on that issue.

**Mr Morrison:** The Northern Land Council is very supportive of strong governance arrangements, and given the requirement now to report under the Public Governance, Performance and Accountability Act, or the PGPA Act, which replaced the old Commonwealth Authorities and Companies Act, we certainly understand the need to have excellent governance arrangements and to ensure that risks are understood and managed appropriately. But we are also acutely aware that there is a temptation, perhaps, for an overburden of red tape. So we have got to, obviously, find the balance.

**Senator SIEWERT:** Do you think that we have found that balance in the bill?

**Mr Morrison:** Yes, I think so.

**Senator SIEWERT:** Have you had concerns raised with you about how the board has operated in the past?

**Mr Morrison:** We find this every day in the life of the Northern Land Council. If I could be somewhat frank, I think organisations like the Indigenous Land Corporation, like the Northern Land Council, are dealing with very disparate, poor people, and we also deal with situations where the demand typically outstrips the ability to supply those issues that Indigenous people want. What I am trying to say is that there has been a robust debate between the Indigenous Land Corporation and the Northern Land Council in the past, but we are committed to working constructively to achieve better outcomes for traditional owners. Having clear delineation over our boundaries of work and the types of things that we are trying to do, I think, is something that, obviously, is good governance and good practice to get outcomes for Aboriginal and Torres Strait Islander peoples.

**Senator SIEWERT:** From your comment earlier in your opening comments, you sound like you are supportive of changing the name of the account.

**Mr Morrison:** Yes. I think people have a better understanding, personally, of the word 'fund' rather than 'account', and it is obviously geared and designed in that way.

**Senator SIEWERT:** Thank you.

**Senator MOORE:** Thank you for coming. I hope you have other meetings in Canberra at the same time. Mr Morrison, I am particularly interested in some of the comments that were made by the two departments to the original proposition. The ILC has provided us with a supplementary submission which goes through a lot of those comments. One of the ones that I thought has to have a response, particularly, is the issue around consultation because we always ask if there has been appropriate consultation on everything. The Department of the Prime Minister and Cabinet felt that the provisions around this bill may not have had adequate consultation within the Indigenous community. So that, again, being hoisted with our own petard, to an extent, you really have to prove that that has happened. I would be interested to know from your perspective, and working in the ILC, what consultation has occurred, should there be more, and does it meet the expectations of your members for consultation moving into a change of legislation.

**Mr Morrison:** I might talk to that from an administrator's point of view. But I might just also deflect it to the chair and deputy for the council's point of view. From the administration's point of view, since I have been the chief executive of the Northern Land Council, I have maintained close relations with the chair of the ILC, Dr Casey, and also with Mr Dillon as the CEO of the ILC, from an administrator's point of view. But the chair and deputy might like to respond.

**Mr Daly:** I think the ILC has consulted relatively well. People on the ground know what has happening. I have spoken to my constituents about it and they have come up and asked questions about it. I have been open and frank with them, and people are really supportive of the move that is taking place. We have got history in

what we are trying to achieve here. We have done this with the ABA. Given what has happened with the ABA over the years, we cannot afford to go down that line again. The ABA was originally set up to benefit all Aboriginal peoples living in the Northern Territory, and it has benefited people over a period of time. But the red tape put on it when it became controlled by the minister at the time created a lot of hardship among Aboriginal people. We find it hard to access funds through the ABA, so we are very supportive of protecting the land account. We do not want to see the land account become a political slush fund for governments. This has happened already with the ABA, and we have worked within it. We have difficulty sometimes accessing funds from the ABA.

We have had a good, constructive relationship with the ILC. The ILC has come forward on quite a few occasions. They have quite a few good programs in the Northern Land Council region. We have got four or five programs that I know of, and have worked in, that are very successful. One of the programs, which is for fire, is on my traditional homelands. It is a successful model. It is a shining star among all the things that are happening nowadays within Indigenous affairs. We have a good management committee there, we have a good relationship with the board of ILC and we also have a good relationship with the managers of the ILC. It is just about communicating the aspirations of Aboriginal people and getting that forward. But we do not want to see happen to the ILC what happened to the ABA. I have worked with the ABA, and I have seen the difficulties of manoeuvring among the red tape that is created. I think that, if all forms of government come forward and have a look at the experience of the ABA, you will realise what we are trying to protect here.

**Senator MOORE:** Mr Bush Blanas, do you want to add anything around consultation?

**Mr Bush Blanas:** No.

**Senator MOORE:** We take the issue of consultation very seriously as an indicator of any engagement in this area. When PM&C say they are uncertain at the level of consultation—and that is clearly in their evidence—what is your response? Do you believe it is adequate for a move in legislation, or do you believe there should be more consultation—and, if so, what?

**Mr Daly:** In my opinion, the consultations that have happened so far, with the limited amount of time we have had to deal with it, have been more than adequate. But if the government wants to waste more money and go back and have more consultations, let's do it. I live out in the bush. I am not a full-time employee of the Northern Land Council. So if I hear these things, I am pretty sure others will. I do not even have a television to sit down and watch at night. I do not have the luxury of that out in the bush. So if I am getting this information out there—and I haven't even got my own computer hooked up out bush—I am sure the information has gone out far and wide.

**Senator MOORE:** So people are talking about the issue. The only other question I have is around the financial impact. What has been explained to us very clearly is that this particular piece of legislation commits to ensuring that the fund is sacrosanct and money will go into the fund, which may impact on the amount of money that goes into the ILC operating budget.

**Senator SIEWERT:** Particularly in the short term.

**Senator MOORE:** Particularly in the short term. And that may well have an impact on projects that can be funded. From the council's point of view, do your members understand that, by ensuring that this is the way forward, it may mean that, in the short term, there may not be as many projects funded?

**Mr Morrison:** I think it would be useful to provide some further information about that to interested parties. But I think the most important point is about securing it for the longer term, from our point of view.

**CHAIR:** You have made a submission in support of the bill. In terms of your processes, do you go to your full council? What happens in terms of that? Do you consult all of your relevant members and stakeholders on that?

**Mr Morrison:** I would like to go back to the question about whether we have been consulted appropriately. In fact, Dr Casey did attend one of our full council meetings in Katherine, in May last year, where a discussion took place with 83 elected representatives from across our region. So I think there has been adequate consultation there.

**CHAIR:** Is that consultation you were conducting, or that others were conducting with the land council?

**Mr Morrison:** I think it was an information session that was presented to the full council and, from there, people took the information back to their communities. To reiterate what the deputy chair said previously, we do believe that there has been adequate consultation. You can do consultation until you are blue in the face but, at this point, we are satisfied that enough has been done.

**CHAIR:** So you have the consultation with the full council and then they go back to their communities and consult. Does the full council tick off on your submission, or is that done at another level?

**Mr Morrison:** It is an administrative matter that takes place. We report to our executive, which is made up of nine people from the seven regions, plus the chair and the deputy chair, and they are typically presented with these submissions that we make.

**CHAIR:** So the full council has not formally been asked for its view on this bill that we are considering?

**Mr Morrison:** Not the exact details, no.

**CHAIR:** Is that something you would expect to happen before this is debated in parliament, or is that not a process you will be doing?

**Mr Morrison:** Our next full council meeting is scheduled for June. If the timing is right, there will definitely be adequate time for us to have that conversation, and we would be more than happy to invite the CEO and the chair of the ILC to that meeting.

**Mr Daly:** There is not much the council misses. The council is fairly robust. Once you bring an issue to the table, they do not let it go. They keep coming back and they want more and more information on it. It is a very robust field of councillors that we have got. They are not only from Aboriginal communities; they are from Aboriginal outstations—basically the heartland of the country. So the information does get disseminated back to communities by the councillors. If there are any negatives, you get feedback. If there is anything negative in any of the feedback that we give to our councillors, and they take that back to their constituency, it is fired back pretty quickly.

**Senator SIEWERT:** I want to go back to some of the comments that the KLC has made and ask your opinion on them. Object (d) is to ensure that Aboriginal persons and Torres Strait Islanders 'receive the recognition within the Australian nation to which their prior rights and interests in their traditional lands and their rich and diverse culture entitle them to aspire'. The KLC are suggesting that we take out the word 'prior'. Can I ask you for your comment on that. It may sound minor, but I think it is quite significant. I can understand the reason they are saying that, so I would really appreciate any comments you want to make on that.

**Mr Morrison:** This is the first time we have heard this, so we have not discussed it. But my view is that we would prefer to leave the word 'prior' in there. In the context of the nation having a discussion about constitutional recognition, understanding the nature of the history of this country is very important, and I think the word 'prior' would be essential in that context.

**Mr Daly:** You can run all you like, and you can move ahead in life, but you will not get anywhere unless you know and acknowledge your history. History is an important part of Aboriginal life. I think we need to leave the word 'prior' in there because history is a big part of Aboriginal life.

**Senator SIEWERT:** I would really appreciate any further feedback from your members.

**Mr Daly:** We would be more than happy to provide it.

**Senator SIEWERT:** As I said, I think it is quite a significant suggestion.

I wanted to ask about another of their proposals. They are suggesting that between (1) and (d)—in the same objects—there should be an additional subclause 'to recognise the grand bargain'. They are suggesting we incorporate that and the compromises that were made by Aboriginal people and Torres Strait Islanders in negotiations with the Australian government following the decision of the High Court Mabo case. Subclauses could be in terms such as 'to acknowledge and recognise that past dispossession and land includes statutory mechanisms in the Native Title Act'.

I will not read it all but you can see where they are coming from in terms of explicitly putting, in the objects, where this came from and why the ILC and the account was put in place. Do you think that is a good idea? If you do not want to comment right now maybe I could ask you to take it on notice.

**Mr Morrison:** Maybe we could take it on notice.

**Senator SIEWERT:** We would then argue the toss over the words. It is really the concept I am asking you about.

**Mr Morrison:** It is a technical one that we would like to take on notice.

**Senator SIEWERT:** It is in their submission. Maybe we would could send it to you and you could get back to us on that one, because I would be really interested.

**Mr Morrison:** Sure.

**Senator SIEWERT:** It is quite a significant issue. In fact, we talked with the ILC this morning, about recognising why this account is here and why we want to make sure we are strengthening it and strengthening the provisions for building the account into the future. So I would appreciate any comments you could make about

whether you think it is worthwhile putting it in there or whether you think it is going to complicate it. I think that would be useful.

I also wanted to go back to your own submission. You put your comments in the context of the United Nations Declaration on the Rights of Indigenous Peoples articles 3, 4 and 5. Could you just expand on that a little bit. My understanding of your submission is that you think it is consistent with those articles. Are you able to expand on that a little bit more?

**Mr Morrison:** Obviously, one of the major functions of the Aboriginal Land Rights Act is to gain free, prior and informed consent of traditional owners in respect of any interest on lands where the Aboriginal Land Rights Act operates. Obviously, the United Nations Declaration on the Rights of Indigenous Peoples had some points to that.

I guess the articles that we are referring to here really talk to empowerment of individuals. So that is very consistent with the Aboriginal Land Rights Act. We believe that the bill that is being discussed is also consistent with those articles as mentioned not just in relation to empowering people to make decisions, but in relation to giving them the ability to express in their own Indigenous and other cultural ways the kinds of futures that they may want to pursue, which may not necessarily be typical in mainstream society. I guess this speaks to that ability for Indigenous people to do the sorts of things development-wise that may be useful for them from a cultural point of view rather than just a typical commercial transaction point of view.

**Senator SIEWERT:** Thank you. I just wanted to make sure we had that on the record. Professor Dodson has put in a number of suggested amendments, which ILC are getting back to us on, but in general are fairly supportive of. A lot of them seem pretty sensible to me. Some of them are technical. If we are going to seek to amend the current bill I would really appreciate some wider feedback on the other amendments, which is why I was asking you about the KLC amendments. Have you had a chance to look at what Professor Dodson is recommending?

**Mr Morrison:** No.

**Senator SIEWERT:** I am sorry to give you some homework. If you could have a look at them I would really appreciate feedback on whether you think that they are something you would support. Obviously, from my perspective, I want to make the bill as rigorous as possible and as effective as possible, but also we want to make sure that any other amendments are accepted by the broader community, so any recommendations that you have on the amendments would be really appreciated.

**Mr Morrison:** Yes, we will get back.

**CHAIR:** They could take it on notice.

**Senator SIEWERT:** Yes, that would be great, thanks. Some, as I said, are quite technical. That would be appreciated.

**CHAIR:** If that is all, we thank you very much for your evidence today. We appreciate your time.

**ELU, Mr Joseph, Chairperson, Torres Strait Regional Authority**

**SEE KEE, Mr Wayne, Chief Executive Officer, Torres Strait Regional Authority**

[12:02]

**CHAIR:** I now welcome representatives from the Torres Strait Regional Authority. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you; is that correct?

**Mr Elu:** Yes.

**Mr See Kee:** Yes.

**CHAIR:** I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The Torres Strait Regional Authority has lodged submission 18 with the committee. Do you wish to make any amendments or alterations to that submission?

**Mr Elu:** No.

**CHAIR:** I now invite you, if you would like to, to make a short opening statement, and then we will move to questions.

**Mr Elu:** Thank you, Mr Chairman. First of all, I would like to acknowledge the traditional owners of the land on which we meet, the Ngunawal people, and thank you for the invitation. We will take our submission as read.

ILC has not operated within our region of Torres Strait, whereas IBA has done a few bits of work up there, so we have contact with them every now and then. Senators might know that I was Chair of IBA for a number of years in the past. Most of the money spent in Torres Strait from the Commonwealth is handled by the TSRA.

But we have put our submission in, now that we have acquired native title over the land—most of the land now—and significant amounts of the sea. That claim went through last year. We now have native title over the bulk of Sea Claim Part A, as we call it, and in there are a fair amount of resources. We would like to get them over to our side of the ledger rather than the non-Indigenous fisheries that happen up there. That is why we put in a submission that we would like an extension of the ILC wording to go into the sea so that we can purchase property rights within the sea country.

As you would probably know—those of you who have been in the Torres Strait—we have very little land and 42,000 square kilometres of water, so we need to tap into that resource. But at the moment the ILC have been telling us—not telling us, but the way we see it is—that they are land focused, but we would like them to now start going into the sea country expenditures.

And of course there are other things that we have put in there. We are chasing fishing licences in the Torres Strait now. Some we have purchased over the years, but with some we still want to do it. We can sort of commercialise the fishing industry in the straits according to our custom and traditions.

**CHAIR:** Thank you. Just before I move to Senator Siewert, I will ask about consultation on this bill. Was the Torres Strait Regional Authority consulted as this bill was being developed?

**Mr Elu:** We just had the information sent to us, and we put it in front of our members, but there was no sort of formal consultation with ILC.

**CHAIR:** When was that information sent to you?

**Mr See Kee:** It would have been last year.

**Mr Elu:** Yes, last year.

**CHAIR:** Would you have liked to have seen a formal consultation process?

**Mr Elu:** Like I say, we have not had interaction with ILC in the past, so we just thought, 'Good for them; they're going to put a new bill into parliament, and we can see what the result is.' We have never had any formal interaction with them as far as expenditure and all that is concerned. But we did put that submission in, saying that we would need to go into the sea country in the ILC bill so that we can get some funding up there in the future.

**CHAIR:** Thank you.

**Senator SIEWERT:** You are probably aware now that ILC also are proposing that an amendment be made, basically so that the definition of 'land' includes land and sea.

**Mr Elu:** Well, we have heard you talk this morning, and I have had a few phone calls with Dawn Casey, the chair, of course. We have tried to meet with her before this, but we have not been able to. But she knows of our intentions before this year.

**Senator SIEWERT:** So, if the definition were changed to ensure that it covered land and sea, and that would then ensure that it was land and sea management, in your opinion would that cover your—

**Mr Elu:** Our desires to tap into their money?

**Senator SIEWERT:** desires? I was trying to think of the right word. I was going to say 'concerns', but 'desires' is a good word.

**Mr Elu:** Yes, of course. Our previous understanding of the ILC's charter was that they were supposed to purchase land for people who could not claim it under native title and then hand over the land to the TOs, or traditional owners, and/or their representatives. Because, like I said, most of the land is claimed now, it is under native title, we saw no reason to tap ILC's moneys for land purchases. We have most of it, 99.9 per cent of it, under native title.

**Senator SIEWERT:** Your submission uses good examples of why you need to access it, such as the commercial fishing example. You were here, anyway, so you heard NLC say that they were supportive of expansion, which I must say does not surprise me!

**Mr Elu:** When they heard we got that native title over the Sea Claim Part A, we got calls from the coastal land councils.

**Senator SIEWERT:** You heard me asking the NLC about the proposals that the Kimberley Land Council have put up about taking out the word 'prior'. Could I ask you that same question.

**Mr Elu:** In most of our vocabulary, we use 'prior', so personally I could not say we would want to take it out. Obviously you mentioned Mabo. Mabo was all on his prior occupation. Mabo went after prior sovereignty, but the judges knocked him back and said 'prior occupation'.

**Senator SIEWERT:** Thank you. For obvious reasons, it is important that I get an understanding of where particularly land councils are sitting with that—whether it should be in or out. There is the same question around their proposal of putting in some recognition of the fact that this was a grand bargain. They are proposing some wording, but it is more the concept that I am asking about. Should the objects have something like that in them that recognises in the objects why the account exists, what it is used for, and includes that as well?

**Mr See Kee:** I think in the TSRA submission it speaks up front about how the TSRA supports what is going forward.

**Senator SIEWERT:** Yes.

**Mr See Kee:** I am not speaking for the chair or the board—the chair might want to come in here—but really, in terms of anything that can strengthen the objectives and the intent of that fund, that is something that I am pretty sure that the TSRA will be supportive of.

**Senator SIEWERT:** From your submission, I understand that you are supportive of the bill in general—

**Mr See Kee:** Yes.

**Senator SIEWERT:** besides the discussion we have just had about amendments, and I understand that. Do I then interpret what you have just said to mean that, if further amendments strengthened the objects, you would be supportive? I am not trying to put words in your mouth.

**Mr Elu:** Like the CEO said, strengthening would be good, but if it starts weakening it we would have problems. I think you know that the Native Title Act has been weakened so much over the years that it is now a bundle of rights, we hear, not ownership of land.

**Senator SIEWERT:** I may be going where Senator Moore is about to go. We have had submissions from both the Department of Finance and the Department of the Prime Minister and Cabinet that this is putting extra accountability and stronger governance measures on ILC than on other like organisations or other requirements that are required under the—what is the proper name of the act? I always forget.

**Mr Elu:** The PGPA Act?

**Senator SIEWERT:** Yes, PGPA. I can never get the acronym right.

**Mr Elu:** You want to work under it; you'll see!

**Senator SIEWERT:** And therefore it could be seen as being discriminatory or not fair. Do you have any comments on that particular issue?

**Mr Elu:** I think we will take that on notice, because we are just getting our heads around PGPA at the moment. As you know, it came in last year—

**Senator MOORE:** Yes.

**Mr Elu:** and I do not really know particularly which part of PGPA ILC is talking about.

**Senator SIEWERT:** It is PM&C.

**Mr Elu:** Oh, PM&C.

**Senator SIEWERT:** What PM&C are saying is that, with the requirements in this bill, you are putting stronger governance measures on ILC than under the PGPA Act and/or replicating some.

**Mr Elu:** We shall take that on notice and look at what they are putting on the ILC.

**Senator SIEWERT:** We will send you a copy of what PM&C are saying.

**Mr Elu:** I was going to ask the CEO to send me that—

**Senator SIEWERT:** All right.

**Mr Elu:** what extra work he is getting!

**Senator MOORE:** Welcome, gentlemen. I think I would actually rather be back in the straits talking to you up there! My question is about the consultation. You may have heard me asking the previous witnesses and PM&C also. In this process—and you would understand it from your experiences—the bill goes out, we have a committee and people put submissions in, and then people have an opportunity to respond to those whole processes. The first-round submissions from the departments have raised issues such as Senator Siewert has mentioned about a higher level of accountability.

One of the clear things that were said by PM&C is that they questioned whether there had been adequate consultation around the development of this particular bill. As you well know, that is a very significant issue in all parliamentary processes but I think particularly around issues with Aboriginal and Torres Strait Islander people. It is absolutely inherent in this legislation that there must be full consultation. PM&C have raised that issue. They were concerned that there may not have been adequate consultation prior to parliament addressing the bill. From your perspective—and I know that you regularly raise the issue of consultation in the islands, with all kinds of things—do you think sufficient consultation has been held before parliament begins to discuss this piece of legislation?

**Mr Elu:** To our knowledge there has not been any personal consultation up in Torres Strait with this particular bill. As I said, we have had notice of it through PM&C officers; we have talked with them over the phone. And we have put before our board the papers we received. Some of the board members looked at it, and some have said that it is too far away and that ILC never did anything so they are not going to even bother reading this. So, that type of thing is happening. And probably out in the remote areas, unless it is going to affect those people at the community level, they do not take particular notice of what the government sends us.

**Senator MOORE:** So, from your organisation, would you consider that this has been appropriate consultation before debate?

**Mr Elu:** Well, as I said, because I am a full-time chair, and the CEO is full-time, we have this discussion in the office, and I have called Dawn a couple of times, or she has called me, and we talked about not only this but other issues. And we have talked about it within our senior management, with myself as chair. And of course there are the papers we put together to the board. Our staff goes through the bill and all that. But, as I said, between ILC and PM&C and us, there is no proper consultation; it has just been a sort of exchange of information.

**Senator SIEWERT:** Sorry to ask, but I was wondering, regarding the amendments that Professor Dodson proposed—if you are looking at the other issues and taking that on notice—would you mind having a look at the amendments that—

**Mr Elu:** I do not think we have that.

**Senator SIEWERT:** We can send that to you. When we send you the other information we will send you those—

**Mr Elu:** Professor Dodson's submission; yes, please.

**Senator SIEWERT:** It is just that if we are making amendments to the bill I want to make sure that they are supported by other organisations and communities as well and that they think that they are good ideas—which is why I was asking you about the issue around the word 'prior'. If you could look at that as well, that would really be appreciated.

And just going back to the consultation, given that you have had little interaction with the ILC, for the reasons you have outlined, do I understand correctly that what you are saying is that people have not really engaged with the whole concept of the corporation because under its current remit it does not have much relevance for you?

**Mr Elu:** That is right. As I said before, our understanding was that ILC was created to buy land for people who could not claim land under native title, which meant that we were left out, because we have brought 99.9 per cent of our land under native title now.

**Senator SIEWERT:** If it is changed to include sea, and obviously sea management, how big an impact, or potential, will that have for the Torres Strait?

**Mr Elu:** As I said, we will invite ILC now, and even before this bill is going through parliament, to talk about what it will mean for us as the two organisations of the Commonwealth. We can utilise what is in the act to benefit Torres Strait Islanders.

**Mr See Kee:** There will probably be a bigger impact in terms of the imperative to engage with ILC then, in terms of the sea area.

**Senator SIEWERT:** Yes, that is what I mean. Particularly with the recent decisions, what does it actually mean for the people of the Torres Strait, if they could get access to some of the resources that would potentially be available under a change.

**Mr See Kee:** So, that sense of relevance that the chair is talking about will probably increase.

**Senator SIEWERT:** Yes.

**Mr Elu:** And then people will start reading about what you send us.

**Senator SIEWERT:** Yes. Okay; thanks.

**CHAIR:** We thank you very much for coming today.

**Proceedings suspended from 12:19 to 13:01**

**DODSON, Professor Michael, Director, National Centre for Indigenous Studies**

**WOOD, Dr Asmi, Senior Research Fellow, National Centre for Indigenous Studies**

**CHAIR:** We now welcome representatives of the National Centre for Indigenous Studies at the Australian National University. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Is that correct?

**Prof. Dodson:** Yes, that is correct.

**CHAIR:** Great. Professor Dodson and Dr Wood have lodged submission 3 with the committee. Do you wish to make any amendments or alterations to that submission?

**Prof. Dodson:** No. We would like to speak to it, though.

**CHAIR:** Yes, sure. I will now invite you to do that, if you would like to, and then we will move to questions.

**Prof. Dodson:** Thank you very much. I would like to open this presentation to the committee by making some broad observations on the bill and, if necessary, Dr Wood will speak to some detailed recommendations. I now want to emphasise the key recommendations we have made to the committee in our formal written—I am not sure what is called!—submission or response.

We propose to strengthen the bill by including provisions that prohibit non-land-related purchases from the land account. And, further, to prohibit transactions that do not have a close, reasonable nexus with such purchases. We also propose to provide strong and strict control measures over the use of the land fund. If we impose actions that will weaken such measures—for example, the amalgamation of the substantive functions of the ILC, the Indigenous Land Corporation, and the IBA, Indigenous Business Australia—we think this would create potential conflicts of interest within a combined organisation.

We think there should be a strengthening of the corporate governance measures that relate to the ILC generally but with specific emphasis related to the activities of the board. It is proposed that the bill include provisions to ensure that such control measures are commensurate with those of the corporate governance mechanisms mandated in the corporations law, including, say, for large organisations where applicable law under the Corporations (Aboriginal and Torres Strait Islander) Act is concerned.

We support the growth of the land fund in real terms. However, we propose this growth be achieved while ensuring that investment options available to the land fund are circumscribed by what would reasonably be characterised as conservative but ethical investment options. We propose to include provisions that broaden the scope of the powers of the ILC to allow the ILC to purchase interests in land but land which is by legislation deemed, ipso facto, to be inalienable, which usually applies to such lands over which traditional owners have native titles within the meaning of section 223 of the Native Title Act 1993. The purpose of the creation of these 'interests' is to enable the ILC to assist and encourage traditional owners to carry out economic activity for the benefit of those traditional owners. For example, this law could allow the creation of the fee simple type interest on but not over the whole land on which native title has been found to survive so that economic activities involving and reasonably for the benefit of traditional owners will become easier to pursue—for example, the construction of infrastructure in which the ILC could acquire a proprietary interest but without having to incur the expenses of creating Indigenous land use agreements within the meaning of the Native Title Act. Also, we propose the ability to create new estates on land that apply purely to such native title land and which recognise the need for such lands not to be alienated and remain inalienable but for the ILC or its subsidiaries alone to be permitted to invest in such develop and programs on such land and who are permitted to acquire and own legal estate in real property but interests which are limited to real property interests other than the land. Once such transactions run their term and/or the loan is discharged and profits are paid to the ILC, the full beneficial ownership of these small parcels of land and buildings upon this land are returned to the traditional owners, and native title rights and interests—that were held to be dormant to then—would resume henceforth.

Finally, we oppose the merger of the ILC and the IBA and request the minister take cognizance of the conflicts to which the Ernst and Young report alludes.

**CHAIR:** Great; thank you.

**Senator SIEWERT:** Can I just pick up where you left off in terms of the ILC and the merger with the IBA? I note that in your submission you suggest the bill be amended further to ensure that that does not happen. In your opinion, under the current drafting, would something like that still be possible?

**Dr Wood:** My reading was that it could be, but maybe with some guidance to the interpretation of this provision. Perhaps if parliament informs the judiciary as to what its intent was in creating that provision and it made it clear, then perhaps that could be taken into account in the interpretation of the provision.

**Senator SIEWERT:** My understanding of your submission, though, is that you think the actual legislation needs to be strengthened.

**Prof. Dodson:** Yes. It should be clear.

**Dr Wood:** If it is unambiguous then there is no question of interpretation.

**Senator SIEWERT:** It is one of the intents; so if you think it does not meet it, I would like to see it spelt out more clearly in that case.

**Senator MOORE:** Dr Wood and Professor Dodson, are you aware of any other piece of legislation that is so prescriptive about the structure of an organisation? I am not opposed—in fact, we are very clear that we do want to ensure that they remain separate entities. And the minister has come out and said that he is of a mind to support that. I think that was late last year that he came out with comments about that. But I am just thinking about the drafting of a piece of legislation. I just want to see whether this would be peculiar to a bill for the ILC, as opposed to something that happens—I am going to be asking PM&C the same thing, but I was just wondering: in your experience have you seen any other piece of legislation that says, 'This organisation must always be retained as independent'?

**Prof. Dodson:** The answer to prescription is: no, this is not unique. There are numerous—though I cannot point to one at the moment. Corporations laws are pretty prescriptive as to the way that boards are to behave and how they are to look after investors' moneys and a whole range of things. It is not unusual to prescribe these things in legislative drafting.

**Dr Wood:** I would add: it is important to prescribe certain things—for example, if you are creating a new interest in land that is not quite fee simple but, for most intents and purposes as between the entities involved, would look like fee simple, then, as that is not an established part of the common law or statutory law, it would be important to prescribe the limits of that interest, for example.

**Prof. Dodson:** That is slightly different. I did not think of it in the way that Dr Wood thought of the question, but that is just as relevant. One of the intentions of the bill is to provide sustainable ways to provide economic, social and cultural benefits. The way we are trying to think about this is: how can we preserve the communal nature of Aboriginal and Torres Strait Islander attachment to land and at the same time allow for economic development? How can we enable groups of native title holders or Aboriginal and Torres Strait Islander people who own land communally to exploit that land for economic purposes, through existing financial institutions, perhaps? The trick is to figure out how we can best maximise the chances of the group retaining their interests in the land while doing those other things.

**Senator SIEWERT:** I think you may just have answered the question that I had, although I need to explore that a bit more. Can you take me through this? You say:

- To include provisions that broaden the scope of the powers ... to allow the ILC to purchase interests in land ...

That would still have to be related to interests in the land, so you could not invest in something that is not related to the land itself. Is that right?

**Prof. Dodson:** Not necessarily, if I understand your question correctly. You can invest in the infrastructure on the land.

**Senator SIEWERT:** Yes, that is what I meant. It would still have to be infrastructure on the land that you have enabled purchase of or acquired, even if it is under fee simple. It still has to be an economic activity that is related to land.

**Prof. Dodson:** Yes. I am not sure where you put housing in that, but—

**Senator SIEWERT:** That is what I wanted to come to next.

**Prof. Dodson:** An example I could think of is this. If a group has native title of one description or another—let's say it is exclusive possession native title—they could agree, firstly, with the relevant state or territory to alienate or extinguish the native title in exchange for freehold, for a portion of the land, not all of it, or blocks within the land, and then allow their own people to say, 'I want an interest in the land.' The group can then say through their prescribed body corporate or whatever, 'We will let you lease this land. We will require you to go and borrow some money from the bank, to build your shed to run your motor car repair business or to build a house for your family, and we will tell the bank that we will put up the land as collateral. We will guarantee the loan with the land, but we will control it. If you default, we will step in so the land is not lost to us as a group.'

In the case of default, there is clear security for the lending institution, one way or the other. Either they are going to finish up with the freehold block or they are going to have their loan satisfied. That is one way of thinking of it. I will let Dr Wood talk about creating another new interest that could do the same thing.

**Dr Wood:** What we meant in the submission was the creation of an interest which both honours the native inalienability of the land and satisfies economic activity so that the whole thing does not become moribund by its restrictive nature. It would, for all intents and purposes, be transferrable between people doing certain businesses that would fit in with traditional mores and ethics of the people about certain things that can and cannot be done, and it would still be able to generate economic activity which can depend on finances that come from places outside. But that interest is fairly strictly circumscribed in terms of what can be done with those interests so that the overall integrity of the large parcel of land is still maintained within the meaning of the Native Title Act.

**Prof. Dodson:** One of the things that drives my thinking on this is that we do not want to get into a Dawes Act situation like they got into in the United States, where allotments to individual groups were lost to Native Americans in the end because there was no way in which the group as a whole could retain the whole, because it had been segmented, if you like.

**Senator SIEWERT:** I do understand where you are coming from. I would need to look at how we structure an amendment that could pick that up.

**Prof. Dodson:** In both approaches there is an element of risk, of course, particularly for the Aboriginal and Torres Strait Islander people. There is the risk of losing the land.

**Senator SIEWERT:** Yes.

**Prof. Dodson:** They have to weigh that up with all other things. If they are robust and strong in themselves and their corporate and commercial arrangements, they would make their own judgements about the risk that they are taking. And they ought to be allowed to do that, provided they all agree, of course—that it is an informed decision and is not something that is imposed upon them.

**Senator SIEWERT:** I did want to ask you about the expansion of the definition of 'land' to also cover sea. There are proposals from a number of organisations to enable the ILC to cover sea country and sea management, and the proposal we were talking to the ILC about this morning was to change the definition of 'land' so in encompassed land and sea. Is that something—

**Prof. Dodson:** It is not something I have looked at. I do not know if my colleague, Dr Wood, looked at it. It is not something I have given a lot of thought to, but I would be very cautious about it.

**Senator SIEWERT:** We have had the Torres Strait—

**Prof. Dodson:** Asmi is a Torres Strait Islander. Perhaps I should address the question to him. His country is surrounded by sea.

**Dr Wood:** I have a different view to the purpose of this—

**Prof. Dodson:** I am from the sea country as well, but on the mainland.

**Dr Wood:** There are some people who do not make a distinction between land and water as many other groups do, so land and sea are seen as contiguous in terms of some groups. Though we have not addressed that in our submission, if that could be taken into account, that would certainly assist. It is very peculiar to the understanding of certain groups as to what constitutes land and water.

**Prof. Dodson:** I am from Broome. We are coastal people, and we have sites in the sea that are significant sites. Remember that not long ago those places were terra firma—they were not under water.

**Dr Wood:** I think the Akiba decision is very useful in this sense. In the lower courts when His Honour Justice Finn looked at the evidential issues, he concluded, in my reading, that land and sea constituted an indistinguishable part of the people's understanding of what belonged to them. The case went all the way through the High Court, and I think that now stands.

**Senator SIEWERT:** Are you saying you probably do not need to change the definition? Because of that decision, there is an understanding now that it means both or am I reading too much into what you just said?

**Dr Wood:** That is in effect what I said. That legislation always trumps the common law. So if it can be entrenched in legislation that would be good, taking into account the several groups that are touched by this [inaudible].

**Senator SIEWERT:** I asked the NLC this morning and they were supportive of the concept. They had not included it in their submission, but the primary focus of the Torres Strait Regional Authority's submission was expanding the definition. They used the example of commercial fishing licences and things like that.

**Dr Wood:** In the Torres Strait, this is the common understanding of what constitutes land.

**Senator SIEWERT:** That is the point they were making.

**Prof. Dodson:** There is a parallel inquiry afoot at the moment with the Australian Law Reform Commission with respect to native title dealing with some of these issues. Of course, it is a long way off changing the landscape, so to speak, but at least for the landscape. That Law Reform Commission reference is looking in part at the question you raise.

**Senator MOORE:** The responses we have had from the Department of the Prime Minister and Cabinet raise two points that I want to follow-up with you. One is on consultation and one is the level of accountability. The PM&C said that they were unsure about bringing this bill to parliament at the moment and whether it has actually had sufficient consultation in the community, as we understand the wide importance of having effective consultation in all legislation but particularly in consultation with the legislation that will pattern Aboriginal and islander communities. I would like to know your view about whether it has met what you would consider to be sufficient or effective consultation.

The second one is that both PM&C and Finance have said that many of the points to do with accountability that are in this legislation are already covered in other aspects of Commonwealth government legislation. When the ILC gave their evidence said that they had understood that, but they believed it should have a higher level; it is additional accountability because of the importance of this legislation and the importance and the integrity of the land fund. As one of the land councils did say, they thought that we are expecting higher levels of accountability for people working in this area than we would for anybody else. What is your view about that? You have said that there needs to consistency with the current legislation.

**Prof. Dodson:** Taking the last one first, I would not see the additional accountability measures infringing any discrimination laws. I have not seen the ILC submission, but if that is what they are saying that there ought to be tighter controls then I would agree with that, particularly around the purpose of the fund.

**Senator MOORE:** That is their position.

**Prof. Dodson:** We seem to have lost that in the history somewhere. This was meant to be a fund to help Aboriginal people and Torres Strait Islanders who could not assert their native title rights because of the impact of colonisation, the extinguishment of their rights and the extinguishment of their native title. This was meant to be a way of getting them some land. That is what they were accountable to, and I think perhaps they have lost their way a bit along that, and need to be strongly redirected—in our view.

With respect to the consultations—Dr Wood might want to talk about the accountability question as well—we certainly have not discussed it. But I really cannot answer your question about whether there has been sufficient or effective consultation—I suspect the answer is 'No'. I reckon that most Aboriginal people around the country would not know anything about this bill or what is happening. It is picked up by people like the land councils, we academics and others who have a direct interest in it. That is the way it is, I guess.

**Senator MOORE:** Are you satisfied with that, Professor?

**Prof. Dodson:** I think that the people who are most affected by legislative action ought to at least have some say. Firstly, they should know about it and, secondly, they should have some say in how it is constructed. That is easy to say, but it is a bit more complex when you are out on the ground. That is why we have organisations like land councils. Hopefully, they are looking after the people who are out there on the ground.

**Senator MOORE:** Dr Wood?

**Dr Wood:** I think I would like to see a stronger oversight and stronger laws. As Professor Dodson said, the original intent was that the monies be used to help those who are the most dispossessed by colonisation.

As you can see in the Yorta Yorta case: the Yorta Yorta know that they are Yorta Yorta and everybody around them knows that they are Yorta Yorta, but our law does not recognise them as Yorta Yorta with a continuing tradition. So there needs to be some kind of recognition that the law of England does not act in the best interests of the law of the original peoples of Australia. Some guidance through parliament, directing corporate institutions or legal entities to take that into account would be very good, I think.

**Senator MOORE:** So a greater emphasis in this legislation than in the—

**Dr Wood:** Yes.

**Senator MOORE:** former governance legislation in the public sector? You believe that there is a role for that greater focus in this legislation?

**Dr Wood:** Yes, because it is addressing a very particular problem that is not covered by law of general application. And in terms of consultation: I think having the opportunity to speak to these things is always very good, but people do not always have the resources to attend these kinds of open sessions. I would like to draw the parliament's attention to the United Nations Declaration on the Rights of Indigenous Peoples on the idea of free,

prior and informed consent, and also to draw your attention to the Inter-American Court of Human Rights' interpretation of that provision in *Saramaka People v Suriname*. That case explores this idea of free, prior and informed consent and gives it a little bit more legal context and meaning. They are not a common law jurisdiction, but I think that we can learn from other people as well.

**Senator MOORE:** Thank you.

**CHAIR:** We might leave it there. Thank you, Professor Dodson, and thank you, Dr Woods.

**Prof. Dodson:** Thank you, Mr Chairman, for the opportunity.

**Dr Wood:** Thank you.

**GRAHAM, Mr Martin, Assistant Secretary, Department of Finance**

**McINTYRE, Ms Amanda, Acting First Assistant Secretary, Department of the Prime Minister and Cabinet**

**ROBERTSON, Mr Neil, Assistant Secretary, Department of Finance**

**STUART-FOX, Ms Maya, Assistant Secretary, Department of the Prime Minister and Cabinet**

**SUUR, Mr Lembit, First Assistant Secretary, Department of Finance**

**THOMANN, Mr Mark, First Assistant Secretary, Department of Finance**

**WILLIAMS, Ms Nadine, First Assistant Secretary, Jobs and the Economy Division, Department of the Prime Minister and Cabinet**

[13:37]

**CHAIR:** We now welcome representatives from the Department of Prime Minister and Cabinet and the Department of Finance. I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

The Department of Prime Minister and Cabinet has lodged submission 14 with the committee. Do you wish to make any amendments or alterations to that submission.

**Ms Williams:** No, we do not.

**CHAIR:** The Department of Finance has lodged submission 20. Do you wish to make any amendments or alterations?

**Mr Thomann:** We did submit a corrigendum on 8 December, which has a revised table.

**CHAIR:** Yes, that has been received. So we have taken that as part of the submission now. Presumably there are no other amendments?

**Mr Suur:** We have no other amendments.

**CHAIR:** I now invite you, if you would like to, to make a short opening statement before we move to questions.

**Ms Williams:** We do not propose to make an opening statement, but of course we are happy to take any questions.

**CHAIR:** The Department of Finance likewise?

**Mr Suur:** We are in a similar position.

**CHAIR:** There has been some discussion—and it is in the submissions—that some of the provisions in the bill replicate existing provisions in the Public Governance, Performance and Accountability Act and in the Aboriginal and Torres Strait Islander Act and, in fact, contradict and/or conflicts with these laws in some cases. I think that is in one of the submissions. Could someone from the department outline some of the examples of where conflicts or overlaps occur?

**Mr Suur:** I might start on that. An issue for us are items 11 and 13 in the bill. They are the items that seek to amend the legislation to insert a new provision after the existing section 191F(1) of the act and to repeal the existing section 191W and substitute that with a new provision. Those provisions contain principles that are in the nature of duties that are additional to the duties that the PGPA Act imposes on accountable authorities in sections 15 to 19 of the PGPA Act, and on officials, in sections 25 to 29 of the PGPA Act. Frankly, it is not clear to us what the amendments are seeking to achieve. They introduce new and additional statutory obligations on the ILC board and on ILC officers, but they use terms that are not defined in the legislation. They are not explained in the explanatory memorandum. In fact, if you look at broader governance practice across Australia, if you look at the Australian Stock Exchange rules, if you look at guidances issued by the Australian Institute of Company Directors, if you look at things like the guidance issued by the Australian Accounting Standards Board or guidance sets issued by us, these are terms that do not exist. In fact, they conflate concepts that exist in particular contexts, but in a way that in our view is confusing. Our proposition is that it is not clear why separate and additional obligations or principles need to be introduced for the ILC board to have it stand apart from other Commonwealth boards and the general governance principles that apply.

These are statutory duties. These are duties against which people will be held accountable. Yet the ILC submissions do not explain at all why these terms have been selected, what they seek to achieve, other than to say that they will mandate higher and different standards of corporate governance for the ILC. I agree that they will be different, but I think the problem is that they are so imprecise as to be poorly conceived.

Let me give you an example. The duties that are in the PGPA Act that were previously in the CAC Act that related to directors and senior officers under the CAC Act came from corporations law. They are modelled on the duties that are imposed on directors and officers under the Corporations Act. But there is very little case law that interprets the CAC Act duties. While it is useful to consider examples from corporations law, we need to take care to apply private law analogies to the duties in the CAC Act. CAC Act duties are not concerned with corporations and shareholders but with Commonwealth authorities with different lines of accountability. This is still a largely untested area, but we are using terms that are familiar and embedded in corporations practice.

These terms that are proposed in the amending bill are frankly not terms of art, they are not terms that you can find in publications from the people who usually set governance controls within Australia. It is unclear what they mean. Neither are they terms that readily relate to the PGPA Act and existing guidance in the Commonwealth about governance.

**Senator MOORE:** Can you indicate the location in your submission of the arguments you just made?

**Mr Suur:** We talk about the imprecision and the confusion.

**Senator MOORE:** Can you point to the definitional stuff you have just raised?

**Mr Suur:** No. It is not in the submission.

**Senator MOORE:** I am a bit lost, because this has been around for a long time. I would have liked to have seen that argument fully expressed in the submission, or at least in the supplementary one. I would really like to get some further information from you pointing out all those terms, because that has not been raised in the submission from you, which I have just quickly reread. I was just wondering whether I had missed something. It did not go into that detail about your concerns. If that is the opening argument—and it is a very real argument—it would be useful if we as a committee had that detail. So I would really like some more information on that.

**Mr Suur:** We are happy to provide that in writing.

**Senator MOORE:** That would be great.

**Mr Suur:** If you wish I can expand on the points I have made.

**Senator MOORE:** I am sure that would be useful, but in terms of the statements you made that there are a number—I am sorry to jump in here, committee, but it is really quite critical in terms of the preparation for today—if we could get a full list of the definitional problems, as you expressed them, so we can have a look at that, that would be useful.

**Mr Suur:** I can in summary tell you which terms they are. It is the phrase 'corporate governance'; it is the term 'transparency'; it is the term 'financial accountability'; and it is the principle of 'ethical procurement'. They are the four terms that appear in those two proposed amendments that I pointed to, and they are the terms that we think are imprecise and cause potential confusion because they are imprecise—not defined anywhere, not explained anywhere and not used broadly in the sense that you can point to something and say, 'When people talk about "ethical procurement", here is its normal meaning,' and therefore you can assign its normal meaning to the bill.

**Senator SIEWERT:** I am sorry to be difficult, but could you say them again?

**Mr Suur:** It is 'corporate governance', 'transparency', 'financial accountability' and 'principle of ethical procurement'. Remember, what we are talking about is statutory duties, so they would be imposed on the directors and officers of the Indigenous Land Corporation.

**CHAIR:** I will continue with some questions, then I will come to other senators. Concerning the issue of ethical procurement, that you have highlighted as one of those terms that is imprecise, what do you see as potential issues if that were legislated? Obviously, we see a raging debate around things like ethical investments and all those sorts of things, and there is always a live debate about what that means. What is it ethical to invest in? Do we draw boundaries around things that are lawful although some people do not like them—tobacco products or whatever it might be? Ethical procurement is one that I have not come across before. What sort of issues do you see? If that were legislated, what are some of the problems you might see for those who are bound by that term?

**Mr Suur:** I have not seen the term either. It is a term that vexes me. I am not sure that such a principle exists. The Commonwealth procurement rules, which are done under the PGPA Act, talk about ethical behaviour in the context of procurement; but the Commonwealth procurement rules do not apply to the ILC. There is a list of

prescribed corporate entities under section 30 of the PGPA Rule to whom the procurement rules apply. There are about 20 of them: they include CSIRO, the Australian Nuclear Science and Technology Organisation, the Australian War Memorial—they are all covered, but the ILC is not. If the ILC were interested in linking itself to the ethical behaviour standards in procurement that apply broadly to Commonwealth procurement activity, the proper way to do that is to get itself listed under the PGPA Rule. If the ILC does not wish to be bound by the standards that relate to ethical procurement in the Commonwealth, it is not clear why it is invoking this imprecise term in relation to its procurement activity.

So the whole question of what is ethical is situational. We use 'ethical' in the context of the PGPA Act as an element of what constitutes proper use of public resources. The Australian Stock Exchange talks about ethical decision-making in its corporate governance principles and recommendations, but it is unclear what 'ethical' means in the context of this bill. Is it one of these? Is it some of these? Does it really go to the act of procurement? If so, what is the decision that is being taken that says that the same level of ethical behaviour in relation to procurement that applies to the Commonwealth broadly is not appropriate to the ILC?

**CHAIR:** Perhaps I could take a step back. You have a specific issue with imprecision in some of this language, but there is also, as expressed in your submission, a concern around overlap, duplication and that sort of thing. So, your specific concern here goes somewhat further. It is I guess an add-on to that concern. But, taking a step back, aside from the imprecision as such, what do you see being the potential implications of having a different regime applying—putting aside even the imprecision for a moment, although it might be part of your concern—to the land account versus the management of other statutory bodies under a Commonwealth framework?

**Mr Suur:** The things that I am talking about relate specifically to the ILC board and ILC officers. There are some additional governance arrangements that are proposed in relation to the land account. Quite often in enabling legislation and in statutes you will see particular provisions put in place in relation to things like accounts or the declaration of personal interests by board members and things like that. That is normal. There are core provisions in the Commonwealth, but, in relation to particular activities and particular entities, sometimes the parliament decides that additional standards are necessary and required. And where they are thought through, where they are well constructed, where there is a clear public policy purpose for having them, and where they are readily understood and reconciled with general provisions that are in place, there is nothing wrong with that.

**Senator SIEWERT:** With having different ones—is that what you are saying?

**Mr Suur:** In having add-on ones. I think I heard Mr Dillon this morning talk about additional requirements.

**Senator SIEWERT:** Yes. And you are making the point that there is nothing wrong with doing that?

**Mr Suur:** I am saying that that happens in other places as well, and that is a decision for policy makers and the parliament. If it is felt that those sorts of requirements are sometimes needed in particular places, then it can happen. But it is an area where people need to tread cautiously, and I think the question always has to be: why do something separate? Why stand this organisation apart from all other organisations and require these things?

**CHAIR:** And I guess, following on from that, you are saying that if you are to go down that path then not only do you need a very strong public policy justification but also, presumably, based on your earlier evidence, you need to be very, very clear in terms of what those additional obligations mean.

**Mr Suur:** Yes. This is imposing statutory obligations on people, and you need to be very clear about what they are and what they are seeking to achieve, and you need to have precision around them in a way that does not befuddle the people on whom they are imposed. Maybe the Department of the Prime Minister and Cabinet has views on this issue as well.

**Ms Williams:** As our submission set out, we would support some of Finance's views, particularly around the potential for there to be overlap or duplication between what is being proposed here and what is currently within the PGPA Act. And, as we have set out in our submission, we would question whether in fact those new provisions are necessary, given that the PGPA Act covers directors' duties quite sufficiently. So, that is probably what I would say in that regard. We also note that obviously there are changes suggested to the ATSI Act, particularly around the objects of the act, which we feel are fully covered at this stage within the ATSI Act. That is our view, as we set out in our submission.

**CHAIR:** Just further to that: you talked about where there is overlap, where there are additional requirements. Is there any concern, with all these potential different requirements under the bill versus existing legislation, that any of these obligations or any of the requirements under the proposed act or the bill may come into conflict?

**Ms Williams:** I do not think it is a concern about conflict. It is, rather, about whether they are in fact necessary, whether they duplicate what is currently in place and whether therefore there is a sufficient justification to place additional or duplicative requirements on the directors of the board.

**Senator SIEWERT:** I want to pursue that. If you heard what Mr Dillon said this morning you obviously heard what the other witnesses have said, and that is that they are supportive of this approach, supportive of strengthening the government's processes. Given that you are hearing from Aboriginal organisations saying that they actually want these provisions, then, given that you have said that it is appropriate in some instances to have stronger provisions, does that not indicate that in that case these provisions are justified?

**Mr Suur:** Going back to provisions in particular—

**Senator SIEWERT:** Yes, and I will come back to your other points in a minute.

**Mr Suur:** I do not see that they strengthen governance. Frankly, I do not see what value they add. As I said, they are imprecise terms. There is no attempt to define them. There is no attempt in the explanatory memorandum to explain how these arrangements will work. I think their characterisation of it as boosting governance requirements in relation to the ILC is simply sloganeering, to be honest.

**Senator SIEWERT:** I have to go to the issue that is one of the significant issues that we are having to deal with in terms of ILC, and that is the massive debt that they have now in relation to the purchase of the Ayers Rock Resort and the purchase that was made a couple of years ago and the debt they are now having. In fact, your department, as I understand it—your minister—has now referred that issue to Minister Scullion, and there are quite obviously some issues that happened there. Are you saying there is no need? How did that happen? Are you saying there is no need to address the issues that that purchase raises?

**Mr Suur:** I am saying that the two proposed items that are in the bill that I am referring to would have no impact in relation to that set of events.

**Senator SIEWERT:** Well, how would you deal with that set of events? To me, there are clear inadequacies that have been raised in the governance provisions for ILC that could have contributed to what happened.

**Mr Suur:** I do not see the failure in governance here. There was a decision taken by the previous ILC board, which the current ILC board does not support, and there are implications for the ILC's balance sheet and indeed for its ability to disburse funds potentially as a result of that decision.

**Senator SIEWERT:** So, you are saying it was just flawed decision making, not failure in making sure they have better governance.

**Mr Suur:** I am not in a position to judge whether it was flawed decision making or not. What I can tell you is that insofar as the duties of people who were on the ILC board are concerned, matters have been referred to us over the last few years, which we have looked at and taken legal advice on. And it is not apparent that there has been any failure of duty. There is a difference of views about whether or not a particular purchase was prudent at the time or has proven to be prudent with the passage of time. But those sorts of things happen frequently in a whole range of organisations.

**Senator SIEWERT:** Sorry—did you say you have had some legal advice?

**Mr Suur:** Yes. When we have looked at matters that have been referred to us, we have looked at them properly.

**Senator SIEWERT:** I have no doubt that you looked at them properly. Did that mean obtaining legal advice as well?

**Mr Suur:** Yes.

**Senator SIEWERT:** I will ask this, and I know I will be told no, but I have to make the attempt: is it possible to get access to that legal advice?

**Mr Suur:** I will take that on notice.

**Senator SIEWERT:** In terms of the points that you raised about those four key points, is your main argument that they are not defined in the explanatory memorandum? The reason we have these inquiries is that we can find out if we have got it right or if we need to amend the legislation. I am not saying it is perfect. In fact, there are a number of amendments that have been recommended that I think are really good. If the explanatory memorandum were amended to clearly define those definitions, would that address some of your concerns? There is a point about whether it is technically correct and whether you agree with it, and I would hesitate to say that sometimes government departments do not agree with some of the legislation that some of us put up and get through. Whether it is technically correct and technically feasible is different to whether you like it or not.

**Mr Suur:** Let me answer that question indirectly by using an example of the PGPA Act where we introduced terms that go to governance, and we have them in our legislation. For example, there is the notion of proper use of public resources. For example, there is the notion of what the purpose is of an entity. We define those terms in the definitions section of the legislation. In addition, we use general concepts, and I will give you an example of a general concept that we use or words that we use that, on the face of them, seek to describe something but that are not legal terms or legislative terms. One is 'financial sustainability'. We explain that term in the guidance that we issue in relation to the legislation. So the terms that we use are either found in authoritative documents like the Constitution or documents issued by authoritative bodies like the Australian Accounting Standards Board, or they are terms that are defined in the legislation or that are explained in the guidance, and if you look at the explanatory memorandum to the bill there is a description of the logic that goes to why stuff is done in a particular way and so on. Certainly, when terms are introduced, particularly terms that are purporting to establish statutory responsibilities and accountabilities on people, it is better practice to define them either in the legislation or in some document accompanying the legislation.

**Senator SIEWERT:** I take your point, and that is why I was asking if we defined those terms. I understand the comments that you made about ethical procurement. We are moving further and further into the world of ethical investment et cetera, and I suggest that you are going to be seeing more and more of these terms, so we are going to have to define them. I take on board the comment about better defining them. Would that then make it more technically rigorous, whether you like the concepts or not? If we defined them, would that address some of your concerns about the technical nature of the failures of the explanatory memorandum?

**Mr Suur:** I think it would help those who are reading the legislation and those who are conducting their business under the legislation to understand the expectations that are put on them.

**Senator SIEWERT:** You are going to put that in writing and send in a supplementary submission or some comments around that?

**Mr Suur:** If that is the wish of the committee.

**Senator SIEWERT:** That would be appreciated if you could. It would be helpful. I will go to the issue of the consultation over the bill. Is it your concern that there has not been enough overarching consultation in terms of the bill?

**Ms Williams:** Certainly, at the time of our submission we were not aware of any consultation in relation to the bill, which is what we pointed out in our submission. I know that today the ILC has outlined a range of areas where it considers that consultation has occurred.

**Senator SIEWERT:** I must admit it is really pushing my bounds of politeness around consultation and being criticised around the consultation process from a government that came out with an Indigenous advancement strategy in which there was no consultation with anybody about—as far as I am aware, or certainly no-one I have spoken to. So I really, really struggle, I have got to say, given that you must have been aware that ILC had a draft of this out for quite some time. Surely you were aware of the draft. Surely you were aware of the draft and the fact that it was out there for public comment and gained significant media attention—not overwhelming. But surely you are aware of that.

**Ms Williams:** Certainly. But I think the point in our submission was purely that we were not aware of any formal consultation that had occurred on it. And that was at that point in time when we made our submission. But certainly I am conscious that there were some media around it.

**Senator MOORE:** You may have heard that had been following up on the consultation with all of the witnesses, because we take it so seriously.

**Ms Williams:** Of course.

**Senator MOORE:** Does the department have any guidelines for consultation? What is the definition of consultation? I would like one for across the whole of the public service, but particularly for PM&C. Does the department have some guidelines for consultation, the way it should operate and some guidance for people when they are doing consultative processes?

**Ms Williams:** We certainly do not have any formal guidance around how one should consult. I think consultation, as you are aware, will be fit for purpose. There are certainly different forms of consultation that you would want to undertake for something of this magnitude versus other sorts of consultation that you might do on the ground if you are making changes to a program or to a policy. My view is that, certainly, the department conducts a range of consultations in a range of areas, and they will be fit for purpose depending on the situation.

**Senator MOORE:** Do you have any KPIs for consultation in terms of what has to be addressed in consultation?

**Ms Williams:** Not that I am aware of, no.

**Senator MOORE:** So in the statement about insufficient consultation, what was the guideline for what was insufficient and sufficient consultations?

**Ms Williams:** I would point out that, in our submission, what we did say was that we were not aware of the consultation that had occurred on the bill. At no time did we suggest that it was insufficient.

**Senator MOORE:** So what does constitute sufficient consultation?

**Ms Williams:** It would depend on the circumstances.

**Senator MOORE:** So there is nothing within the department to tell the department what sufficient consultation is?

**Ms Williams:** We have a range of consultation practices, and—

**Senator MOORE:** Can we have a copy of those?

**Ms Williams:** we have a range of practices that we would apply to a particular situation.

**Senator MOORE:** And can we have a copy of those—in terms of the practices of consultation in the department?

**Ms Williams:** As I was saying, those consultation practices would differ depending on the situation.

**Senator MOORE:** Sure.

**Ms Williams:** I would not like to write them down or set them down in stone. There are different ways that we would approach consultation depending on the situation, the policy, whether it is a program change or a policy change. There are different levels of people that you would need to talk to depending on the communities or the stakeholders that are affected. At times that is going to need to be quite an intensive process. But, at other times, maybe it is not as necessary to be quite so intensive. It would really just depend on the situation. I think the critical thing here is that this was not a critique around the lack of consultation. Rather, it was us saying that at this point of time when we put in our submission we were not aware of the level of consultation that had occurred. Since then, obviously, the ILC has outlined a range of areas where, in its view, consultation on this particular bill and the provisions within this bill have occurred.

**Senator MOORE:** Does the Department of Finance have any guidelines on consultation?

**Mr Suur:** Not that I am aware of. Again, as pointed out, the consultation process is situational. It depends on what is being put in place, what is being developed, who the stakeholders are, how broad the consultation needs to be. I guess the ultimate measure is that it leads to a robust outcome. But I think that our practices are similar to those outlined by Ms Williams in relation to PM&C in that people make judgements about what is appropriate in the circumstances.

**Senator MOORE:** Fit for purpose?

**Mr Suur:** Yes.

**Senator MOORE:** That was the line. Fit for purpose, but we do not have anything telling us what constitutes how that works?

**Ms Williams:** It is going to be different in every situation, yes.

**Senator SIEWERT:** On the issue around the impact of the amendments and how they would affect the account and funding to the ILC, I do not know if you have seen the follow-up submission they have made about further amending the act to address that issue.

**Mr Thomann:** That supplementary submission from the Indigenous Land Corporation was brought to our attention yesterday and we have had a look at that, yes.

**Senator SIEWERT:** Does that address some of your concerns?

**Mr Thomann:** It certainly goes some way to addressing our concerns. We certainly think it is sensible to go back to the basic concept around maintaining the real value of the total account and using that as a basis for calculating whether the returns to the account are above or below the expected real value. Then, if the actual value of the account is above the real value, dividing that between the ILC and retaining the other half of that value in the account seems a sensible approach to us.

We do see that it would need to be supplemented by another provision. That is because if you just maintain the total real value of the account as the benchmark and if you do not adjust the benchmark up to the new value

established by that additional amount retained in the fund, then as the actual value of the fund fluctuates it will revert back to the mean. What we think needs to happen is there would need to be a further clause to add the amount of the funds retained in the land account to a benchmark by resetting the base year to the year in which the amount above the real value of the land account is retained.

You would sort of have this ratcheting effect: in each year where the actual value of the account does go above the real value—and sometimes the actual value of the account will be below and then your returns in the subsequent year will have to bring it back to the real value—as calculated in that year, then that 50 per cent of that amount above would need to be rebased as the base year.

**Senator SIEWERT:** And that then ratchets it up.

**Mr Thomann:** Yes, you would end up with this little step in those years.

**Senator SIEWERT:** So does that need to be added to the other amendment?

**Mr Thomann:** Yes, we would suggest that you would need to draft—

**Senator MOORE:** And would that make it work?

**Mr Thomann:** In the short time that we have had to consider it, we think that is the case. But, obviously, it needs to be thought through. Given our failure to comprehend the last complex arrangements, I would like to think it through a bit more—given that we had to provide a corrigenda in December. But we think that would work.

It is simpler; we certainly like the fact that it is simpler. I noticed in the supplementary submission that the ILC board assures us that it does not want overcomplicated arrangements, and we would certainly support that guiding principle in drafting the bill.

**Senator MOORE:** And would that meet the intent of the legislation?

**Senator SIEWERT:** Could you perhaps take that on notice? As you said, you need to consider it a little more.

**Mr Thomann:** What we would like to do is take that on notice. We will redo our calculations around suggested drafting. We might discuss that with the Indigenous Land Corporation as well, just to make sure we are on the same page.

**Senator SIEWERT:** That would be great, thank you.

**Mr Suur:** We could wrap that up into the supplementary information you sought from me as well, and do a single consolidated supplementary submission if that suits you?

**Senator SIEWERT:** That would be very much appreciated, thank you.

**Mr Thomann:** There is another matter in the drafting in the ILC supplementary memorandum, in that it seems to suggest retrospectivity to 2010. We would suggest you need to define a time, 2015 for instance, from which these arrangements would take place. Otherwise you will have all these unwinding calculations, if you start it from 2010, which would be the possible implication if those words in the ILC supplementary submission were to be applied in the drafting the bill. We will also make some suggestions around that.

**Senator SIEWERT:** That would be appreciated, thank you.

**Senator MOORE:** Mr Thomann, can you confirm when you got the supplementary the ILC supplementary suggestions?

**Mr Thomann:** It was brought to my attention yesterday.

**Senator MOORE:** We understand it was public in December. I was surprised by your comment and I am double-checking. The supplementary submission was out there in December.

**Mr Thomann:** I take your point, Senator.

**Senator MOORE:** I know there is a lot going on.

**Mr Thomann:** We had a bit going on with MYEFO—

**Senator MOORE:** Just a bit!

**Mr Thomann:** And I suppose the fact that there was a supplementary submission did take us a little by surprise, given we have been having discussions with the ILC. We are happy to consider it further.

**Senator MOORE:** Have there been ongoing discussions with the ILC about this process in that period? From our perspective, we have a proposed bill, we have a range of public submissions and we had a delayed inquiry, so there has been a lot of time, and then we have a supplementary submission from the ILC, which is a process I really welcome—if you are putting something forward and you see other submissions that make different points

to actually get it back to you. In that period, which is several months, have there been ongoing discussions between the ILC and Finance and PM&C working through the issues around the need for accountability in the ILC and moving forward in a more corporate way, which I think is a shared goal of everyone? I want to see what the process of communication has been.

**Mr Thomann:** From my recollection, the first engagement with the ILC on this particular issue—we do engage with them on other issues obviously in relation to estimates and our role in budget group—was after we provided our submission and the ILC, very helpfully, pointed out that we had misunderstood one step in the calculation. From budget group's point of view, that was the first point of engagement we had with the ILC to discuss this. But since then we have certainly had opportunities to discuss this.

**Senator MOORE:** To trawl the intent, how it works and all that kind of stuff.

**Mr Thomann:** We will re-engage now we have the supplementary submission around those discussions. This is in relation to maintaining the real value of the farm.

**Senator MOORE:** I know this is difficult, can you give me any idea of how many occasions there have been discussions on this issue since October last year, which was when this bill came up? While you are consulting, I ask this same question of PM&C.

**Ms Williams:** I concur with what Mark said there. We do engage very regularly with the ILC through a range of regular meetings on several issues, including investment on the land account et cetera. We have had opportunities to discuss some of these issues as part of that process.

**Senator MOORE:** How many times? I do not want dates and times. How many times about this bill and why and how?

**Ms Williams:** I could not say exactly how many times. I would have to take that on notice and have a look.

**Senator MOORE:** More than two?

**Ms Williams:** Certainly a couple of times.

**Senator MOORE:** I am trying to make it as simple as possible.

**Mr Thomann:** We have certainly discussed it with the CFO of the ILC on a couple of occasions.

**Senator MOORE:** That is fine.

**Mr Thomann:** My staff may have had other discussions to understand how it all fits together.

**Senator MOORE:** I am always interested in the ongoing discussions, so there is no perception that it is something that has been dropped from outer space. So there has been an ongoing communication process around these issues and this bill?

**Mr Thomann:** Certainly, and I had one conversation with Mr Dillon—

**Senator MOORE:** Date and time! No.

**Mr Thomann:** It was last year—

**Senator SIEWERT:** She is stirring.

**Mr Thomann:** I do not mind being stirred. It was last year in relation to this particular issue around the calculation of the drafting of the bill.

**Senator MOORE:** Which led to your first round—

**Mr Thomann:** Which led to our corrigendum.

**Senator MOORE:** It was great to see the change.

**Mr Thomann:** And led to a constructive conversation about the joint objective of how we go about maintaining the real value of the farm. Notwithstanding the characterisation of Finance bureaucrats in that supplementary submission, it was of interest to us in Finance.

**Ms Williams:** Certainly, we have talked a great deal about the operation of the land account and perhaps how it could be more effective. Perhaps we have not had any detailed discussions about some of the detailed provisions in this bill with the ILC, although we have certainly talked about it in the broad.

**Senator SIEWERT:** Ms Williams, my question follows on from the conversation we just had in terms of the amendments that would address the concerns you raised about growing the value of the account. Given the amendments that we have been talking about from the ILC and the further ones that we have just been discussing, would that address PM&C's concern around those issues—that the account might go backwards?

**Ms Williams:** I would have to wait to see, perhaps, the further detailed work that Finance is going to do in that space.

**Senator SIEWERT:** That is a fair enough point. There is no point pursuing that. Maybe you could take it on notice, then, that, once we get those, you could let us know whether those issues address your concerns.

**Ms Williams:** Certainly.

**Senator SIEWERT:** There is one issue that I want to go to now, because I know we are going to run out of time. You have given us a lot of information, but the area that I would like to traverse is the issue of changing the definition of 'land'. Regardless of these amendments, the amendment that has come up is the proposal that in fact the land account cover sea—that the definition of 'land' cover sea. Do you have any comments on that now, or would you like to take it on notice? Have you considered it in the past? Probably it is more appropriate to address it to you, Ms Williams.

**Ms Williams:** Yes. I think we are aware that it has been raised. Perhaps giving some consideration to the evidence of the previous witnesses, it certainly is something that perhaps needs some further investigation—certainly around those questions of definition.

**Senator SIEWERT:** So you have not looked at it yet?

**Ms Williams:** We are aware of it as an issue, and we are happy to have a look at it.

**Senator SIEWERT:** I am not trying to split hairs, but, until now, has it not been on your drawing board?

**Ms Williams:** It has not been on my drawing board.

**Senator SIEWERT:** Would you mind taking that on notice?

**Ms Williams:** Certainly.

**Senator SIEWERT:** You were just having a conversation with Senator Moore about having conversations with ILC, and ILC this morning raised issues around the Future Fund and that, if the account had been managed in the same way, I think an extra half a billion dollars would have been raised. Where are we at in terms of looking at the Future Fund and being involved in the management of that account?

**Ms McIntyre:** Maybe I could take that in the first instance. My role is as the finance minister's delegate for the land account. When the account moved into PM&C as part of the machinery of government changes, one of the things I was keen to do was to look at how we could maximise the return on the account. There are a number of things that constrain us at the moment. One of those is the things we are allowed to invest in, and our investments are limited to cash or cash-like investments—

**Senator MOORE:** 'Our' is the ILC?

**Ms McIntyre:** Well, the land account, because I am the delegate on the land account. So, when I say 'our', I am talking about that.

**Senator SIEWERT:** That is what we sort of assumed, but we thought we had better clarify it.

**Ms McIntyre:** In that respect, if the fish farm was able to manage it—and my understanding is that there would be a required amendment on their behalf as well, though Finance might have something further to say on that—or if somebody else was able to manage it, they would still be limited to those investments at the moment. So their ability to generate a return any greater than what we have generated would be limited, and I would suggest that those projections are inflated, given the current investment parameters.

**Senator SIEWERT:** Overall?

**Ms McIntyre:** Because what they are doing is: they are comparing what the Future Fund can invest other funds in, which is a much broader portfolio of investments, with this amount of money, but we can only invest that money in cash and cash-like, and, if it went in its current form to the Future Fund, they would only be able to invest in cash and cash-like. So we have to change both—

**Senator SIEWERT:** Exactly. That is what I am getting to. In order to do that, you obviously need to change both in order to grow that account—

**Ms McIntyre:** That is correct.

**Senator SIEWERT:** if it were given to the Future Fund to—

**Ms McIntyre:** You need to balance a number of things, and we need to consider that the more risky the investments are, the more likely it is that, in some years, the real value of the account will actually decline, and to ask, 'How willing are we for that to occur in a 12-month period or a two-year period to get greater returns overall?' They are the things that need to be considered and balanced.

**Senator SIEWERT:** I do not know if you heard the conversation we were having this morning with ILC, but it seems to me that, given the conversation we had this morning, that is something that the ILC has given consideration to. This is talking about investment over the long term. Given the support for the approach that the ILC was proposing through its bill and that we certainly want to progress through the bill that is currently before the Senate, if there was broad consent from Aboriginal and Torres Strait Islander communities in particular to take that risk, would that be supported?

**Mr Thomann:** Could I just go to one of—

**Senator SIEWERT:** I will come back to that question. I appreciate you cannot give me an opinion and so I need to ask it in a different way.

**Mr Thomann:** If I could just go to one of the premises of your question in relation to the long term, while the Future Fund has a long-term investment trajectory in that the funds are not required to be drawn down, I think, until 2020, it is the nature of the land account that, while it has a long-term trajectory in being maintained into perpetuity, in terms of the draw-down, there is a requirement to pay the ILC a guaranteed, indexed, statutory amount every year, which is one of the things that informs the conservative nature of the investment mandate in order to both juggle those two requirements to maintain the real value of the fund and provide benefits to Aboriginal and Torres Strait Islander people through the ILC on an annual basis.

**Senator SIEWERT:** And that is the conversation we were having this morning. That is why I prefaced my comments with, 'That's the conversation we were having this morning with ILC,' realising that, as I understood the conversation we had, there would be a balance about some of the money that then came out on the yearly basis.

**Senator MOORE:** Are those two concepts mutually exclusive?

**Mr Thomann:** They have to be balanced. In assessing any kind of investment mandate, in whatever form it is, you need to take into account the objective to maintain the principal, the objective of long-term growth in the fund, the appetite for risk and the need to make a guaranteed payment. In fact, the Future Fund Management Agency does that in relation to the nation-building funds. It has a Future Fund, but it also has the nation-building funds, and they are a much more conservative investment mandate and their returns are, in some years, less than the returns for the land account. So it is a sort of horses for courses kind of situation.

**Senator MOORE:** So it is already the kind of thing that structurally could coexist, but do you have to have all those parameters defined and operational?

**Mr Thomann:** Those considerations must necessarily inform the consideration of what is the appropriate investment mandate.

**Senator MOORE:** But it can happen?

**Mr Thomann:** Yes.

**Senator MOORE:** Because it is not my area, I just wanted to—

**Mr Thomann:** Sorry, can I clarify: what can happen?

**Senator MOORE:** It can happen that those two concepts of a structured process that has a long-term intent—the whole process is around long-term intent—can operate with a process that has immediacy of requirement at different times. It has to be carefully managed and it has to be clearly defined and transparent, but it can happen.

**Mr Thomann:** They are not mutually exclusive, but, if you are balancing out a disbursement on an annual basis, you will not get the same returns as a fund which is not having to—

**Senator MOORE:** Absolutely.

**Mr Thomann:** It can have a greater appetite for risk because there is no requirement for those funds. It is the same as superannuation. When you are in the accumulation phase, you can have a greater appetite for risk, but, when you are drawing down on those funds on an annual basis, you have a much lower appetite for risk.

**Senator MOORE:** Don't even take me down the superannuation path!

**Senator SIEWERT:** I have to admit that finance is not my area of expertise, but, regarding changing the parameters for the land account, they could still be changed to enable different sorts of investments that are not necessarily as high a risk as some others but could generate some higher returns. Am I correct?

**Ms McIntyre:** You are correct in saying that that can happen, yes, but it is absolutely—

**Senator SIEWERT:** It would still protect the account.

**Ms McIntyre:** And that, as Mr Thomann has said, is exactly the balance that you need to strike—the more risky the investment, the less protection you have to maintain the real value over time.

**Senator SIEWERT:** At the moment it is not possible to do that at all because of the nature of the requirements of the account?

**Ms McIntyre:** The legislation ties us into a definition in the PGPA Act, and that limits the things that we can invest in.

**Senator SIEWERT:** I will withdraw my other question, because it is the decision making process of government, or whether this legislation gets through to enable it.

**Senator MOORE:** Mr Suur definitely wants to put a proviso on that.

**Mr Suur:** The point I wanted to make is that within the current arrangements, which are under 58 of the PGPA Act and a rule that is issued under the act, there is some capacity to select between different investment instruments. But they are all essentially conservative in nature. So you are mixing, if you like, within a narrow band of types of investments. Interestingly, there are 152 special accounts in the Commonwealth. The land account is the only special account established in legislation where parliament has explicitly tied the investment mandate to section 58 of the PGPA Act. So to achieve the sorts of things you are talking about there needs to be a bit of legislative unpicking. Regardless of the policy choice that is made and the investment choices that are made there needs to be some legislative unpicking, as well.

**Senator SIEWERT:** That is what I understood would have to happen. The circumstances then defined why the decision was made in the first place to tie it.

**Mr Suur:** It was for the reasons that others have pointed out.

**Senator SIEWERT:** Ms Williams, your submission makes comments about the objects being in two places. I am sure you have read the ILC comments to that, being that this is not the only place where that happens. Could you outline your concerns, given the comments from ILC pointing out that there is other legislation that does that and it does not end up in major confusion? Or perhaps your view is that it does.

**Ms Williams:** I think our view is that it is important that those people who operate under the act, including the board, have some clarity around their objects and objectives, and that having it in two different places does add to some confusion in that regard. That was certainly what we set out in our submission—largely that, but also that I think that if it is clearly set out currently under the ATSI Act then we cannot see the value or the merit in actually reiterating it.

**Senator SIEWERT:** I think it is a case where we are just going to have to agree to differ.

**Ms Williams:** Yes.

**Senator MOORE:** There is no cost involved. This is simply a philosophical position—that to have a standard you believe it is covered effectively to have the same objects in other places. That is simply the argument, isn't it? There is no cost involved in changing the objects. There is nothing like that.

**Ms Williams:** It is an argument around clarity and the need to maintain that clarity for the people who operate under the auspices of that act.

**CHAIR:** Thank you to all of our witnesses today.

**Committee adjourned at 14:33**

## Transcript

Station: **A-PAC** Date: **08/07/2015**

Program: **A-PAC DAYWATCH** Time: **03:31 PM**

Compere: Summary ID: **W00062391104**

Item: **REPORTER ASKS IF WHEN SCULLION WAS SHADOW INDIGENOUS AFFAIRS MINISTER HE WAS APPROACHED BY ANY FORMER ILC BOARD MEMBERS ABOUT THE ACQUISITION OF AYERS ROCK RESORT.**

**INTERVIEWEES: NIGEL SCULLION, FEDERAL INDIGENOUS AFFAIRS MINISTER**

<b>Audience:</b>	Male 16+ N/A	Female 16+ N/A	All people N/A
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REPORTER: Got a couple of questions about Ayers Rock Resort.

NIGEL SCULLION: Cool.

REPORTER: When you were the Shadow Indigenous Affairs Minister were you approached by any former ILC board members from 2010 about the acquisition of Ayers Rock Resort?

NIGEL SCULLION: No I wasn't but I did meet both formally and informally with a number of the board members to discuss a whole range of issues and as you can recall it was nothing really controversial in 2010 [audio skips]. I really have no idea what this allegation of some conflict of interest is. It's actually your responsibility and your role to engage in wider portfolio and Northern Territory issues in opposition and that's exactly what I was doing.

REPORTER:	Have you ever been approached in any form about the use of funds from the land accounts to finance any such purchase?
NIGEL SCULLION:	No, nor have I heard of it. Now I understand that this is a bit of mischief thing run by the ILC. All I'd like to say about Ayers Rock Resort, it is a fantastic place. It has 250 full time Aboriginal people working there and it's one of the only places in Australia you can go and the tourists say: Isn't it fantastic. One of the things I wanted to do when I came to Australia is not only see the wonderful biodiversity but all to experience your wonderful culture, meet Aboriginal people and this is a tourist destination that delivers just that in spades and we should be talking it up, not talking it down.
REPORTER:	None of the reviews we've had have had the power to compel evidence. So none of the reviews you've had have had the ability to compel evidence and there are many unanswered questions about who benefited from the sale. Why not just order a full investigation, clear your name and explain to taxpayers' how around \$100 million of their money evaporated?
NIGEL SCULLION:	Well first of all I don't accept the notion that \$100 million evaporated. It is now working at a great profit and all of the dramas happened at a time called the global financial crisis. Certainly the bookings weren't as strong as they were and all of the issues concerned are about how many people actually came and stayed in the resort. It's been a terrific resort that it's actually been batting well above its weight in comparisons to with other similar locations over that period of time.

We've had- I'm not even sure how many reviews but there've been a large number of reviews and there has been absolutely no evidence to have another one. The people who want a review continue to call for reviews, we've had reviews. They didn't get what they wanted out of that particular review and they want another one. [Audio skips] not having another review because these reviews cost money and I can see absolutely no benefit to the taxpayer of having another one.

[Continues - unrelated material]

\* \* END \* \*

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## Allegations of largest ever 'evaporation' of Indigenous money in Uluru resort deal

By Sally Brooks

Updated Wed 8 Jul 2015, 5:36pm

**Taxpayers "inexplicably" paid an "unjustified" \$30 million when a Federal Government Indigenous body acquired Ayers Rock Resort in 2010, a letter to the Prime Minister alleges.**

The 38-page document from the Indigenous Land Corporation (ILC), signed by chairwoman Dr Dawn Casey, to Tony Abbott was obtained by the ABC under Freedom of Information (FOI) laws.

The ILC - a Commonwealth entity aimed at helping Indigenous people receive economic benefits from land - acquired Ayers Rock Resort (ARR) at Yulara near Uluru from property giant GPT for \$300 million in October 2010.

GPT originally offered the resort to the ILC for \$270 million in 2009, but the sale price was revised upwards by \$30 million in 2010.

The letter to Mr Abbott, dated May 27, alleged the former ILC board agreed to the increased price "without any sound reasoning documented in the [then ILC Board] minutes."

The letter states:

"[This was] despite strong concerns from certain directors and due diligence advisers indicating that the purchase price may not have been commensurate with the resort's value."

Banks refused to finance the full acquisition, and then Indigenous Affairs Minister Jenny Macklin declined to back the purchase and forbid access to the Land Account.

The Land Account is a Commonwealth account which provides guaranteed funding to the ILC to acquire and manage land for Indigenous people.

At the same time GPT increased the resort's sale price in 2010, the property giant proposed a new seller-financed model.

The letter states:

"A number of facts are irrefutable. One, the ILC was not in a position to raise commercial finance to purchase the asset even at \$270 million.

"Two, the \$30 million increase in the purchase price came simultaneously with GPT's agreement to provide vendor finance to enable the transaction. Without vendor finance the ILC would not have been in a position to proceed.

"Given the highly detrimental and uncommercial nature of the arrangement for the ILC, this element of the transaction [if proven to be true] is at best a breach of the legislative requirement that the ILC Board operate in accordance with sound business principles and the director's duties under the Commonwealth Authorities and Companies Act.

"At worst [it's] a deliberate and potentially illegal ploy to induce an unnecessary and unjustified extra payment of \$30 million by the Commonwealth.

"For this reason, a thorough independent investigation is necessary to determine the true motivations behind this decision."



PHOTO: Tables are laid for Ayers Rock Resort's Sound of Silence Dining Experience in the desert near Uluru. (AAP)

MAP: NT

### More than \$100 million tax payer money 'evaporated'

Since the ILC acquired Ayers Rock Resort the property's value has been written down twice, mostly recently in January 2014 when it was valued at \$202.5 million.

In July 2015, the resort was valued on the ILC's books at \$225 million.

The loss of more than \$100 million has been described by Dr Casey to Fairfax Media as "perhaps the largest single evaporation of public money in the Indigenous policy domain, ever".

Dr Casey has been advocating for an independent investigation into the purchase, but Indigenous Affairs Minister Nigel Scullion and Finance Minister Mathias Cormann have said they do not believe another inquiry is needed.

A review of the resort's purchase in 2013 by McGrathNicol, commissioned by Ms Macklin, found there were flaws in the due diligence and governance processes underpinning the decision to purchase the resort.

In the letter to the Prime Minister, Dr Casey argues another investigation is needed partly because the McGrathNicol review did not have any powers to compel evidence, so was constrained in determining what happened with the sale.

Dr Casey is now appealing to Tony Abbott to hold an investigation into the acquisition, and continues to allege the Federal Indigenous Affairs Minister has a conflict of interest.

## Nigel Scullion has conflict of interest: ILC

The letter repeats allegations that Senator Scullion may have been approached by some former ILC Board directors to see if the Northern Territory senator would, if elected to Government in 2010, allow the ILC access to the Land Account so the purchase of the resort could go ahead.

The letter states:

"If the [then] ILC Board, in full knowledge of the high financial risks that the acquisition presented, decided to acquire the ARR with the belief and intention that the Land Account could be used to fund any resultant financial problems and approached the then opposition shadow minister for Indigenous affairs, Senator Scullion, seeking a commitment to facilitate such a drawdown in the event of a change of government in 2010, then it could be concluded that the previous ILC Board did not act in the best interests of the ILC or for a proposer purpose.

"This would potentially amount to a breach of sections 23, 24 and 25 of the Commonwealth Authorities and Companies Act."

Senator Scullion's spokeswoman said he stands by previous comments that he does not have a conflict of interest in deciding if a full inquiry into the purchase is needed.

### More on this story:

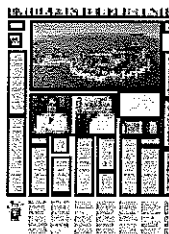
- Dust flies in Ayers Rock Resort \$65m writedown
- \$317m buy of Ayers Rock Resort 'inexplicable'
- Resort between Rock and hard place after shake-up
- Review questions Ayers Rock Resort valuation

Topics: Indigenous-culture, indigenous-policy, government-and-politics, nt

First posted Tue 7 Jul 2015, 1:20pm

## How the ILC's acquisition of Ayers Rock Resort unfolded:

- 2008: Property giant GPT offers to sell a portfolio of properties, which includes Ayers Rock Resort (ARR), for \$282 million
- 2009: January: GPT offers to sell only Ayers Rock Resort to the ILC for \$270 million
- 2009: April: The then Indigenous affairs minister Jenny Macklin advises the ILC Board she will not support the use of the Land Account to fund the purchase of Ayers Rock Resort
- 2010: June: GPT advises it is no longer willing to sell ARR for \$270 million, quoting three reasons: the recovery of the economy, GPT's recapitalisation and introduction of a second airline to Yulara
- 2010: June: GPT offers to sell the resort for an increased price of \$300 million and suggests a new vendor-financed model
- 2010: October: ILC Board decides to acquire resort for \$300 million
- 2014: January: McGrath Nicol revalue the resort at \$202.5 million
- 2015: July: The resort is valued at \$225 million on the ILC's books



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Page 1 of 5

# BIG HOLE IN THE RED CENTRE

The Ayers Rock Resort continues to suck in cash from the ILC

SARAH MARTIN



"This land speaks to you," reads the slick marketing material for the Ayers Rock Resort in central Australia. "Listen to the stories of the Anangu people, the whispering of the desert oak, the spark of life as the sun cracks the horizon. Touch the silence. Hear the land."

There is a positive story to sell at the sprawling complex under the shadow of Uluru in Australia's red centre. From the front reception desk at the Desert Gardens hotel to the waitstaff at the "glamping" tents pitched under the stars, there are almost 300 employees at one of the country's most famous tourist drawcards.

On the surface, it's an indigenous success story. But five years after the Indigenous Land Corporation signed off on the decision to buy the resort for \$317 million, the impact of the purchase continues to reverberate through the ILC.

Mired in debt of almost \$200m, the ILC is hemorrhaging money to the resort. So far, it has spent \$375m of public money intended for indigenous land projects on an asset worth only \$225m, and faces capital works of \$120m across the next decade. Next year the ILC must refinance \$200m in debt, and has revealed that because of the resort's value, it will be forced to borrow from "non-traditional" lenders, charging interest of up to 11 per cent.

The ILC will have to put in an extra \$35m of its own funds to se-

cure the loans.

"You can only borrow so much from an asset worth \$225m," ILC chief executive Michael Dillon told Senate estimates last week.

And the legacy of the purchase looks likely to beset the organisation for another generation.

Across the next 20 years, the ILC estimates it will spend \$20m of its \$50m annual budget on debt repayments, diverting funds away from other indigenous projects.

In February, the ILC wrote to Tony Abbott urging him to hand control of its \$2 billion land account to the Future Fund in a desperate attempt to increase its returns to help offset the cost of debt repayments.

"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," chairwoman Dawn Casey has warned.

The ILC was established in 1995 with the purpose of assisting indigenous people to acquire and manage land to achieve economic, environmental, social and cultural benefits.

At Ayers Rock Resort, the cost to the agency of training 700 people and securing 300 jobs has been in the order of \$500,000 a position — 50 times that spent under other indigenous job programs.

The expense of the project, described by Casey as perhaps the "largest single evaporation of public money in the indigenous policy domain, ever", has raised questions about the decision-making process that led the former board to approve the acquisition.

The ILC has been doggedly pursuing the federal government

for an independent inquiry into the actions of the former board for the past two years, arguing it thought there had been an unprecedented failure of corporate

governance queried whether there had been potential breaches of the Commonwealth Authorities and Companies Act by a small number of board members.

In December, Finance Minister Mathias Cormann agreed an inquiry was necessary, writing to Casey to inform her that possible breaches of the law should be investigated by the government.

"I also think it is important the entire facts of the purchase and related actions are investigated by the government itself," he said.

Cormann wrote to Indigenous Affairs Minister Nigel Scullion — the minister responsible for the ILC — seeking an investigation "with some urgency to assess these serious allegations".

But Scullion has refused, saying the issues have been thoroughly probed in three reviews and "significant scrutiny" of the former ILC board's decision has already taken place.

The agency is now fighting to have that decision overruled. It has written to the Prime Minister outlining what it claims are at least six breaches of the CAC Act and the Aboriginal and Torres Strait Is-

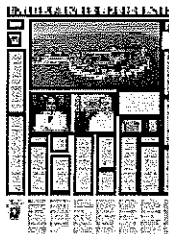
lander Act. In evidence to a Senate estimates hearing this week, Dillon said the board believed "a small number" of board members might have breached their duties. If the government does not order an inquiry, the ILC has warned it is preparing legal action against some former directors.

"We have formed the view that the ILC has a cause of action and standing to pursue claims against them," says a letter from Casey to Cormann sent last October.

"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."

It claims the purchase was driven by particular members of the former board.

Under the ATSI Act, the ILC is



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expected to act in accordance with "sound business principles when-

ever it performs its functions on a commercial basis".

The CAC Act imposes duties and obligations on board members of commonwealth statutory bodies that mirror those for corporate boards.

Following requests from *The Australian* under Freedom of Information laws, the ILC last week released more than 200 pages of documents, including board minutes leading up to the 2010 acquisition. This is the first time that details of the directors' deliberations have been made public. They make for prophetic reading.

As early as 2008, as the global financial crisis hit, ILC director Kevin Driscoll — appointed to the board for his business expertise — cautioned against the purchase. At this stage, the resort had a price tag of \$282m.

"Director Driscoll stated that ... he believed that the price of \$282 million ... was excessive given its location and particularly as it was not returning anything like the 15 per cent profit on the purchase price that he would expect in a remote area," the board minutes note.

"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."

This has since been upgraded to at least \$120m on top of \$50m already spent.

Driscoll warned that when the purchase price was added to the cost of repairs, the return on the Ayers Rock Resort would become even less attractive.

At the same meeting, chairwoman Shirley McPherson said that given the current global economic climate it was "the wrong time to borrow such a large amount of money for this project"

Deputy chairman Sam Jeffries also raised concerns "about sourcing the funding without taking away from existing and potential projects, which are substantial".

While noting it would be an

iconic investment, directors Max Gorringer and Ian Trust said they "were concerned that other projects would suffer".

In response, David Baffsky, then chairman of hotel group Accor, said that while the financial viability of the business operations was important, "it should not be the overriding consideration".

He insisted the ILC's prime goal was to create ownership and opportunities for indigenous Australians.

The FoI documents obtained show Driscoll's concerns were again raised at a meeting in April

2009, with particular reference to the figures provided by the firm undertaking due diligence, Grant Samuel. Driscoll was surprised that after 10 years of declining revenues, Grant Samuel was forecasting that from the date of acquisition, there would be five years of upward revenue and occupancy.

Driscoll expressed concern that "the cashflow projections are a complete reversal of the figures over the last 10 years".

Since the acquisition, revenue and occupancy have increased, but at a slower rate than forecast.

The concerns voiced by Driscoll have proved correct, with the difference in the forecast figures and the performance in the resort's past four years totalling \$87m.

Although the resort is running an operating profit, its returns are failing to cover the financing costs of \$11m a year that are underwritten by the ILC. As a result, the ILC is reallocating funds from its land acquisition and land management programs to cover the shortfall.

At the same time Driscoll was voicing his fears about the resort's commercial viability, directors Trust and Gorringer were also warning that the "significant investment in this property would

not allow the ILC to diversify". They said job creation programs elsewhere might suffer.

In August 2010, the ILC received correspondence from the Department of Families, Housing,

Community Services and Indigenous Affairs urging it should wait until a review of the ILC's borrowing powers was completed before proceeding with the acquisition.

After reviewing the terms on offer from the banks, Driscoll told the board he would not support the purchase.

In October 2010, when the board prepared to vote on spending \$320m on the resort, directors were warned of their responsibilities under the laws that the ILC now alleges may have been breached.

Two days before the ILC voted on the acquisition, then finance minister Penny Wong wrote to the chair of the board requesting urgent information about the sale, saying she was "concerned about financial and other risks that could arise from the proposal".

Further, she questioned the "financial robustness" of the model being used by the board to justify the acquisition, saying the proposal might "place the directors in a situation where they have not complied with their duties under the CAC act to ... act with care and

diligence and act in good faith in the best interests of the ILC".

Five years on, as it deals with the aftermath of the decision, the ILC is being urged to draw a line in the sand.

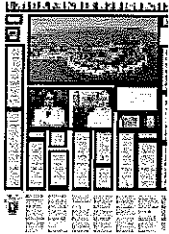
Resisting pressure for an inquiry, Scullion says the ILC "is best served by working collaboratively to make the resort a success, and build on the positive recent financial performance and indigenous employment outcomes".

But the ILC is determined and questions why the Coalition would not want to expose a \$100m financial scandal that happened under the Rudd-Gillard governments.

Casey, whose board term is up for renewal in October, claims Scullion has a conflict of interest in preventing the review.

She has raised concerns with Cormann that Scullion may not be "appropriate" to oversee the investigation.

"There are a number of statements by Senator Scullion in the parliament (prior to becoming a minister) which confirm he had es-



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The Australian, Australia

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established relationships with a number of the directors and officers involved in the transaction," the letter says.

The ILC raises the fact Scullion reappointed Baffsky to the board of Voyages Indigenous Tourism Australia, and appointed former chairwoman McPherson to the board of Indigenous Business Australia.

They suggest a "close relationship" between Scullion and some of the former board members.

Casey has suggested to Cormann that he obtain "a formal assurance from Minister Scullion that he was not privy to information related to the proposed transaction, nor personally involved in discussions related to the financing or merits of the transaction prior to its execution".

Dillon went further in estimates this week, revealing the board had written to Abbott and had deliberately excluded Scullion from the correspondence, "because we believe that he has a conflict of interest in at least one of those areas or may have a conflict of interest".

"We thought it was best if the Prime Minister dealt with that rather than the minister," he said. "It makes it a bit easier for the minister to deal with that."

Scullion has requested ILC to release to him its legal advice relating to the former directors.

The ILC is seeking advice on its position and has written to Abbott raising concerns about the "probability" of the minister's request.

Scullion has denied any conflict of interest.

Baffsky tells *The Australian* the claims from the ILC are "rubbish" and says the due diligence applied to the purchase was rigorous. He says the board duly considered all concerns raised by Driscoll and the ministers of the day.

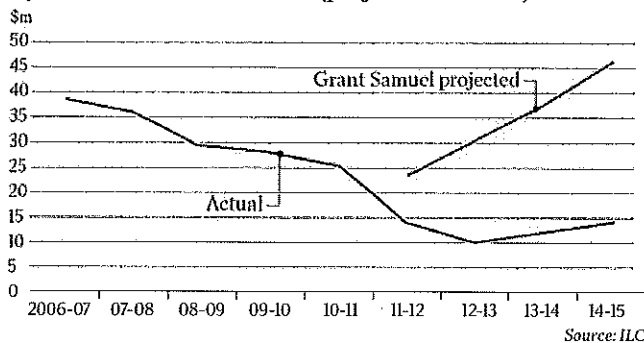
"Obviously, why would we vote in favour of it if we hadn't had due regard to what he had to say, and due regard to the voluminous due diligence that had been conducted by various people?" he says.

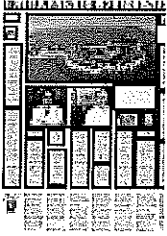
It is now up to Abbott to make the next move. But it seems clear there are more chapters to come in this desert resort's story.

'Director Driscoll stated that ... he believed that the price of \$282 million ... was excessive given its location'

ILC BOARD MINUTES, 2008

Ayers Rock Resort revenue (projected v actual)





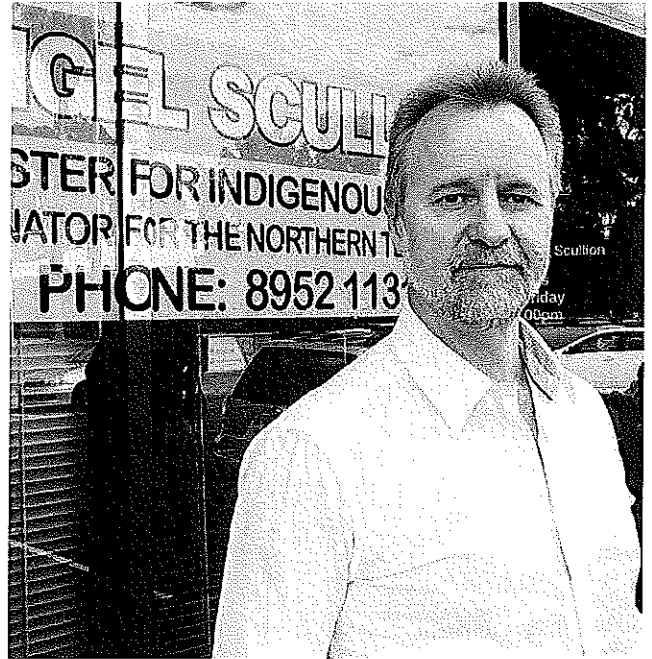
05 Jun 2015  
The Australian, Australia

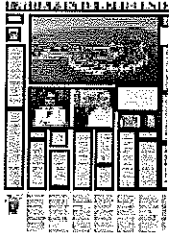
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Clockwise from main, the  
Ayers Rock Resort; former  
finance minister Penny  
Wong; former ILC board  
member David Baffsky;  
Indigenous Affairs Minister  
Nigel Scullion; and ILC  
chairwoman Dawn Casey



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Page 1 of 1

# \$320m resort sale set for court

EXCLUSIVE

SARAH MARTIN

THE Indigenous Land Corporation is preparing to sue four former officers involved in the \$320 million purchase of Ayers Rock Resort, as it continues its two-year push for a government inquiry into the deal.

In correspondence to Finance Minister Mathias Cormann, ILC chair Dawn Casey has advised the government that the organisation believes four former officers "breached their duty of care and diligence" under the Commonwealth Authorities and Companies Act in relation to the 2010 purchase.

It is now seeking to recover some of the more than \$100m in losses it has incurred as a result.

However, the ILC has notified Senator Cormann that it has suspended further action against the former officers, pending a response from government on whether it will establish an independent inquiry into the acquisition.

In reply to Dr Casey's letter, Senator Cormann agrees that the allegations require further investigation and suggests there may be "possible breaches of both civil and criminal law."

"I also think it is important the entire facts of the purchase ... are investigated by the Government itself," he said in a December 22 letter to Dr Casey.

Indigenous Affairs Minister Nigel Scullion has rejected the call to investigate the purchase, saying "significant scrutiny" of the former ILC board's decision has already taken place.

However Dr Casey has since

raised concerns with Senator Cormann that Senator Scullion may not be "appropriate" to oversee the investigation.

"There are a number of statements by Senator Scullion in the parliament (prior to becoming a Minister) which confirm he had established relationships with a number of the directors and officers involved in the transaction," the letter says.

It says Senator Scullion re-appointed David Baffsky to the board of Voyages Indigenous Tourism Australia, and appointed another former board member, Shirley McPherson, to the board of Indigenous Business Australia.

Dr Casey suggests to Senator Cormann that he obtain "a formal assurance from Minister Scullion that he was not privy to information related to the proposed transaction, nor personally involved in discussions related to the financing or merits of the transaction prior to its execution." She says if he had been involved, it would be inappropriate for his department to have carriage of the investigation.

The government has since sought further information from Dr Casey to justify her request for an inquiry, and the details of allegations against former ILC board members.

# The Sydney Morning Herald

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## Cormann backs inquiry into indigenous purchase of Ayers Rock Resort

Heath Aston, political correspondent  
Published: January 26, 2015 - 12:15AM

The purchase of the five-hotel Ayers Rock Resort overlooking Uluru, by the Indigenous Land Corporation is to be investigated by the federal government.

Fairfax Media has learnt that Finance Minister Mathias Cormann has been convinced of the need for an inquiry into the \$320 million acquisition in 2010 after lobbying by the new board of the ILC.

Mr Cormann has asked Indigenous Affairs Minister Nigel Scullion to take charge of a review into the actions of the former ILC board as they pushed ahead with buying the resort despite repeated warnings against the plan by former Labor ministers Penny Wong and Jenny Macklin.

The new board of the ILC, led by chairwoman Dawn Casey, has complained that the acquisition has burdened the corporation with debts of \$200 million and the former directors paid too much for the resort just before a sector-wide slump in tourism.

The value of the resort has been written down twice and is now valued at just over \$200 million, nearly \$120 million less than when it was bought from property giant GPT as it liquidated assets after the global financial crisis.

Dr Casey has described the deal as "perhaps the largest single evaporation of public money in the indigenous policy domain, ever" and ILC chief executive Mike Dillon told a Senate committee last year the purchase was "inexplicable and inexcusable".

The ILC's charter is to "assist indigenous people to acquire and manage land to achieve economic, environmental, social and cultural benefits", but Dr Casey said the resort acquisition – by far the biggest in the ILC's 20-year history – will mean the diversion of funds from the \$1 billion Land Account that would otherwise be spent on numerous Aboriginal communities across Australia.

### Bitter fallout

The bitter fallout over the deal has created a feud between Dr Casey and some of the business community's heaviest hitters, including hotels industry titan David Baffsky, who spearheaded the purchase of the resort during his time as a director.

After the ILC bought the resort, Mr Baffsky established Voyages Indigenous Tourism to run the business and brought in former Qantas boss Geoff Dixon, Investec Bank chairman Richard Longes, property executive Peter Barge and former boss of Indigenous Business Australia, Ronald Morony.

Dr Casey put a broom through the boards of Voyages and ILC when she was appointed in 2011 and has since received two independent reports, including a McGrathNicol review that found holes in the sale process.

McGrathNicol found one of the property valuations used to guide the purchase was 17 months out of date and the \$317 million paid exceeded one of three pre-sale valuations by \$22 million. But it also found good governance was applied.

An inquiry, which could be led by the federal auditor-general or Mr Scullion's department, would likely focus on governance issues.

On Friday, Mr Baffsky, who spent more than a decade on the audit and risk committee of the ILC, said there was no need for another inquiry and it would be an "obscene waste of money" unless there was new information the finance minister wanted looked at.

But he said he would support any review that put a focus on the indigenous employment generated by the Ayers Rock Resort, which has 200 Aboriginal employees.

## 'Breathtaking hypocrisy'

Mr Baffsky accused Dr Casey of "breathtaking hypocrisy" after she presided over a near 30 per cent write-down of indigenous tourism assets in her time as chairwoman of Indigenous Business Australia.

"It's a shame the ILC hasn't used [the resort] as a springboard for more indigenous involvement in tourism. That's why I'm most critical of Dawn Casey," he said.

Dr Casey declined to comment directly and an ILC spokesman said: "The ILC prefers not to comment on this matter at this point in time."

A spokeswoman for Senator Scullion signalled he may not agree with Mr Cormann on the need for an investigation. "The Minister will respond directly to the Finance Minister before commenting," she said.

Senator Scullion has in the past spoken positively in Parliament on the performance of Mr Baffsky and former executive David Galvin. In November, he appointed Shirley McPherson, who chaired the ILC during the sale, to the board of the IBA.

Last year, Mr Dillon described Ms McPherson's responses to at least eight letters from Ms Wong and Ms Macklin asking the ILC not to go through with the purchase as "desultory and paltry".

"As paltry as a bandicoot's breakfast. It was pathetic," he said.

Cast of characters:

Dawn Casey, chair of ILC

Mike Dillon, ILC chief executive

David Baffsky, Accor Hotel honorary chairman and former ILC director

Geoff Dixon, former Voyages Indigenous Tourism board

Shirley McPherson, former ILC chair, director of IBA

Finance Minister Mathias Cormann



Indigenous Affairs Minister Nigel Scullion

Penny Wong, former Labor finance minister

Jenny Macklin, former indigenous affairs minister

*This story was found at: <http://www.smh.com.au/federal-politics/political-news/cormann-backs-inquiry-into-indigenous-purchase-of-ayers-rock-resort-20150125-12x1kz.html>*

# The Sydney Morning Herald

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## Row over Dawn Casey's 'outrageous' Ayers Rock Resort comments

Heath Aston

Published: January 23, 2014 - 12:27PM

The head of the Indigenous Land Corporation has thrown down a challenge to sacked directors of the Ayers Rock Resort, saying if the \$320 million acquisition of the resort overlooking Uluru was such a good deal they should put a consortium together and buy it.

The 2010 purchase of the five-hotel resort at Uluru has become a huge source of friction between the ILC, the new Indigenous Affairs Minister Nigel Scullion and some of the biggest names in the business world.

In October last year, ILC chairwoman Dawn Casey and the board sacked the majority of the board of Voyages Indigenous Tourism - the company established to run the resort for the ILC - claiming it was a dud purchase and a financial drag on the authority.

The sacked directors include former Qantas boss Geoff Dixon, Investec Bank chairman Richard Longes and property executive Peter Barge. Voyages chief executive Koos Klein quit in protest at the surprise purge.

Longtime ILC director David Baffsky, who remains honorary chairman of Accor Hotels, was also shown the door when his tenure was not renewed.

Ms Casey told Fairfax Media: "If this group of businessmen think [the resort] was a good buy and still is a good buy then do they want to make an offer to the ILC?"

She was responding to the emergence of a 30-page consultants' report paid for by Mr Baffsky, Mr Dixon and the other sacked directors.

Authors, Aegis Consulting, were asked to highlight the indigenous employment benefits of the acquisition. They questioned the handling of the matter by the ILC under Ms Casey, finding that Ms Casey "may have commercially damaged a federal government asset" by questioning the sense of the purchase.

In November, Ms Casey told Fairfax Media the acquisition was "perhaps the largest single evaporation of public monies in the indigenous policy domain, ever" after the book value of the resort was cut to \$250 million.

The current and former directors are at war over whether the resort is profitable in light of the near \$200 million debt the ILC has been saddled with and there are different opinions on whether the sustained downturn in tourism had been seen coming when the sale was executed.

Mr Baffsky hit back angrily at Ms Casey's latest remarks, labelling them "outrageous" and "absolutely unbelievable".

He said they could affect contractors and suppliers to the resort.

"Talk about talking an asset down and destabilising the place. That is just irresponsible and should be of great concern," he said.

Mr Baffsky said a recent McGrathNicol report did not find any areas of concern about the actions of the former board.

The report, released in December, questioned the projections for hotel room occupancy assumptions used by Grant Samuel, the main adviser to the sale.

"The [Grant Samuel] model rightly identified that occupancy was the key driver for the [resort's] revenues. However, the model indicated a strong improvement in occupancy in years after the transaction, stabilising at a level of 67 per cent.

"The historical trend on occupancy at Ayers Rock Resort had seen a reduction to a trend level approximating 63 per cent for the four years prior to the global financial crisis. Adjusting the occupancy levels in the [Grant Samuel] model to reflect a 63 per cent occupancy level would suggest a net present value of \$250 million (from the initial value of \$292 million)."

*This story was found at: <http://www.smh.com.au/national/row-over-dawn-caseys-outrageous-ayers-rock-resort-comments-20140123-31acq.html>*



**HOW THE ULURU RESORT DEAL WENT BAD**

# Rock and a hard place

'The largest single evaporation of public monies in the indigenous policy domain ever'

**NEWS, Page 6**





# Millions lost on Uluru resort

**Heath Aston**

Political Correspondent

The head of the Indigenous Land Corporation has accused her own organisation of presiding over "perhaps the largest single evaporation of public money in the indigenous policy domain, ever".

Aboriginal leader Dawn Casey, the chairwoman of the corporation, has questioned the sense of its \$320 million purchase of the Ayers Rock Resort, the group of five hotels that look onto Uluru.

A report by auditor Deloitte has identified a breakdown of corporate governance in the 2010 acquisition, championed by some of the most influential figures in business and politics, including David Baffsky, a stalwart of the tourism industry - and until last month a long-time board member of the corporation - and Labor power-broker Mark Arbib, former minister for indigenous employment.

Three years later, amid a downturn in flights and tourism into the Northern Territory, the value of the resort has been slashed by \$62 million, with a further downward adjustment expected from an official valuation under way.

The corporation has \$200 million in debts on the resort and - while being deemed a stand-out success in terms of indigenous jobs

training - there is argument over the profitability of the business.

The resort is forecast to make an operating cash profit of \$14.5 million this year, but Dr Casey, who became chairwoman in October 2011, said the decade of interest payments - which she believes will push the total cost of the purchase past \$400 million - should be considered in judging its success.

"In the absence of an extraordinary turnaround in market conditions, the ILC board will have no choice but to reallocate funds from other land management priorities to repay the borrowings, which will significantly reduce our ability to meet the expectations in indigenous communities across the nation," she said.

"This is perhaps the largest single evaporation of public monies in the indigenous policy domain ever."

Questions are being asked as to why the corporation got itself into such a bold venture in the volatile tourism market and whether the \$320 million was excessive. A 70-page report by Deloitte has raised a question about the appointment of Sydney merchant

bank and corporate adviser Grant Samuel, which handled the drawn-out purchase process between 2008 and 2010.

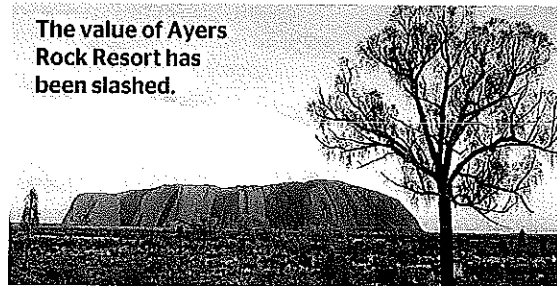
Grant Samuel was on a monthly retainer worth more than \$50,000 and an agreement based on a percentage of the sale that saw it make \$3 million on the deal.

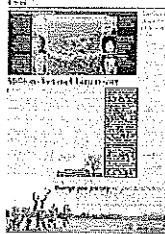
Deloitte found the corporation's purchasing protocols were broken when the contract to advise on the sale was not put out to tender.

"Since Ayers Rock Resort was, in dollar terms, ILC's largest ever indigenous land acquisition, and the value of Grant Samuel's service was expected to be in excess of \$400,000 (based on expected purchase price, with final fees being in excess of \$3 million) it meets two of the requirements for tendering being a non-standard and high-value purchase," Deloitte found.

"Through inquiries from management and inspection of board

**The value of Ayers Rock Resort has been slashed.**





Age, Melbourne  
18 Nov 2013, by Heath Aston

General News, page 1 - 889.91 cm<sup>2</sup>  
Capital City Daily - circulation 142,050 (MTWTF--)



Australian Government  
Indigenous Land Corporation

ID 223607291

BRIEF ILC

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minutes, there is no evidence to suggest that a tender process was followed or any written quotes were sought and/or obtained."

Dr Casey said the current board could find no records "which allow us to understand the basis for the engagement of Grant Samuel or the fee structure adopted".

Mr Baffsky, who led the purchase negotiations on behalf of the corporation, declined to comment but argued strongly in recent days

that the resort remains profitable despite the tourism downturn and high Australian dollar. Mr Baffsky became inaugural chairman of Voyages Indigenous Tourism Australia, the subsidiary company created to run the resort. He brought on to the board Richard Longes, a former chairman of GPT.

Grant Samuel chairman Ross Grant also declined to comment but sources said the corporation in effect "inherited" it as adviser be-

cause it had been advising Wana Ungkuntja, a body representing indigenous communities around Uluru which had the last right of refusal on any deal to take Ayers Rock off then owner GPT.

Mr Arbib's lobbying for the acquisition inside government was not matched by former indigenous affairs minister Jenny Macklin, who wrote to the corporation urging caution about large debts.

## Who's who in the Uluru deal

**David Baffsky**  
Former Accor chairman, ILC board member and director of National Indigenous Culinary Institute. Brought merchant bank Grant Samuel in to advise.



**Ross Grant**  
Chairman of Grant Samuel, director of National Indigenous Culinary Institute. Grant Samuel advised Accor on past deals.



**Mark Arbib**  
Former indigenous employment minister. Director of National Indigenous Culinary Institute and adviser to Crown chairman James Packer.



**Jenny Macklin**  
Former indigenous affairs minister. Wrote to ILC urging caution over deal.




**Dawn Casey**  
New chair of ILC, former director of Powerhouse Museum, chair of Indigenous Business Australia.



**Richard Longes**  
Former Voyages director and former GPT chairman.

# The Sydney Morning Herald

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## Disastrous Ayers Rock Resort purchase ignored advice of ministers

Heath Aston

Published: November 22, 2013 - 1:37PM

- [Federal politics: full coverage](#)

The purchase of the Ayers Rock Resort was "inexplicable and inexcusable", according to the chief executive of the Indigenous Land Corporation.

The "disastrous decision" of the former board of the ILC to plough \$320 million into the five-hotels overlooking Uluru, will hamper the corporation's core purpose - to buy and manage land on behalf of Aboriginal communities across the country - for the next 15 to 20 years, said ILC CEO Mike Dillon.

He told a budget estimates hearing that former Indigenous Affairs Minister Jenny Macklin and former Finance Minister Penny Wong tried to dissuade the ILC from going through with the acquisition.

The ministers wrote a total of eight letters advising against the purchase. Mr Dillon described them as the "strongest letters I've ever seen from a minister to a statutory corporation in my 30 years of public sector experience".

Ms Wong urged in a letter that the ILC defer the purchase process in October 2010. A day later, the corporation executed the deal to take the resort off the hemorrhaging property giant GPT.

The publicly-funded ILC ordinarily has \$35 million of its \$50 million annual budget available to invest in land projects, pastoral, cultural and tourist-related.

Mr Dillon said \$20 million a year of that will now have to be spent covering interest and principal payments on the \$200 million loans taken out by the ILC to execute the 2010 Ayers Rock purchase.

As revealed by Fairfax Media, the \$320 million purchase has been branded "perhaps the largest single evaporation of public money in the indigenous policy domain, ever". This week she called for Parliament to investigate the probity surrounding the purchase.

The deal was driven by former ILC director David Baffsky, a veteran of the tourism sector as honorary chairman of Accor Asia Pacific Hotels, and Sam Jeffries, an indigenous representative of the ILC. The then chairwoman Shirley McPherson, who has since been hired by construction company Leighton, supported the purchase.

Mr Dillon said her responses to ministerial letters were "desultory and paltry".

"As paltry as a bandicoot's breakfast. It was pathetic," he said. "How the previous board of the ILC made this decision, to my mind, is inexplicable and perhaps even inexcusable. The due diligence process highlighted the risks they faced. They had the information. Key board members expressed reservations and concerns but they were essentially, apparently, sidelined," Mr Dillon said.

The ILC was advised on the deal by Sydney-based merchant bank Grant Samuel which took a \$3 million fee based on the purchase price. Fairfax revealed on Monday that a report by auditors questioned the appointment of Grant Samuel without any tender process by the former ILC board.

Mr Dillon said based on profit projections, the resort should have made delivered a \$60 million profit by 2013 and be paying the interest and principle of the loans. The ILC recently had to write a \$10 million cheque so that Voyages Indigenous Tourism, the company set up to run the resort, could cover its debts.

"The reality is that just two and a half years in, those [financial] assumptions have been proven to be incorrect. Not just wrong, fundamentally and absolutely incorrect," he said.

Mr Dillon, a former senior adviser to Ms Macklin, was appointed chief executive three months ago while Dawn Casey joined the board in late 2011, a year after the purchase.

Business figures connected to Voyages, including Investec chairman Richard Longes and Ross Grant of Grant Samuel, the merchant bank that made \$3 million advising on the Ayers Rock Resort buy, insisted in recent days the business was profitable and would recover from the downturn in tourism and the higher dollar.

*This story was found at: <http://www.smh.com.au/federal-politics/political-news/disastrous-ayers-rock-resort-purchase-ignored-advice-of-ministers-20131122-2y0dd.html>*

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