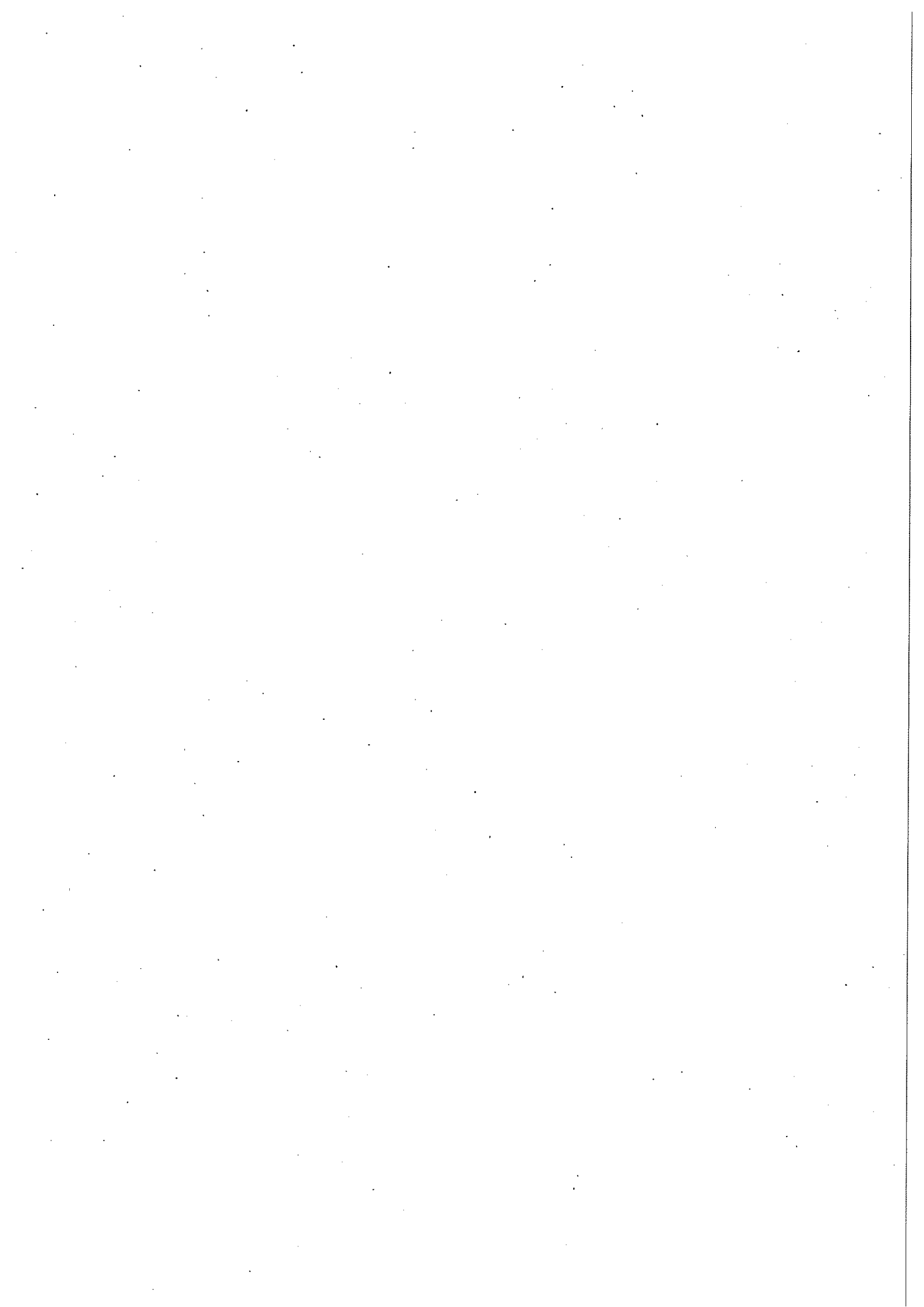


DOCUMENT 1





Australian Government
Indigenous Land Corporation

Board in Confidence
BOARD DECISION

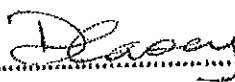
Decision No 423

BOARD MEETING No: 191
MEETING DATE: 26 August 2015
FOR: Certification of the 2014/15 Annual Report

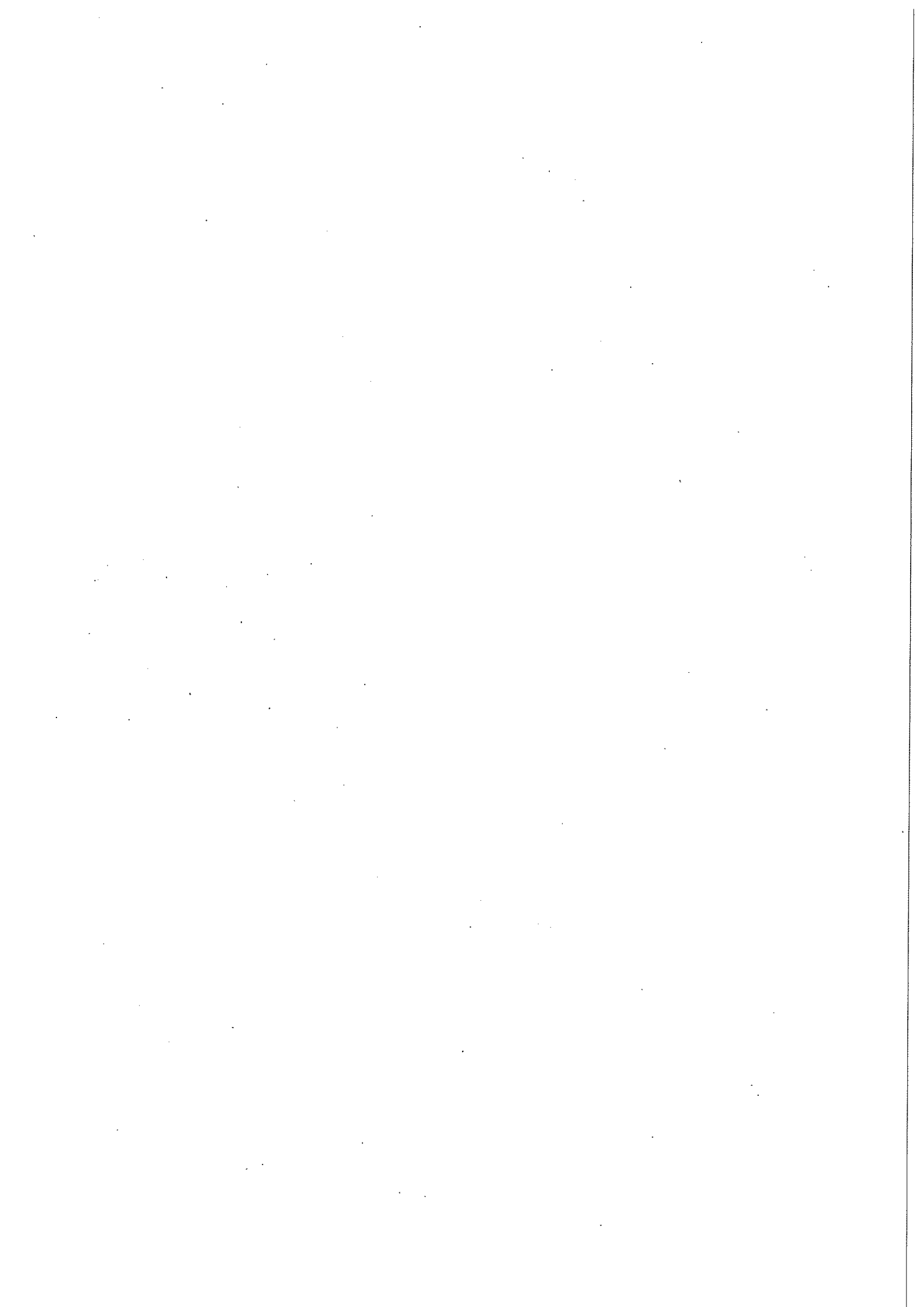
THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND CORPORATION:

1. Notes that it is responsible under Section 46 of the *Public Governance, Performance, Accountability Act 2013* (PGPA Act) for the preparation and presentation each year of an Annual Report.
2. Resolves that the 2014/15 Annual Report complies with the requirements of Section 46 of the PGPA Act and associated rules and includes the ILC's Report of Operations and audited consolidated financial statements for the reporting period, subject to:
 - a) Directors providing any changes required to the content of the draft report to the Chief Executive Officer by 1 September 2015
 - b) Receipt of a certification from the Department of Prime Minister and Cabinet that the draft report satisfies annual reporting compliance requirements.
3. Authorises the Chair to sign the letter of transmission to the Minister for the ILC 2014/15 Annual Report and cause the report to be printed and tabled according to annual report deadlines.

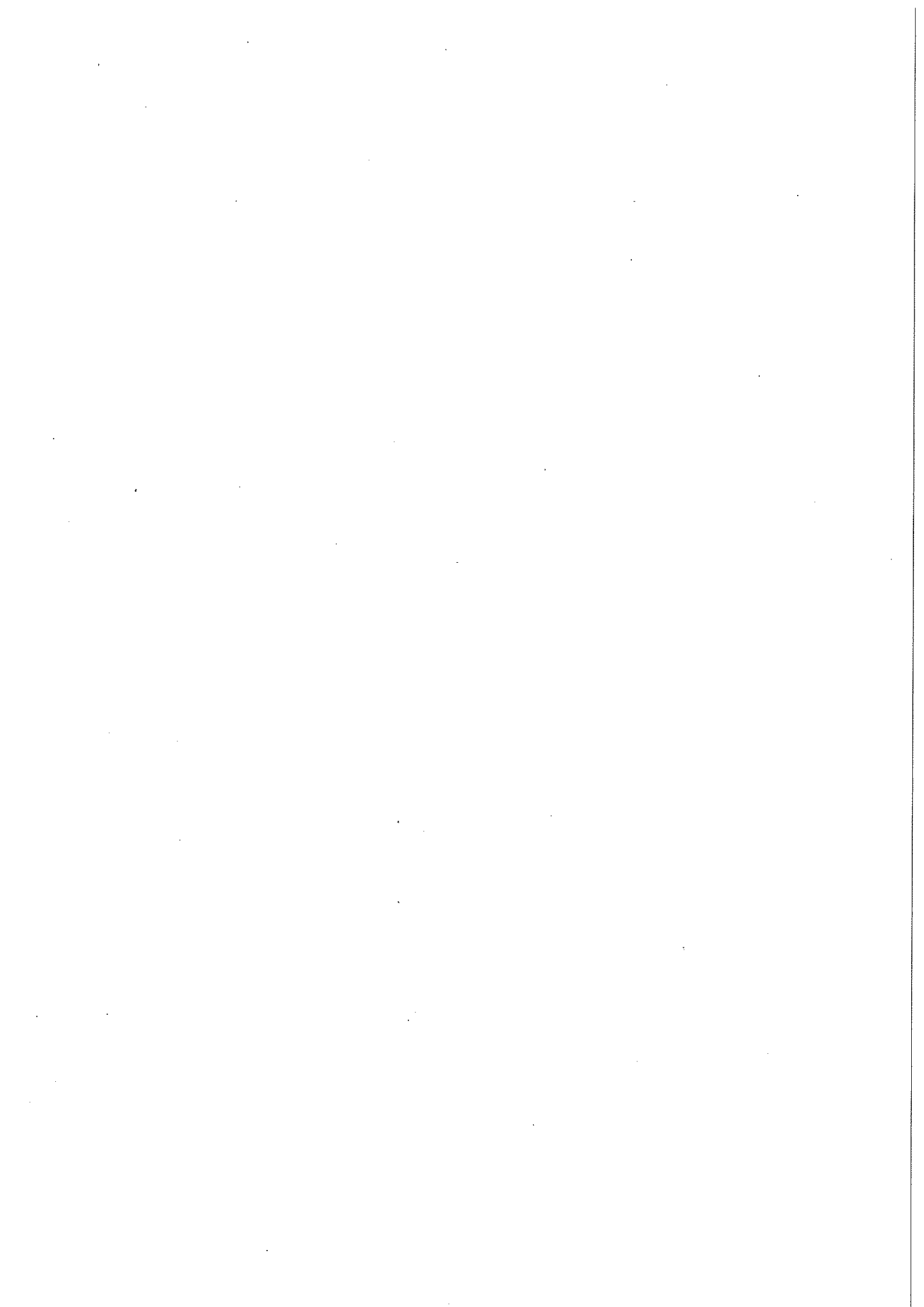
SIGNED, Dawn Casey, Chairperson


.....

Date: 26.08.15



DOCUMENT 1A



Petty, Barry

From: McFadyen, Denise
Sent: Tuesday, 12 January 2016 10:22 AM
To: Kemble, Alice
Subject: RE: sorry, will get off soon.

I am just doing the one on AR foreword? There have been developments – conversation with Leo. Apparently the Minister thinks the letter is inadequate, and wants the Board to reflect on and repudiate the inaccuracy in the report – this one:

the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the then Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister identified a range of relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

From: Kemble, Alice
Sent: Tuesday, 12 January 2016 10:45 AM
To: McFadyen, Denise
Subject: RE: sorry, will get off soon.

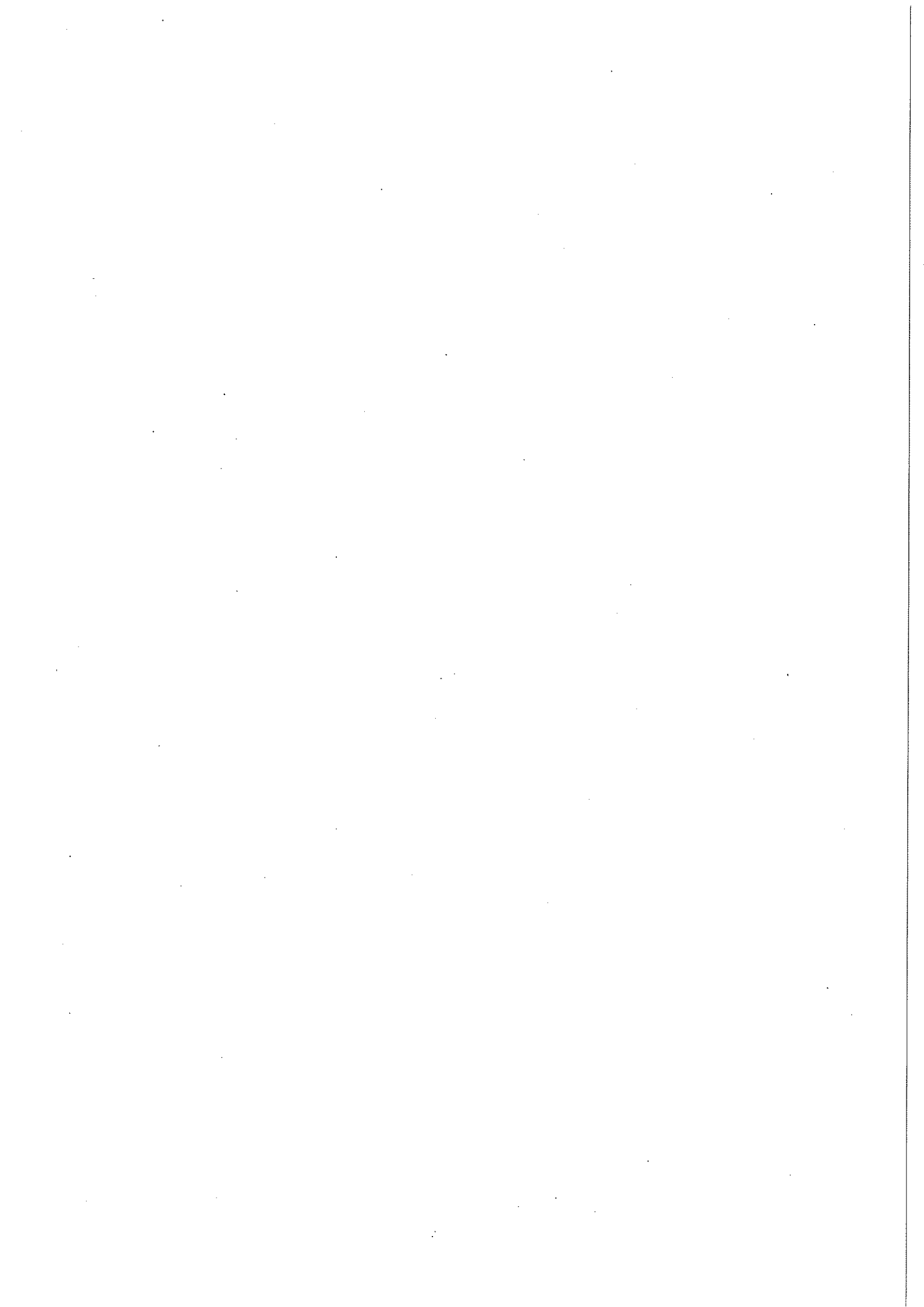
Senate estimates briefs would be lovely. ☺ Am off the phone now!

From: McFadyen, Denise
Sent: Tuesday, 12 January 2016 10:34 AM
To: Kemble, Alice
Subject: RE: sorry, will get off soon.

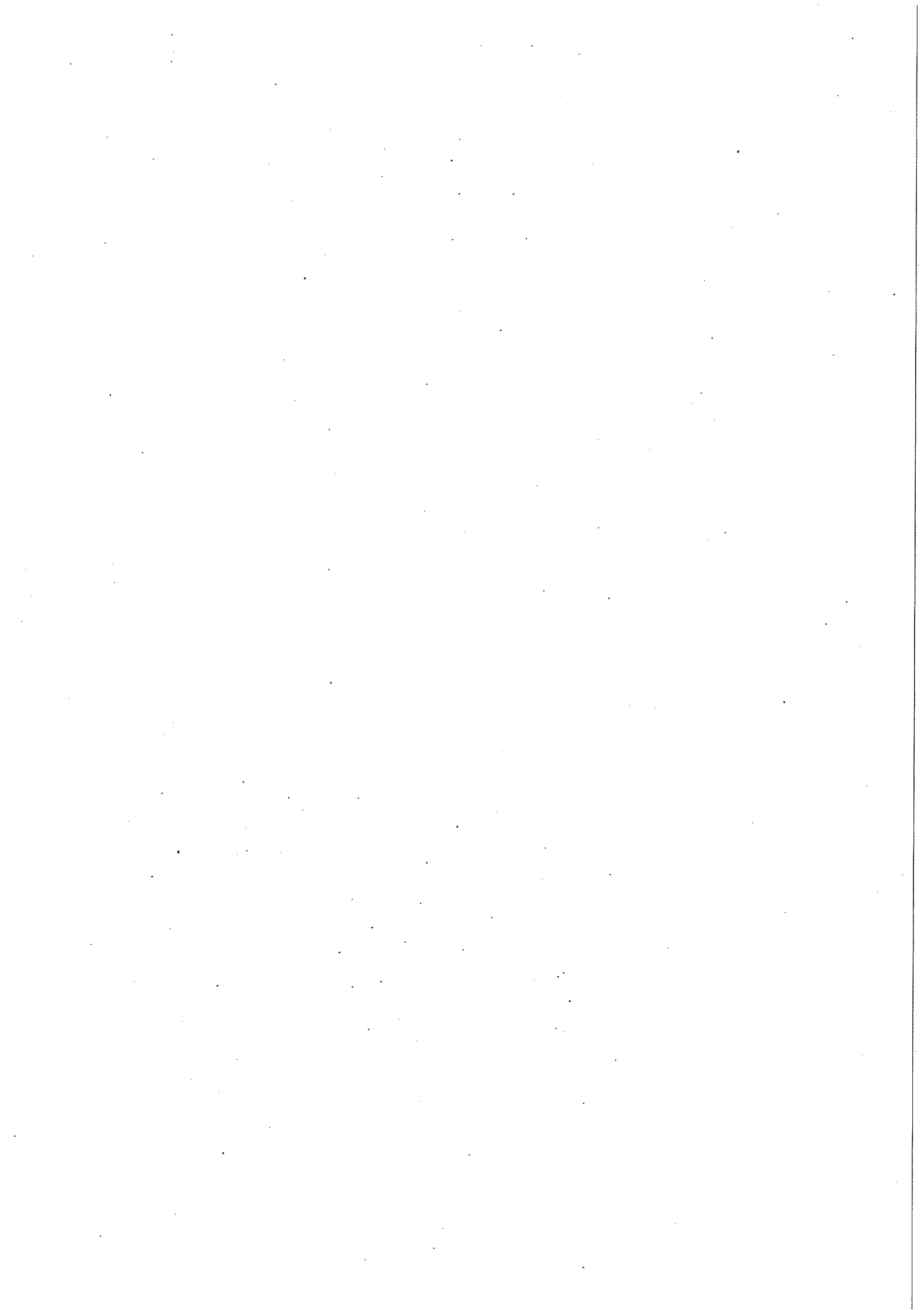
Just wanted to know if you want me to do anything in particular – otherwise will get on with my other tasks as assigned.

From: Kemble, Alice
Sent: Tuesday, 12 January 2016 10:32 AM
To: McFadyen, Denise
Subject: sorry, will get off soon.

Gah...



DOCUMENT 2



Petty, Barry

From: Kemble, Alice
Sent: Tuesday, 12 January 2016 1:20 PM
To: Bator, Leo
Subject: FW: Chair's forward

Leo

We will have draft briefs to you along these lines and will include responses to the questions Kate has raised in defensive senate estimate briefs.

Let me know if you would like anything different.

Alice

From: Gumley, Kate
Sent: Tuesday, 12 January 2016 12:30 PM
To: Nguyen, Tri; Bator, Leo
Cc: Kemble, Alice
Subject: RE: Chair's forward

Hi Leo

Tri has just called and discussed his conversation with you on varying the forward of the annual report. I understand Minister Scullion is concerned about the paras below in the forward. I expect as Tri has flagged that we will attract scrutiny about the delay and any deletions to the annual report at Estimates. Given the definitive support from Senator Cormann for the review expressed in his letter (which is already publicly available) this deletion may attract particular interest. I suggest given the serious reputational risks for the Chair and ILC we should seek a formal letter from the Minister asking for his changes.

I suggest we provide the Board with 3 new papers at the 18 Jan Board mtg. I suggest the papers are limited to one specific issue to avoid confusion on recommendations and in the interest of all options being presented to them:

1. A paper on the Annual Report giving them 3 options to choose from and recommending option (a), (a) retain the current forward with the offending sentence deleted, with the current stronger accompanying letter to position the new Board and (b) a new forward written by the current Chair with a letter to the Government committing to collaborate with them (c) retaining the current forward in full and attaching the stronger letter from the Chair
2. A paper on the SLAB, recommending Directors note the matters not covered in the current approach (detail attached) being developed with Government and ceasing support for the SLAB, writing to the Greens, opposition and Government and Indigenous stakeholders we have previously corresponded with. This will set out the logic and new approach and be a good warm up for the stakeholder discussions.
3. A paper recommending the Board cease the call for a public inquiry into the ARR purchase. This should attach the material provided to the Prime Minister and ask directors to consider the material in exercising their directors' duties in determining if there is insufficient basis for an inquiry by Government.

I have set out some possible questions below and we will need to prepare some defensive briefings.

Likely questioning might be:

1. Why were there delays in the publication of the report
2. When did the ILC provide the report to government and when was it released by the Minister
3. Were there any changes to the report? Who asked these changes be made? Did the Minister, his office or department ask for changes to be made?
4. What negotiations were there on the annual report with the Minister, his office or the department? Who conducted these?

5. Is there written correspondence or emails relating to the requested changes?
6. Was a Board paper put to the Board to approve the changes? Did the current Board discuss the changes? Did they approve them as recommended to them or did they vary these? How many directors voted in support of this action?
7. Is it good governance to vary an annual report of an outgoing chair? Has this previously happened to an ILC report?
8. Does the ILC's legislation require the Minister to approve the Annual report? Was this a formal direction from the Minister? Can this be tabled?
9. How can the ILC be regarded as independent of Government when it is prepared to vary core organisational documents?
10. Has the Board considered their support for the SLAB? What was the recommendation put to the Board? How many directors voted to not proceed with support for the SLAB?
11. Has the Board considered their support for the call for an inquiry? What were the recommendations put to the Board? How many directors voted to not proceed with support for the inquiry?

Regards

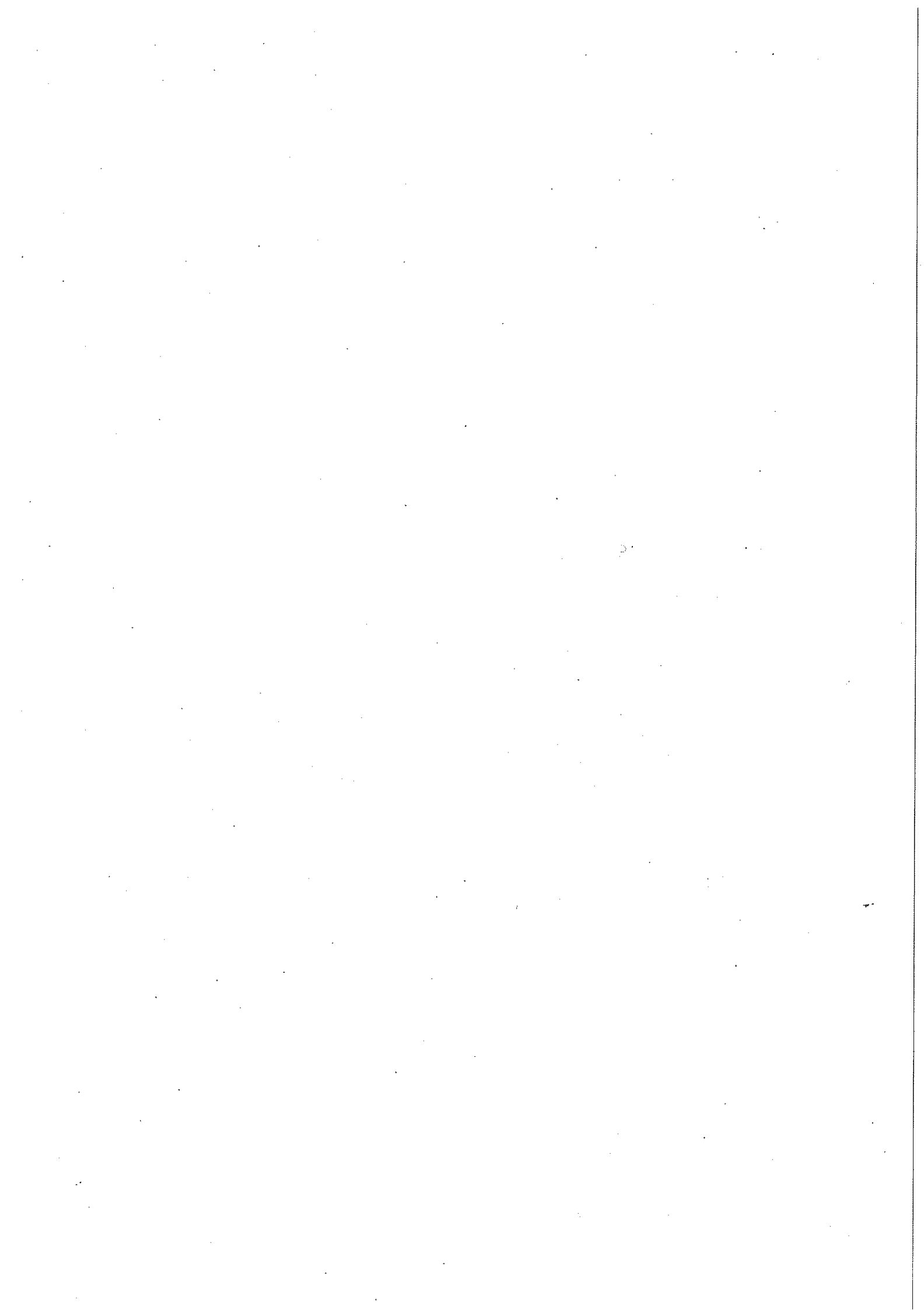
Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

Redacted s 42

Redacted s 42





SENATOR THE HON MATHIAS CORMANN
Minister for Finance

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



C14/3578

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.

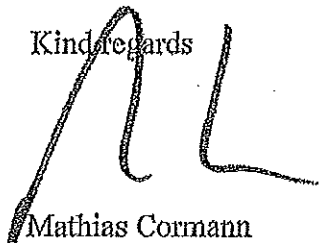
Accordingly, I have written to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, on this matter. As the portfolio Minister responsible for ILC and also for the ATSI Act, he is more appropriately placed to conduct any investigation of the broader issues through his department. He may 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.

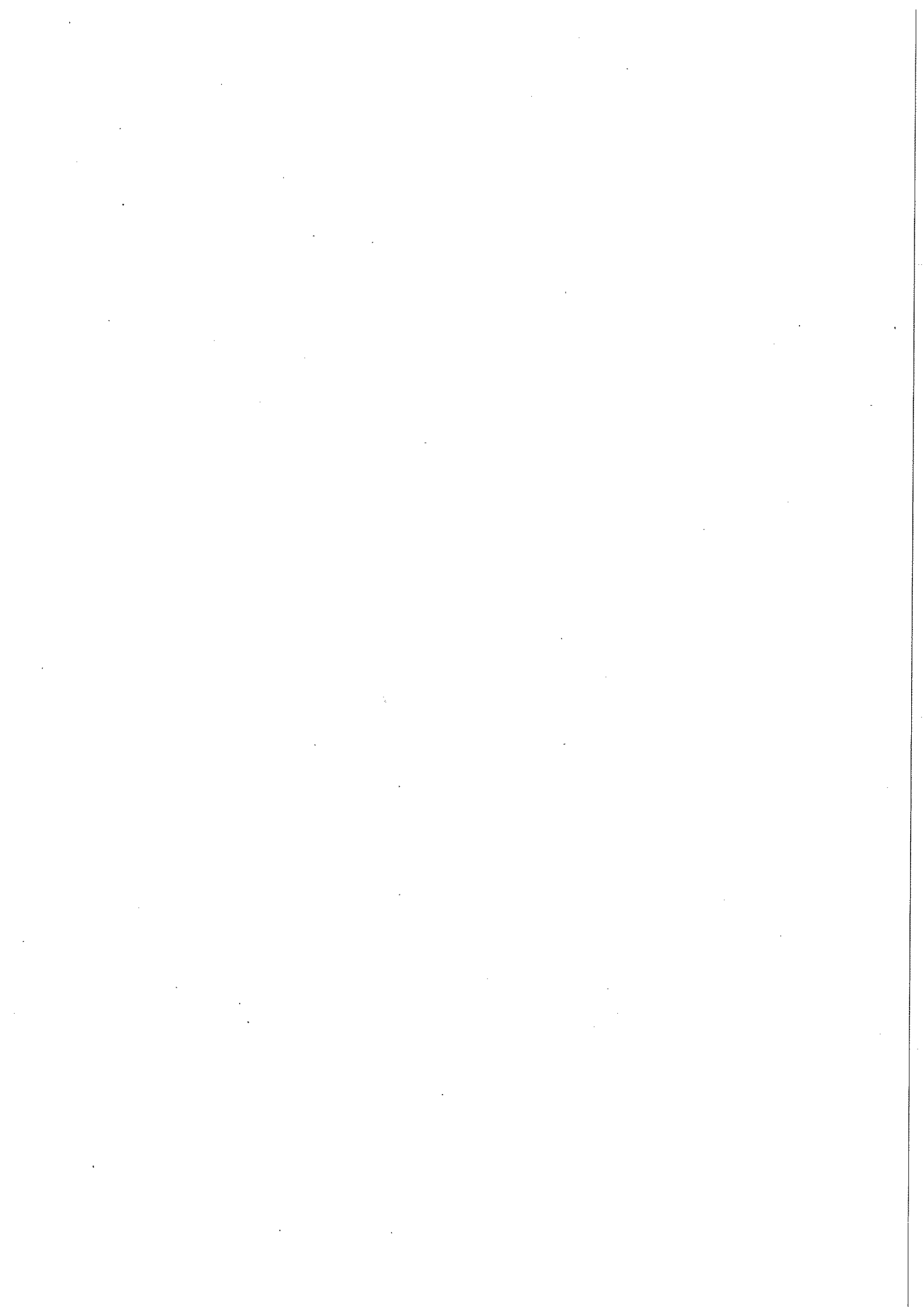
Kind regards

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a smaller 'C' and a long horizontal stroke.

Mathias Cormann
Minister for Finance

LP December 2014

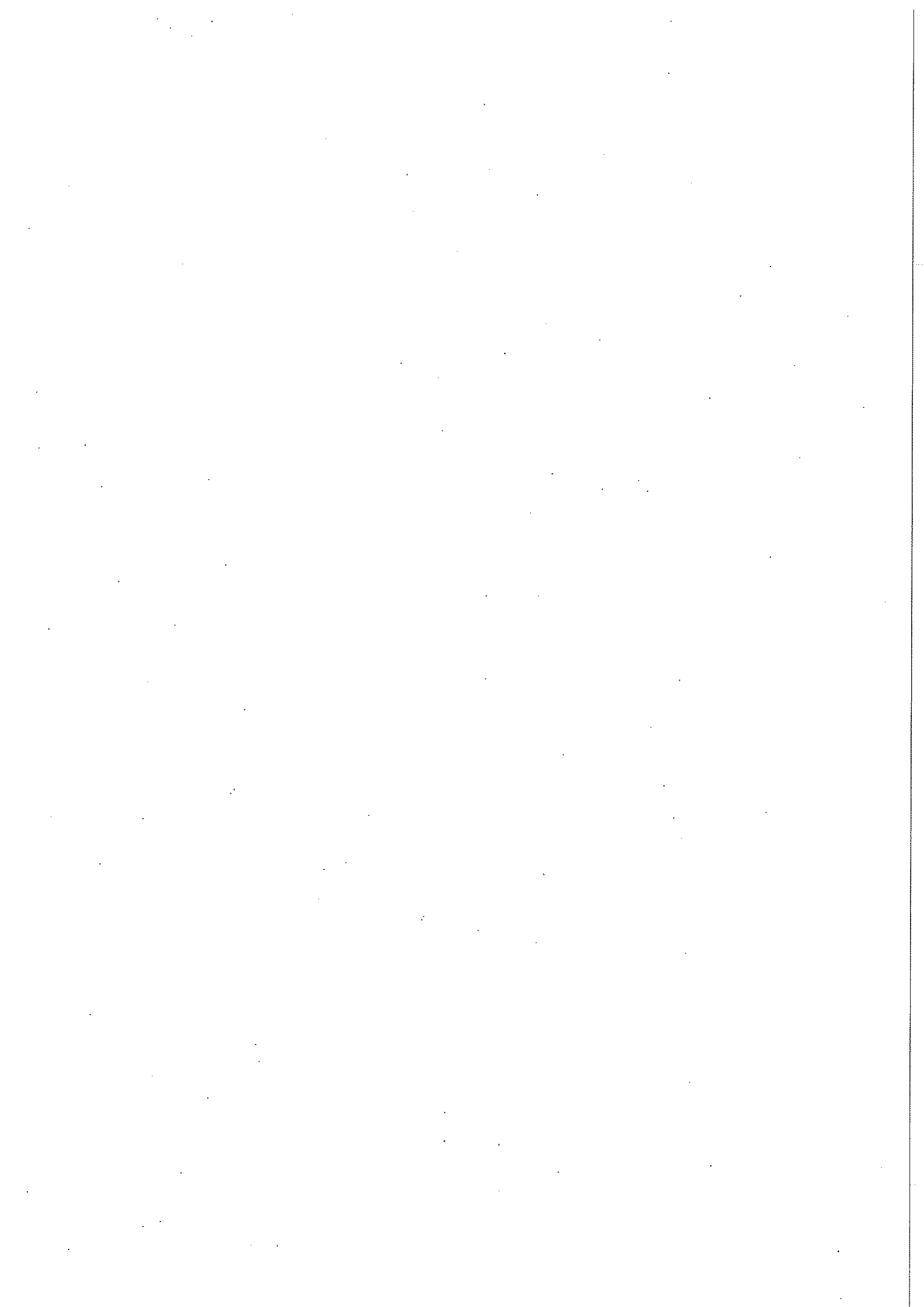
DOCUMENT 2A



Petty, Barry

From: McFadyen, Denise
Sent: Tuesday, 12 January 2016 3:51 PM
To: Kemble, Alice
Cc: Lowe, Sarah
Subject: Board paper - Consideration of AR - Draft.docx
Attachments: Board paper - Consideration of AR - Draft.docx

First draft – haven't drafted Attachment B – have to fly.





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER

BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Considers three options arising from the Minister for Indigenous Affairs's request to amend the ILC Annual Report 2014–15*
- *If option 3 is chosen, considers and approves the new Chairperson's report at Attachment B.*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling.

Issues

The Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, wrote to the ILC Chairperson on xx January 2016 stating that it is his firm belief that there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the draft ILC Annual Report 2014–15. He will withhold permission to table the report while these 'inaccuracies' stand.

Comment [D1]: This letter hasn't been received but it has been sought.

Given this advice, the Board may wish to consider three options:

1. To inform the Minister that the Board supports the report as originally transmitted
2. To remove those parts of the former Chairperson's report that the Minister considers inaccurate—refer **Attachment A**

3. To remove the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson.

The consequences of choosing option 1 are likely to include the ILC's not having an annual report tabled for the 2014–15 year.

Option 2 may be considered inappropriate given the Chairperson's narrative as it stands was signed by Dr Casey. The ILC is committed to best practice governance and high ethical standards. Documents in the ILC's possession indicate that the former Chairperson's account of matters currently in contention with the Minister is accurate. See **Attachment A**.

Option 3 is available to the Board, as the current Board inherited the responsibilities of the former Board and has ownership of the report which remains subject to pre-tabling processes. Choosing this option would expedite tabling of the report. A new Chairperson's report, over the signature of current Chairperson, has been drafted for the Board's consideration. See **Attachment B**.

Recommendation

That the Board:

- Considers three options arising the Minister for Indigenous Affairs request to amend the ILC Annual Report 2014–15
- If option 3 is chosen, considers and approves the new Chairperson's report at Attachment B.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment A

Minister's concerns in relation to the accuracy of events described in the former Chairperson's report

The Minister's concerns relate to a particular passage in the report of the former Chairperson relating to the then ILC Board's call for an independent public inquiry into the purchase of Ayers Rock Resort (ARR):

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister identified a range of relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

The particular sequence of events to be noted is set out below. It must be emphasised that the letters cited below form part of a very extensive correspondence between the ILC and members of the Australian Government elected in September 2013 in relation to the ILC Board's call for an independent public inquiry into the purchase of Ayers Rock Resort.

29 October 2014: The ILC Chairperson wrote to the Minister for Finance asking him to exercise his powers under Clause 6, Schedule 2 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) to seek a declaration of contravention of section 22(1) of the CAC Act, in relation to the acts of certain former Directors and officers of the ILC. The ILC also notified the Finance Minister that it was considering legal action against these individuals.

On the same date the ILC Chairperson wrote to the Minister for Indigenous Affairs stating that the ILC considered it had grounds for action against former Directors/officers.

19 December 2014: The Minister for Finance replied to the Chairperson. His letter stated:

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.

Minister Cormann further stated that he was referring the conduct of any investigation to the Minister for Indigenous Affairs.

12 January 2015 and 3 February 2015: The ILC Chairperson wrote to Minister Cormann questioning the appropriateness of referring the matter to Minister Scullion and asking that carriage of any investigation remain with Minister Cormann and his department.

17 February 2015: Minister Scullion wrote in response to the letter addressed to him on 29 October 2014.

I note that your letter of 29 October 2014 does not raise any 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 ... I would ask that you provide to me as soon as possible any additional information not provided that would support the basis of any legal action the ILC proposed to take ...

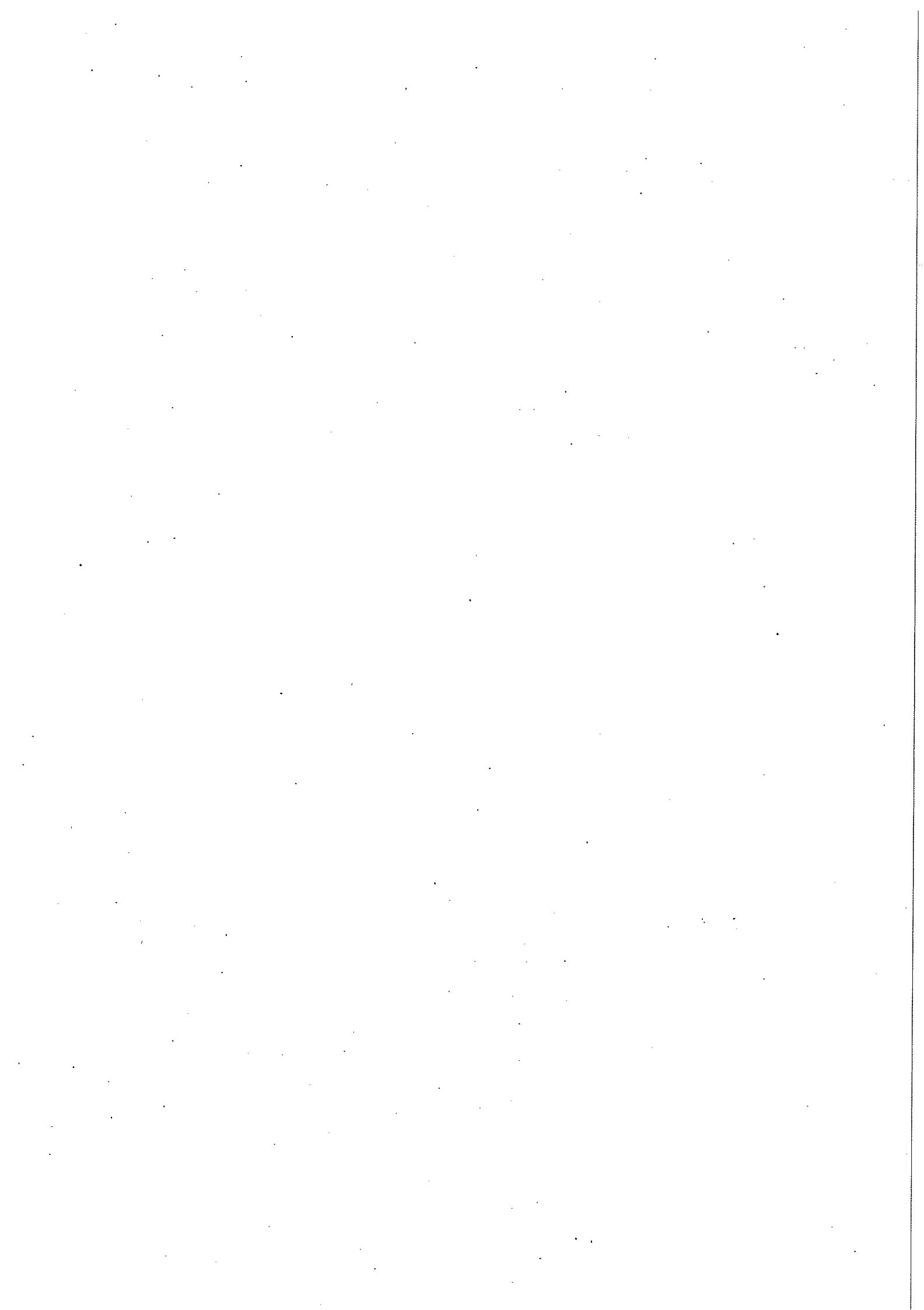
23 February 2015: Senator Cormann wrote to the ILC Chairperson:

I inform you that, after a review by the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, I consider that there is insufficient evidence to support me making an application under Clause 6 of Schedule 2 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) for breaches related to the purchase of Ayers Rock Resort ... There have already been several independent reviews, by various parties, into the purchase of ARR. None of these have produced evidence that support breaches of the CAC Act by the former ILC Board.

27 May 2015: The ILC Chairperson wrote to then Prime Minister, the Hon Tony Abbott MP, providing additional information following a 'detailed review of our previous correspondence and briefings to Ministers on this matter against the extensive and complex records in our possession'. This letter noted Minister Scullion's request in his letter of 17 February 2015.

27 July 2015: Richard Eccles, Deputy Secretary of the Department of the Prime Minister and Cabinet wrote to the ILC Chairperson on behalf of the Prime Minister, saying the 'issues you raised are being considered'.

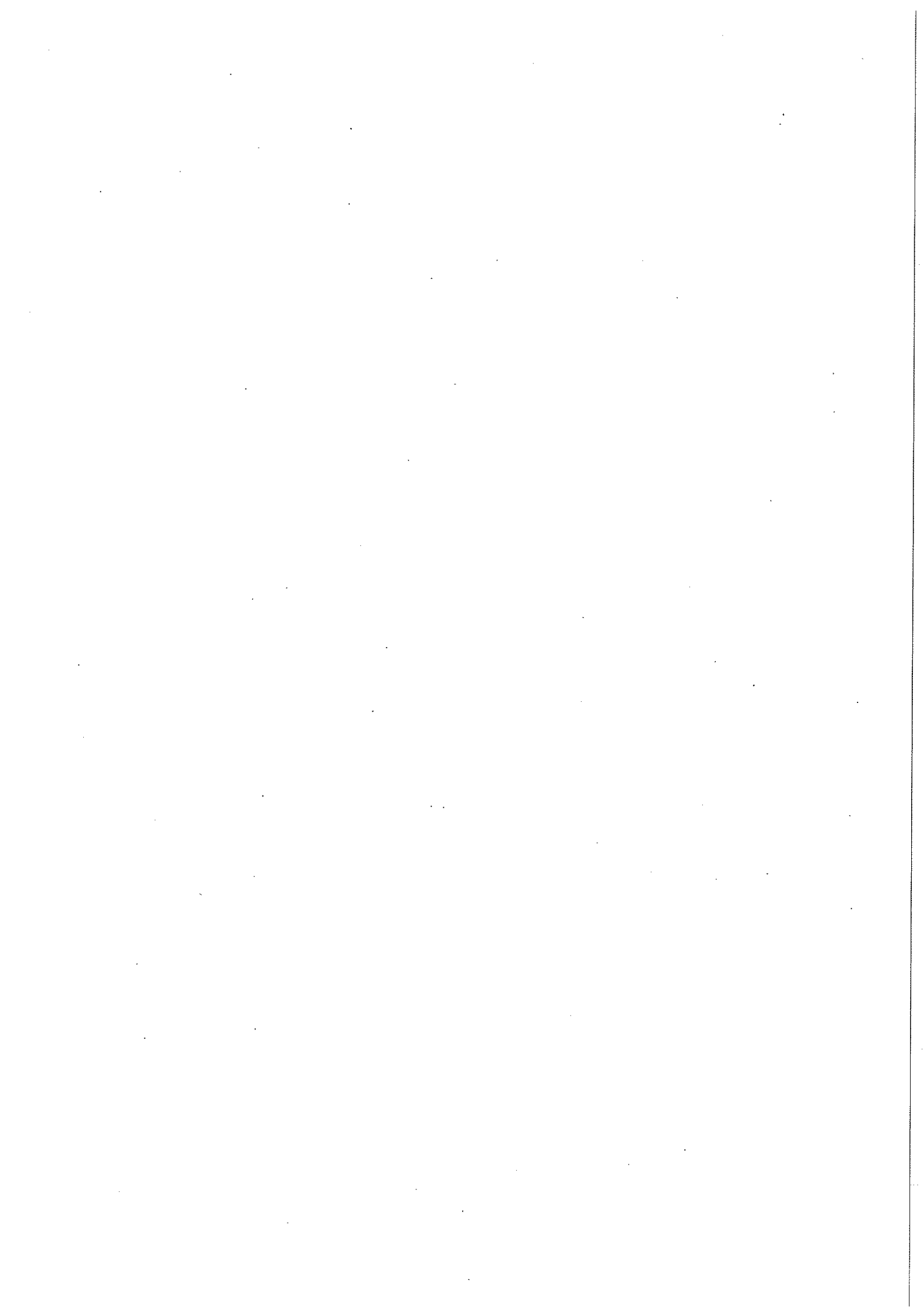
DOCUMENT 3



Petty, Barry

From: Lowe, Sarah
Sent: Tuesday, 12 January 2016 4:31 PM
To: Kemble, Alice
Subject: Board paper - Consideration of AR - Draft (2).docx
Attachments: Board paper - Consideration of AR - Draft (2).docx

Only a couple of minor changes, otherwise all good!





BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Considers three options arising from the Minister for Indigenous Affairs's request to amend the ILC Annual Report 2014–15*
- *If option 3 is chosen, considers and approves the new Chairperson's report at Attachment B.*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the acting Chief Executive Officer, Mr Bator that the Senator will not agree to table the draft Annual Report 2014–15 in its current form, believing there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword'. In particular the Minister's Office have raised concern with references to the Government's position on the Independent Investigation into the purchase of the Ayres Rock Resort, namely,

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed

to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister enclosed all relevant documents and detailed five particularly concerning features of the transaction process. No response had been received at the time of preparing this report.

Whilst there are documents in the ILC's possession that indicate that the former Chairperson's account of matters currently in contention with the Minister is accurate, the Board may wish to consider the following options to expedite the tabling of the Annual Report:

Comment [AJK1]: We could delete this? But if you want it strengthened, we have an attachment ready that includes the relevant information.

1. Retain the current foreword of the former Chairperson and provide a letter to the Minister stating the current Chairperson's position on the independent investigation of the purchase of the ARR and a commitment to work ~~in~~ collaboratively and in cooperation with the Government to achieve positive outcomes for Indigenous Australians – a draft letter is at Attachment A.
2. Remove those parts of the former Chairperson's report that the Minister considers inaccurate, in particular reference to the ~~concerns and requests for an~~ investigation and the position of the Government on the purchase of the Ayres Rock Resort.
3. Replace the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson.

Comment [AJK2]: Do we need to say something about the investigation in to the ILC??

Under Option 1, the Minister may continue to refuse to table the Annual Report.

Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

Option 2 could be considered more appropriate as the current Board inherited the responsibilities of the former Board and ~~has~~ retains ownership of the report throughout the which remains subject to pre-tabling processes. A new Chairperson's report, ~~over the signature of~~ to be signed by the current Chairperson, has been drafted for the Board's consideration. See Attachment B.

Recommendation

That the Board:

- Considers the options arising from the Office of the Minister for Indigenous Affairs' request to amend the ILC Annual Report 2014–15

- If option 2 is chosen, considers and approves the new Chairperson's report at Attachment B.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment A

January 2016

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

Dear Minister

I refer to the Indigenous Land Corporation (ILC) Annual Report covering the period from 1 July 2014 to 30 June 2015 in which the outgoing Chairperson, Dr Dawn Casey, puts certain matters on the record, and urges certain actions on incoming Directors and myself as her successor.

The new ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting new directions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

In 2016 I am also embarking on a schedule of visits to prominent Indigenous leaders to discuss their aspirations for their communities and how both the ILC and Indigenous Business Australia (IBA) can assist. I will brief you on the outcomes of these meetings; however, a number of broad directions and required tasks are already clear.

First and foremost, I want to put on the record the ILC Board's strong commitment to collaboration with the Australian Government and to meeting all requirements of our overarching legislation, the *Public Governance, Performance and Accountability Act 2013*. We will be working with the Government to achieve the ILC's legislative purpose and providing support (within our legislative remit) to policy priorities of the Government. As Directors we recognise the benefits, to the ILC and the Indigenous people it serves, of a close, cooperative and productive relationship with the Government, characterised by open communication. I am convinced the provisions of the current *Aboriginal and Torres Strait Islander Act 2005* are adequate in defining the ILC's purpose and governance.

Second, I will be initiating a bottom-up review of the ILC's operations, by independent consultants, to inform our future processes and strategies. The review will also

consider significant past decisions and their consequences. I will be reporting the outcome of this review to Parliament in the ILC Annual Report 2015–16. As concurrent Chair of IBA, I will be working to forge stronger links between IBA and the ILC and to build and leverage the agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As you know, an immediate challenge facing the ILC is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We look forward to working with you and your department to develop for Government consideration an alternative refinancing option that we hope will minimise the ILC's interest-payment obligations, so the ILC has more resources for its core functions and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. I do not believe that the original transaction needs to be investigated any further than it already has been.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Land Account are generally inadequate to meet the demands being made on the ILC. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 report to COAG on Indigenous land administration and use. I look forward to discussing with you and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three commercial subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around 30 per cent of total ILC Group staff are Indigenous people. The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises (NIPE) operates an extensive cattle business across 13 properties. The White Paper on Developing Northern Australia highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous

ownership across a complex array of land titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

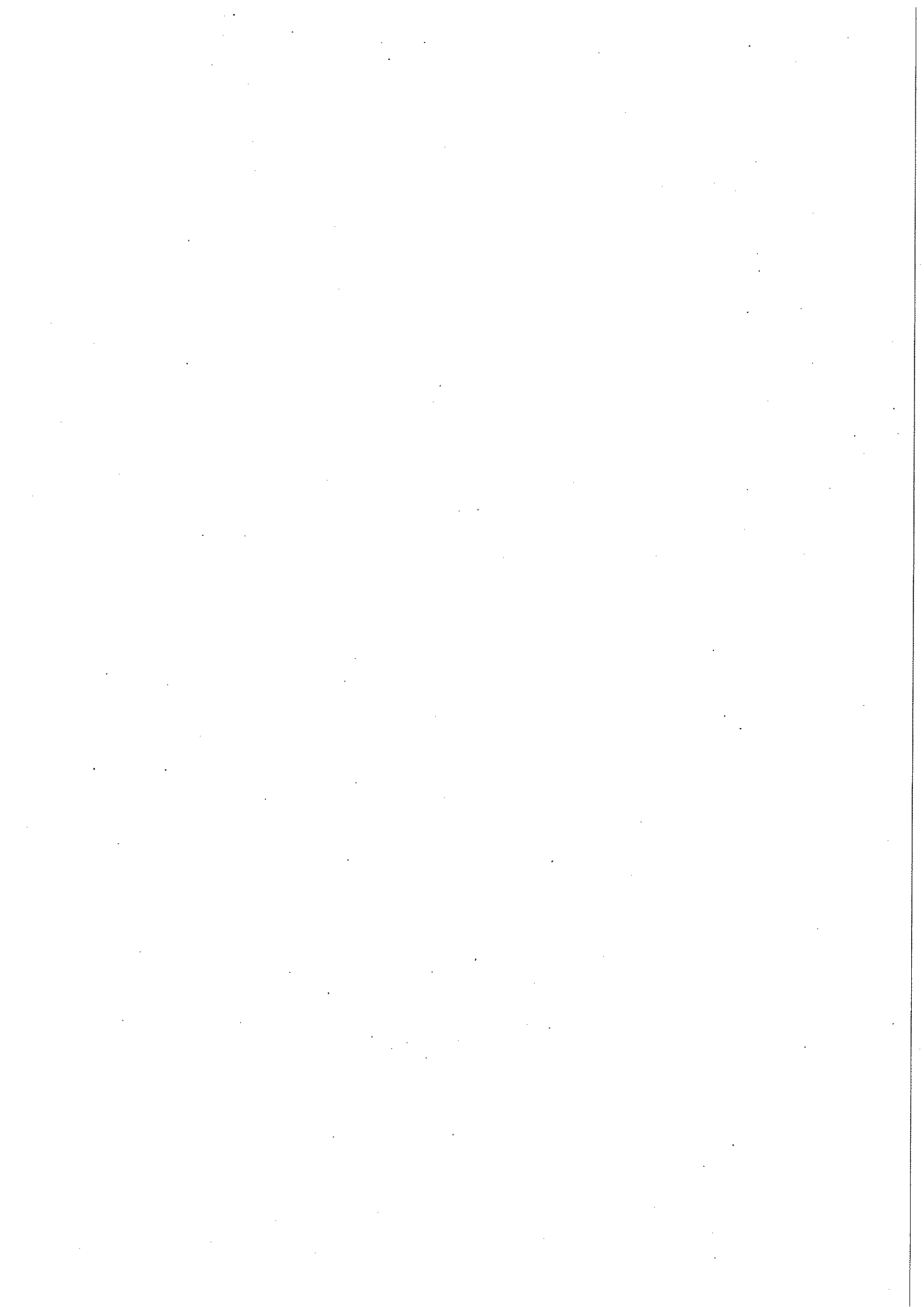
As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the two agencies I chair need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it. The new Board marks a new era for the ILC. I look forward to working with you over the coming years.

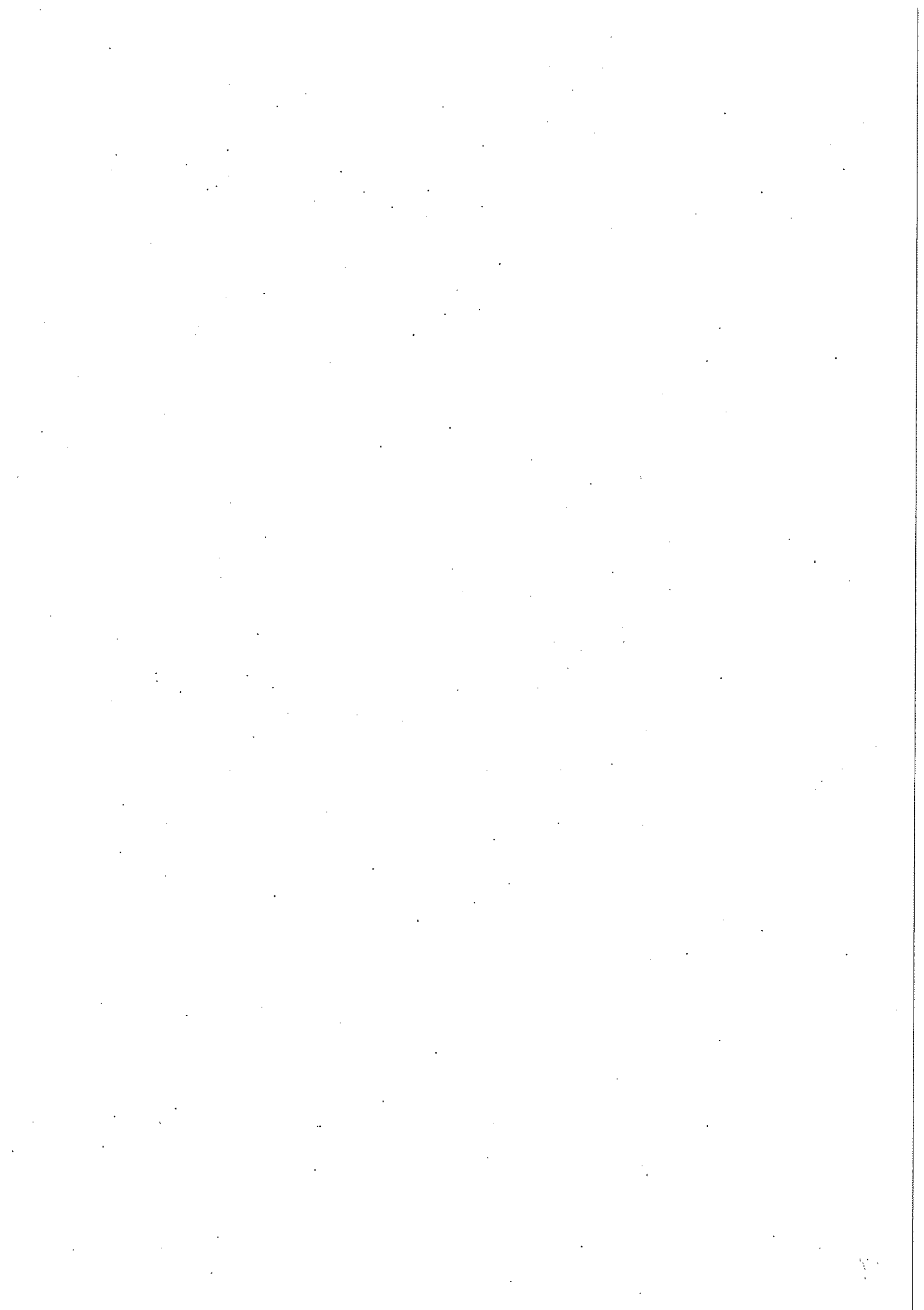
Yours sincerely
Eddie Fry
Chair

Attachment B

Suggested Foreword – Chair Mr Eddie Fry



DOCUMENT 4



Petty, Barry

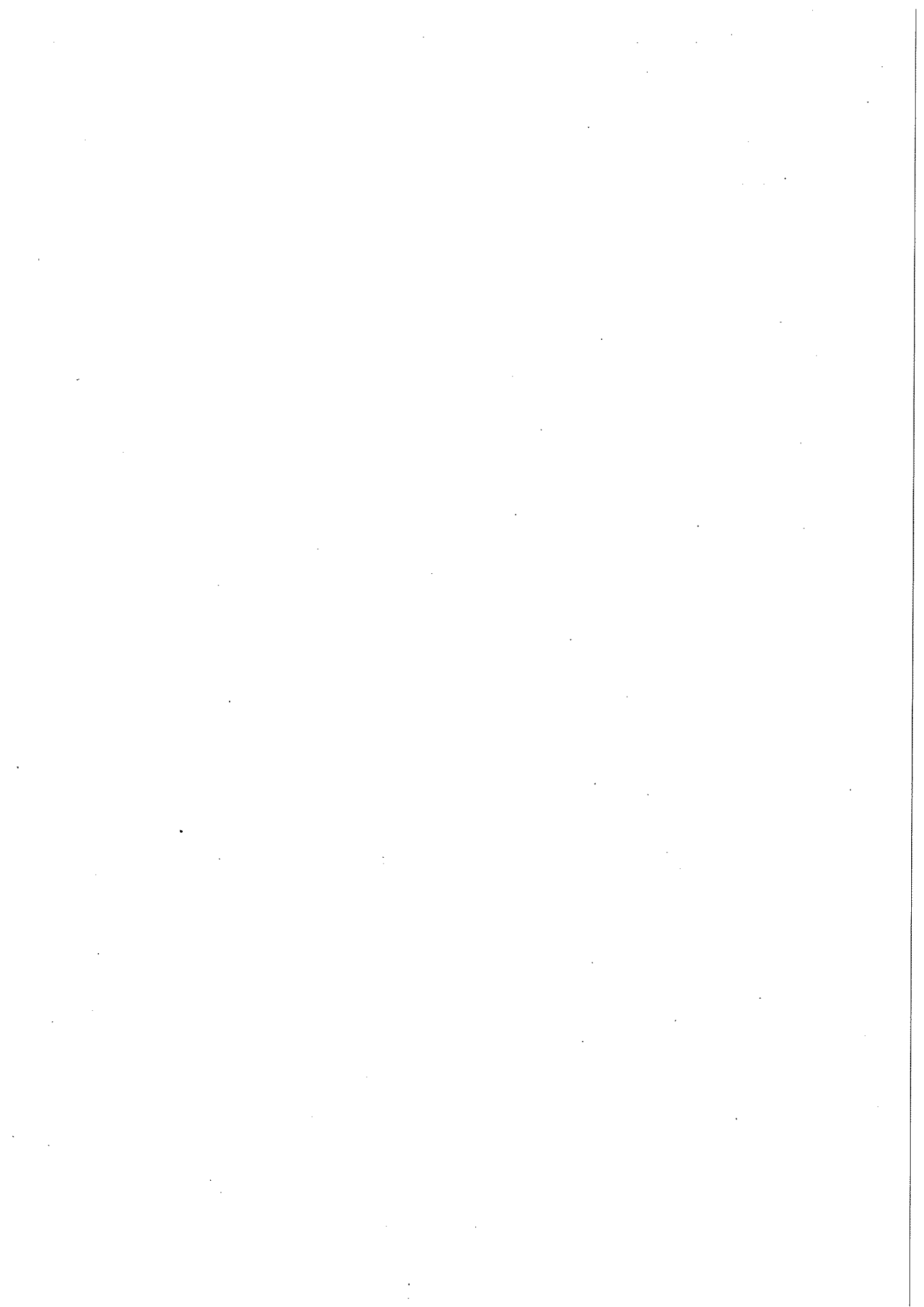
From: Kemble, Alice
Sent: Tuesday, 12 January 2016 4:33 PM
To: Gumley, Kate
Subject: Board paper - Consideration of AR - Draft (2) (2) (2).docx
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2).docx

Hi Kate

Attached is the draft paper on the Annual Report for your consideration.

Will print out and take home if you want to talk through changes too.

A





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Considers three options arising from the Minister for Indigenous Affairs's request to amend the ILC Annual Report 2014–15*
- *If option 3 is chosen, considers and approves the new Chairperson's report at Attachment B.*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the acting Chief Executive Officer, Mr Bator that the Senator will not agree to table the draft Annual Report 2014–15 in its current form, believing there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword'. In particular the Minister's Office have raised concern with references to the Government's position on the independent investigation into the purchase of the Ayres Rock Resort, namely,

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed

to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister enclosed all relevant documents and detailed five particularly concerning features of the transaction process. No response had s been received at the time of preparing this report.

Whilst there are documents in the ILC's possession that indicate that the former Chairperson's account of matters currently in contention with the Minister is accurate, the Board may wish to consider the following options to expedite the tabling of the Annual Report:

1. Retain the current foreword of the former Chairperson and provide a letter to the Minister stating the current Chairperson's position on the Independent investigation of the purchase of the ARR and a commitment to work collaboratively and in cooperation with the Government to achieve positive outcomes for Indigenous Australians – a draft letter is at Attachment A
2. Remove those parts of the former Chairperson's report that the Minister considers inaccurate, in particular reference to the requests for an investigation and the position of the Government on the purchase of the Ayres Rock Resort.
3. Replace the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson.

Comment [AJK1]: We could delete this?
But if you want it strengthened, we have an attachment ready that includes the relevant information.

Comment [AJK2]: Do we need to say something about the investigation in to the ILC??

Under Option 1, the Minister may continue to refuse to table the Annual Report.

Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

Option 2 could be considered more appropriate as the current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current Chairperson, has been drafted for the Board's consideration. See Attachment B.

Recommendation

That the Board:

- Considers the options arising from the Office of the Minister for Indigenous Affairs' request to amend the ILC Annual Report 2014–15
- If option 2 is chosen, considers and approves the new Chairperson's report at Attachment B.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
---	---

Attachment A

January 2016

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

Dear Minister

I refer to the Indigenous Land Corporation (ILC) Annual Report covering the period from 1 July 2014 to 30 June 2015 in which the outgoing Chairperson, Dr Dawn Casey, puts certain matters on the record, and urges certain actions on incoming Directors and myself as her successor.

The new ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting new directions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

In 2016 I am also embarking on a schedule of visits to prominent Indigenous leaders to discuss their aspirations for their communities and how both the ILC and Indigenous Business Australia (IBA) can assist. I will brief you on the outcomes of these meetings; however, a number of broad directions and required tasks are already clear.

First and foremost, I want to put on the record the ILC Board's strong commitment to collaboration with the Australian Government and to meeting all requirements of our overarching legislation, the *Public Governance, Performance and Accountability Act 2013*. We will be working with the Government to achieve the ILC's legislative purpose and providing support (within our legislative remit) to policy priorities of the Government. As Directors we recognise the benefits, to the ILC and the Indigenous people it serves, of a close, cooperative and productive relationship with the Government, characterised by open communication. I am convinced the provisions of the current *Aboriginal and Torres Strait Islander Act 2005* are adequate in defining the ILC's purpose and governance.

Second, I will be initiating a bottom-up review of the ILC's operations, by independent consultants, to inform our future processes and strategies. The review will also

consider significant past decisions and their consequences. I will be reporting the outcome of this review to Parliament in the ILC Annual Report 2015–16.

As concurrent Chair of IBA, I will be working to forge stronger links between IBA and the ILC and to build and leverage the agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As you know, an immediate challenge facing the ILC is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We look forward to working with you and your department to develop for Government consideration an alternative refinancing option that we hope will minimise the ILC's interest-payment obligations, so the ILC has more resources for its core functions and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. I do not believe that the original transaction needs to be investigated any further than it already has been.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Land Account are generally inadequate to meet the demands being made on the ILC. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 report to COAG on Indigenous land administration and use. I look forward to discussing with you and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three commercial subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around 30 per cent of total ILC Group staff are Indigenous people. The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises (NIPE) operates an extensive cattle business across 13 properties. The White Paper on Developing Northern Australia highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous

ownership across a complex array of land titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

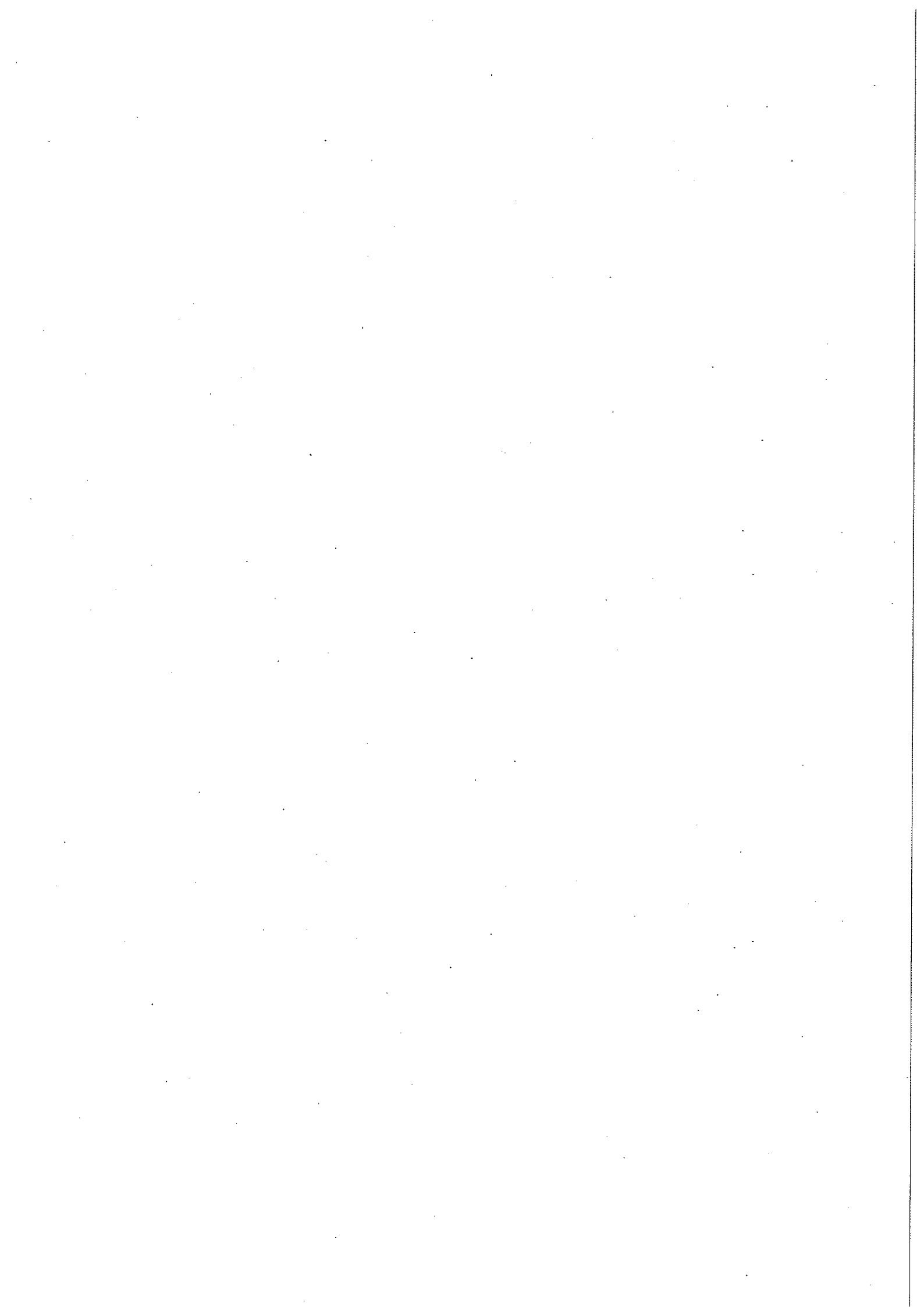
As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the two agencies I chair need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it. The new Board marks a new era for the ILC. I look forward to working with you over the coming years.

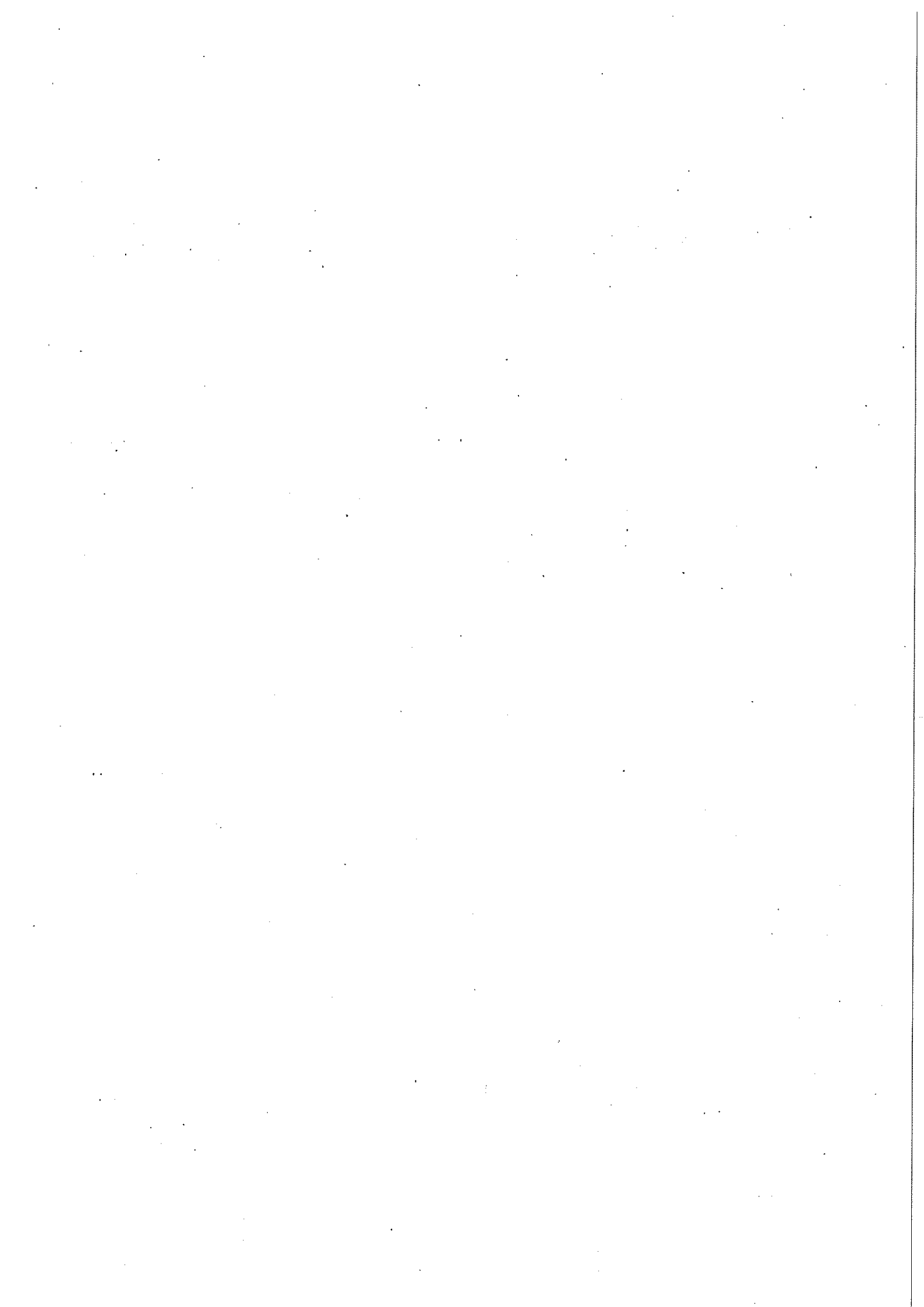
Yours sincerely
Eddie Fry
Chair

Attachment B

Suggested Foreword -- Chair Mr Eddie Fry



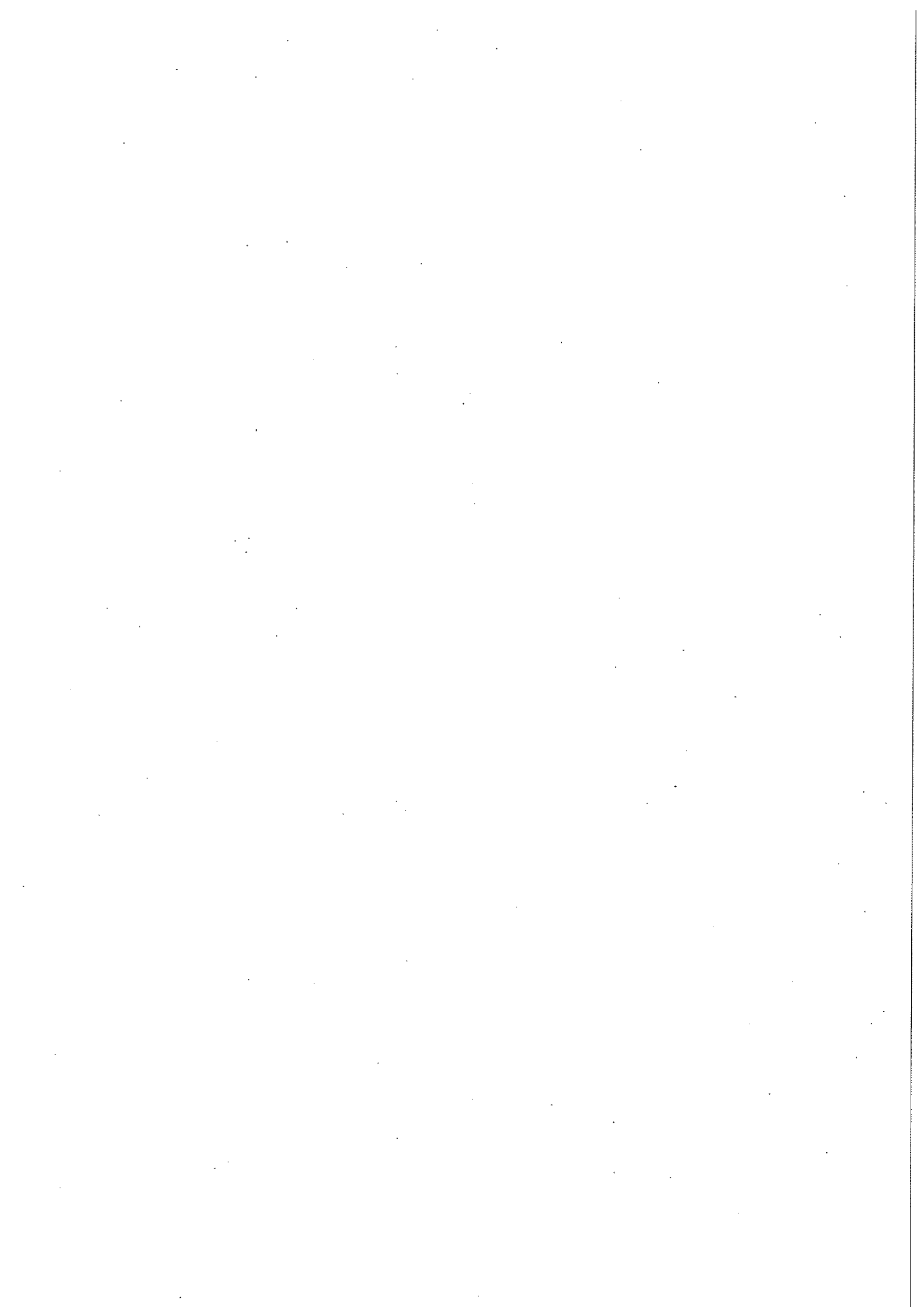
DOCUMENT 5



Petty, Barry

From: McFadyen, Denise
Sent: Wednesday, 13 January 2016 10:19 AM
To: Kemble, Alice
Subject: Board paper - Consideration of AR - Draft (2) (2) (2) (2).docx
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2) (2).docx

Latest version. D





BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board’s reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Agrees to one of the options proposed, or an alternative to respond to arising request from the Office of the Minister for Indigenous Affairs to amend the ILC Annual Report 2014–15*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC’s acting Chief Executive Officer, Mr Leo Bator, that the Senator Minister will not agree to table the draft ILC Annual Report 2014–15 in its current form, believing there are inaccuracies in Dr Casey’s overarching report on the performance of the ILC which forms a foreword to the report. This text is at Attachment A. The Minister’s Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

In particular, the Minister’s Office it is understood that the Minister’s concerns centre on have raised concern with references to the Government’s position on the the need for an independent public investigation inquiry into the purchase of the Ayres Ayers Rock Resort (ARR), namely, an inquiry that was strongly advocated by the former ILC Board.

Comment [AJK1]: Need to say that the Minister’s office would like this settled by Senate Estimates, tabled ahead, I think 11 Jan, for Estimates on the 18th? Changes to the annual report, will need to be re typeset / printed, timeframes to amend are very tight.

Comment [AJK2]: The foreword covers the time / tenure of the former chair / board.

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister enclosed all relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had s-been received at the time of preparing this report.

Whilst there are documents in the ILC's possession (many of which have been made public through Freedom of Information processes) that indicate that the former Chairperson's account of the matters currently in contention with the Minister is accurate, see the correspondence from the Minister for Finance at Attachment B.

Comment [AJK3]: See below -- they are public.

The request from the Minister's Office therefore places the Board in a difficult position. The report under review covers the tenure of the former Chairperson and Board. The ILC's amending or deleting Dr Casey's report could be viewed as unethical, given the legislated independence of the ILC Board and the ILC's commitment to the highest governance standards. Any amendment is highly likely to be noticed by members of the former Board and likely to give rise to some public controversy, including questions directed at the current Board and potential questioning at Senate Estimates.

Comment [AJK4]: We should attach Cormann's letter only, and say that the letter as well as numerous statements/ letters are publicly available on the FYI log?

Something here about amending / changing the annual report could potentially undermine the integrity of the Board... The request from the MO leaves the Board in a difficult position... could be viewed negatively by stakeholders... and could invite questions of the Board publicly, and during Senate Estimates could be called to account for why the annual report has been amended.

Comment [AJK5]: Or this could go below the options

The Board may wish to consider the following options to expedite the tabling of the Annual Report:

1. Retaining the current foreword of the former Chairperson and provide providing a strongly worded letter that letter to the Minister that responds to the issues, including stating the current Board's position (to be determined) on the need for an independent inquiry into the ARR purchase. The letter would commit the ILC to strong and open engagement with the Government to achieve Indigenous benefits, support Government policy priorities and work collaboratively on challenges currently facing the Board.

This letter would be published on the ILC website. A draft letter is at Attachment C.

- It should be noted that this draft includes a commitment made by the Chairperson to discuss with the Board an operational review of the ILC, including decisions taken by the former Board and their consequences. The terms of reference for such a review, together with indicative costs, will be brought to the next Board meeting.
- The draft also reflects the Chairperson's personal views on two matters advocated by the former Board and that are currently before this Board: namely, support for Stronger Land Account Bill and the need for a public inquiry into the ARR purchase. The draft would be altered depending on Board decisions made on these matters.

~~— current Chairperson's position on the independent investigation of the purchase of the ARR and a commitment to work collaboratively and in cooperation with the Government to achieve positive outcomes for Indigenous Australians.~~

~~The letter could also include a commitment to undertake a review into the past decisions of the previous Chair's tenure... Whilst this may ameliorate some of the Minister's concerns, could be viewed negatively by stakeholders, who are keen for the ILC Board to be future and outward focussed... this would also be costly... If this option is agreed, TOR be brought back to next Board meeting, including indicative costs... — a draft letter is at Attachment A.~~

~~Under Option 1, the Minister may continue to refuse to table the Annual Report.~~

Pursuing option 1 could result in the Minister's continuing to refuse to table the Annual Report.

2. Remove/Removing those parts of the former Chairperson's report that the Minister considers inaccurate, in particular references to the requests for an investigation and the position of the Government on the purchase of the Ayres Reck into the ARR purchase. Resort... recognizing that this would continue to be signed by the previous chair...

Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

- ~~— Replace the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson, Commenting on previous Board tenure.... The current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current~~
3. Option 3... as the current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current

Chairperson, has been drafted for the Board's consideration. See Attachment BD.

Both options 2 and 3 may result in negative commentary by former Directors or other stakeholders.

~~Under Option 1, the Minister may continue to refuse to table the Annual Report.~~

~~Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.~~

~~Option 2 could be considered more appropriate as the current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current Chairperson, has been drafted for the Board's consideration. See Attachment B.~~

Recommendation

That the Board:

- Considers the options arising from the Office of the Minister for Indigenous Affairs' request to amend the ILC Annual Report 2014-15
- If option 2-3 is chosen, considers and approves the new Chairperson's report at Attachment BD.

Endorsements

Prepared by: January 2016 <i>In preparing this recommendation, I declare I have no conflict of interest</i>	Approved by: Leo Bator A/g Chief Executive Officer January 2016 <i>In approving this recommendation, I declare I have no conflict of interest</i>
--	--

Comment [AJK6]: Agrees a response to MO request...
Considers letter...
Determine whether to proceed with a investigation into past decisions...

Attachment A

Chairperson's report, ILC Annual Report 2014-15

[PDF]

Attachment B

Letter from the Minister for Finance, Senator the Hon Mathias Cormann to Dr Dawn Casey, ILC Chairperson, 19 December 2014

[PDF]

Attachment C

Draft letter to the Minister for Indigenous Affairs

January 2016

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

Dear Minister

I refer to the Indigenous Land Corporation (ILC) Annual Report covering the period from 1 July 2014 to 30 June 2015 in which the outgoing Chairperson, Dr Dawn Casey, puts certain matters on the record, and urges certain actions on Incoming Directors and myself as her successor.

The new ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting new directions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

In 2016 I am also embarking on a schedule of visits to prominent Indigenous leaders to discuss their aspirations for their communities and how both the ILC and Indigenous Business Australia (IBA) can assist. I will brief you on the outcomes of these meetings; however, a number of broad directions and required tasks are already clear to me.

First and foremost, I want to put on the record the ILC Board's strong commitment to collaboration with the Australian Government and to meeting all requirements of our overarching legislation, the *Public Governance, Performance and Accountability Act 2013*. We will be working with the Government to achieve the ILC's legislative purpose and providing support (within our legislative remit) to policy priorities of the Government. As Directors we recognise the benefits, to the ILC and the Indigenous people it serves, of a close, cooperative and productive relationship with the Government, characterised by open communication. I am convinced the provisions of the current *Aboriginal and Torres Strait Islander Act 2005* are adequate in defining the ILC's purpose and governance.

Second, I will be discussing with my fellow Directors the need for initiating a bottom-up review of the ILC's operations, by independent consultants, to inform our future processes and strategies. The review will also consider significant past decisions and their consequences. I will be reporting the outcome of this review to, with a report to be provided to Parliament in the ILC Annual Report 2015-16.

As concurrent Chair of IBA, I will be working to forge stronger links between IBA and the ILC and to build and leverage the agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As you know, an immediate challenge facing the ILC is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We look forward to working with you and your department to develop for Government consideration an alternative refinancing option that we hope will minimise the ILC's interest-payment obligations, so the ILC has more resources for its core functions and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. I do not believe that the original transaction needs to be investigated any further than it already has been.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Land Account are generally inadequate to meet the demands being made on the ILC. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 report to COAG on Indigenous land administration and use. I look forward to discussing with you and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three commercial subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around 30 per cent of total ILC Group staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises (NIPE) operates an extensive cattle business across 13 properties. The White Paper on Developing Northern Australia highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC

is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

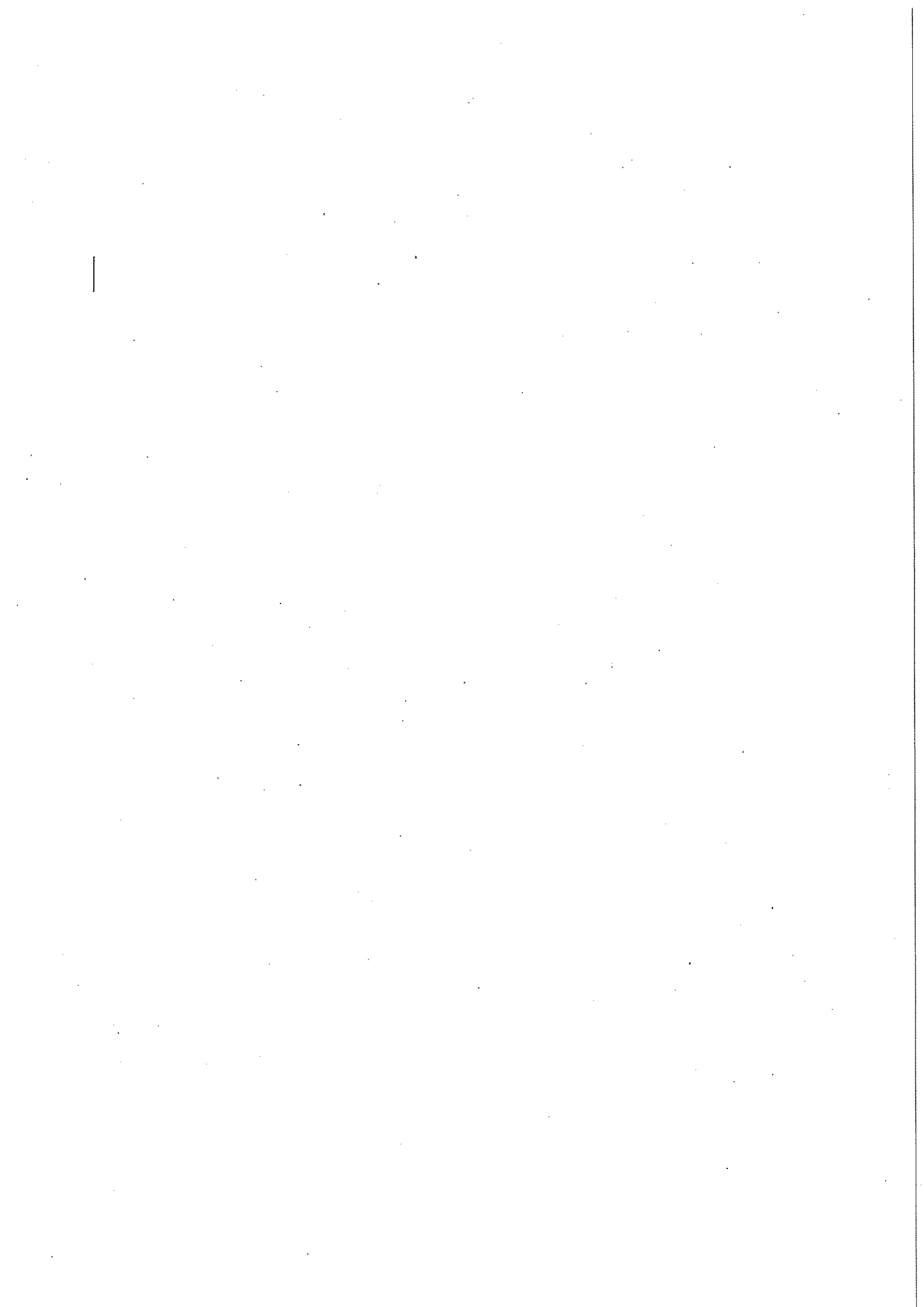
The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of ~~land~~-titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the two agencies I chair need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

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Yours sincerely

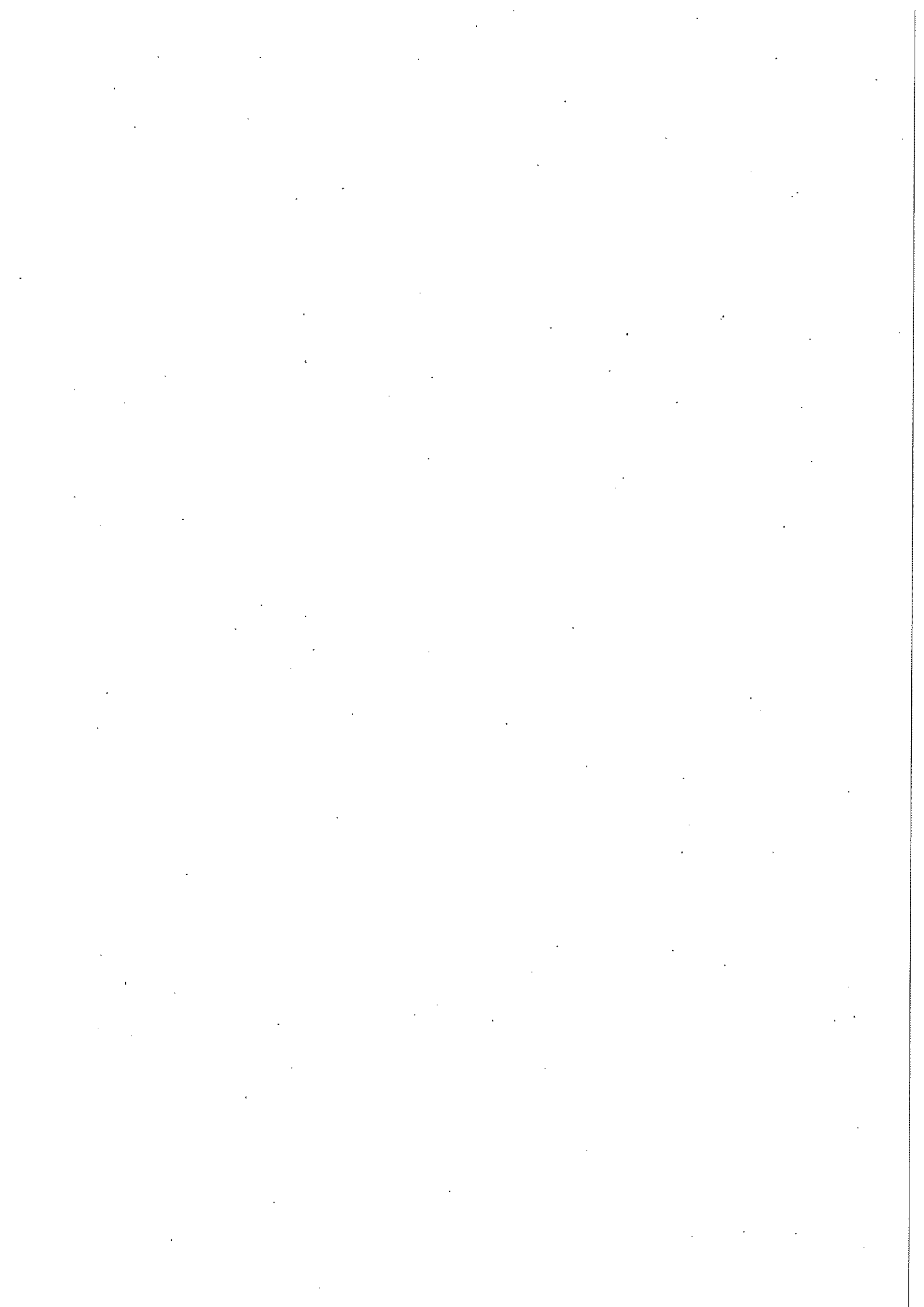
Eddie Fry
Chair



Attachment B

Suggested Foreword – Chair Mr Eddie Fry Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

DOCUMENT 6



Petty, Barry

From: Kemble, Alice
Sent: Wednesday, 13 January 2016 10:29 AM
To: Gumley, Kate; Nguyen, Tri
Subject: Board paper - Consideration of AR - Draft
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2) (2) (3).docx

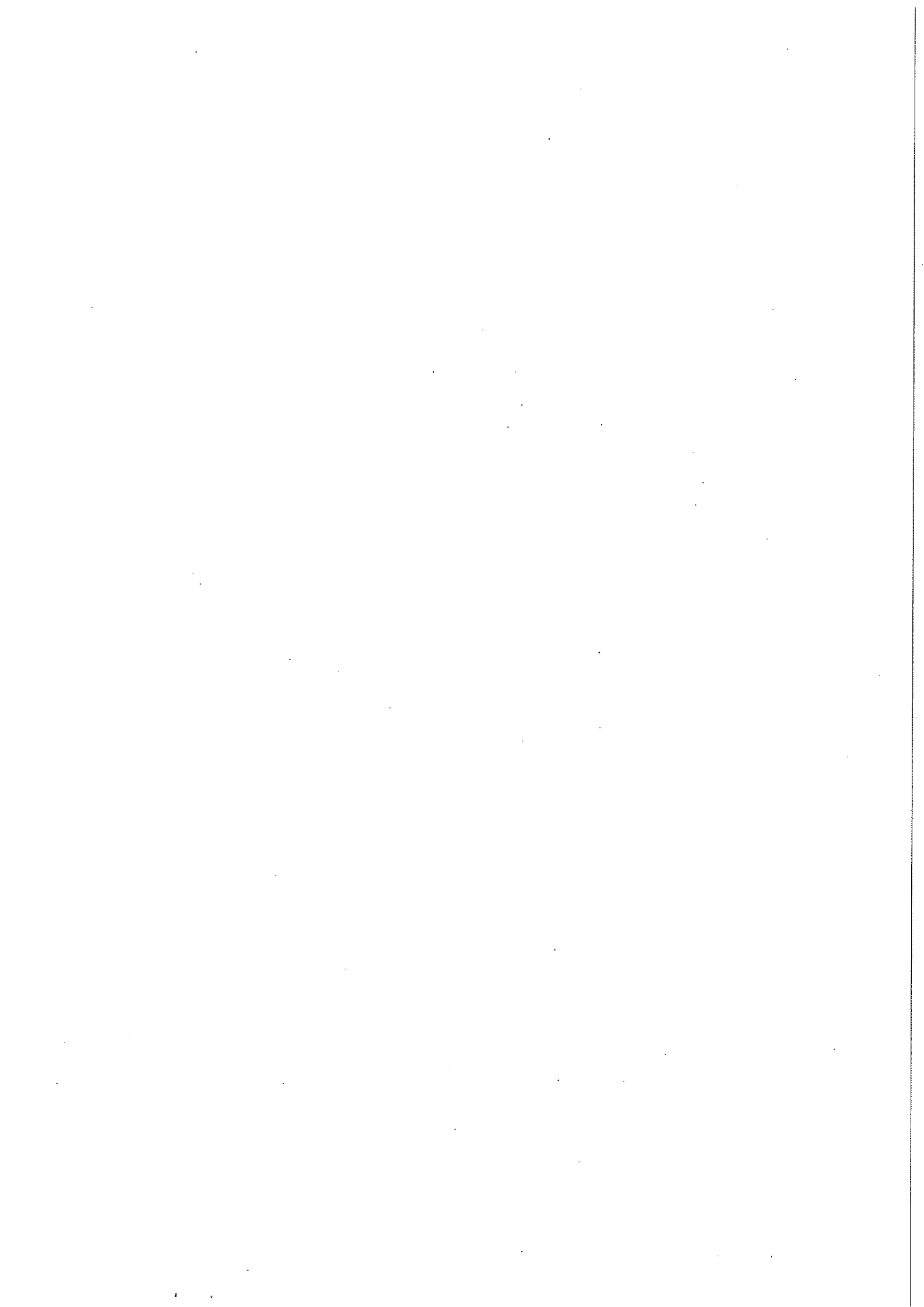
Hi Kate and Tri

I am still working on the attachments (a revised foreword), but I am just about to head into a meeting and wanted to get this to you now for your comment.

The meeting should only go for 30mins and I then be able to talk through any changes you would like, also great if you want to track in any changes.

Thanks

Alice





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Agrees to one of the options proposed, or an alternative to respond to arising request from the Office of the Minister for Indigenous Affairs to amend the ILC Annual Report 2014–15*
- *If Option 1 is chosen, provide feedback on draft letter at Attachment C, including whether or not to proceed with a retrospective inquiry in the previous Chairperson's tenure*
- *If Option 2 is chosen, delete paragraph of concern to the Minister in foreword*
- *If Option 3 is chosen, considers and approves the new Chairperson's report at Attachment D*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer, Mr Leo Bator, that the Minister will not agree to table the draft ILC Annual Report 2014–15 in its current form, because the Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board:

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister enclosed all relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

Documents in the ILC's possession (many of which have been made public through Freedom of Information processes) indicate that the former Chairperson's account of the matters currently in contention is accurate. See the correspondence from the Minister for Finance at [Attachment B](#).

The request from the Minister's Office therefore places the Board in a difficult position. The report under review covers the tenure of the former Chairperson and Board. The ILC's amending or deleting Dr Casey's report could be viewed as unethical, given the legislated independence of the ILC Board and the ILC's commitment to the highest governance standards. Any amendment is highly likely to be noticed by members of the former Board and likely to give rise to some public controversy, including questions directed at the current Board and potential questioning at Senate Estimates.

The Board may wish to consider the following options to expedite tabling of the Annual Report:

1. Retaining the current foreword of the former Chairperson and providing a strongly worded letter to the Minister that responds to the issues, including stating the current Board's position (to be determined) on the need for an independent inquiry into the ARR purchase. The letter would commit the ILC to strong and open engagement with the Government to achieve Indigenous benefits, support Government policy priorities and work collaboratively on challenges currently facing the Board. This letter would be published on the ILC website. A draft letter is at [Attachment C](#).

- It should be noted that this draft includes a commitment made by the Chairperson to discuss with the Board an operational review of the ILC, including decisions taken by the former Board and their consequences. The terms of reference for such a review, together with indicative costs, will be brought to the next Board meeting.
- The draft also reflects the Chairperson's personal views on two matters advocated by the former Board and that are currently before this Board: namely, support for Stronger Land Account Bill and the need for a public inquiry into the ARR purchase. The draft would be altered depending on Board decisions made on these matters.

Pursuing option 1 could result in the Minister's continuing to refuse to table the Annual Report.

2. Removing those parts of the former Chairperson's report that the Minister considers inaccurate, in particular references to requests for an investigation into the ARR purchase.

Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

3. Replace the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson. The current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current Chairperson, has been drafted for the Board's consideration. See Attachment D.

Both options 2 and 3 may result in negative commentary by former Directors or other stakeholders.

Recommendation

That the Board:

- Considers the options arising from the Office of the Minister for Indigenous Affairs' request to amend the ILC Annual Report 2014–15
- Option 1 is chosen, provide feedback on draft letter at Attachment C, including whether or not to proceed with a retrospective inquiry in the previous Chairperson's tenure
- If Option 2 is chosen, delete paragraph of concern to the Minister in foreword
- If option 3 is chosen, considers and approves the new Chairperson's report at Attachment D.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment A

Chairperson's report, ILC Annual Report 2014–15

[PDF]

Attachment B

Letter from the Minister for Finance, Senator the Hon Mathias Cormann to Dr Dawn Casey, ILC Chairperson, 19 December 2014

[PDF]

Attachment C

Draft letter to the Minister for Indigenous Affairs

January 2016

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

Dear Minister

I refer to the Indigenous Land Corporation (ILC) Annual Report covering the period from 1 July 2014 to 30 June 2015 in which the outgoing Chairperson, Dr Dawn Casey, puts certain matters on the record, and urges certain actions on incoming Directors and myself as her successor.

The new ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting new directions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

In 2016 I am also embarking on a schedule of visits to prominent Indigenous leaders to discuss their aspirations for their communities and how both the ILC and Indigenous Business Australia (IBA) can assist. I will brief you on the outcomes of these meetings; however, a number of broad directions and required tasks are already clear to me.

First and foremost, I want to put on the record the ILC Board's strong commitment to collaboration with the Australian Government and to meeting all requirements of our overarching legislation, the *Public Governance, Performance and Accountability Act 2013*. We will be working with the Government to achieve the ILC's legislative purpose and providing support (within our legislative remit) to policy priorities of the Government. As Directors we recognise the benefits, to the ILC and the Indigenous people it serves, of a close, cooperative and productive relationship with the Government, characterised by open communication. I am convinced the provisions of the current *Aboriginal and Torres Strait Islander Act 2005* are adequate in defining the ILC's purpose and governance.

Second, I will be discussing with my fellow Directors the need for a bottom-up review of the ILC's operations, by independent consultants, to inform our future processes and strategies. The review should also consider significant past decisions and their consequences, with a report to be provided to Parliament in the ILC Annual Report 2015–16.

As concurrent Chair of IBA, I will be working to forge stronger links between IBA and the ILC and to build and leverage the agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As you know, an immediate challenge facing the ILC is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We look forward to working with you and your department to develop for Government consideration an alternative refinancing option that we hope will minimise the ILC's interest-payment obligations, so the ILC has more resources for its core functions and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. I do not believe that the original transaction needs to be investigated any further than it already has been.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Land Account are generally inadequate to meet the demands being made on the ILC. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 report to COAG on Indigenous land administration and use. I look forward to discussing with you and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three commercial subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around 30 per cent of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises (NIPE) operates an extensive cattle business across 13 properties. The White Paper on Developing Northern Australia highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC

is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the two agencies I chair need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it. The new Board marks a new era for the ILC. I look forward to working with you over the coming years.

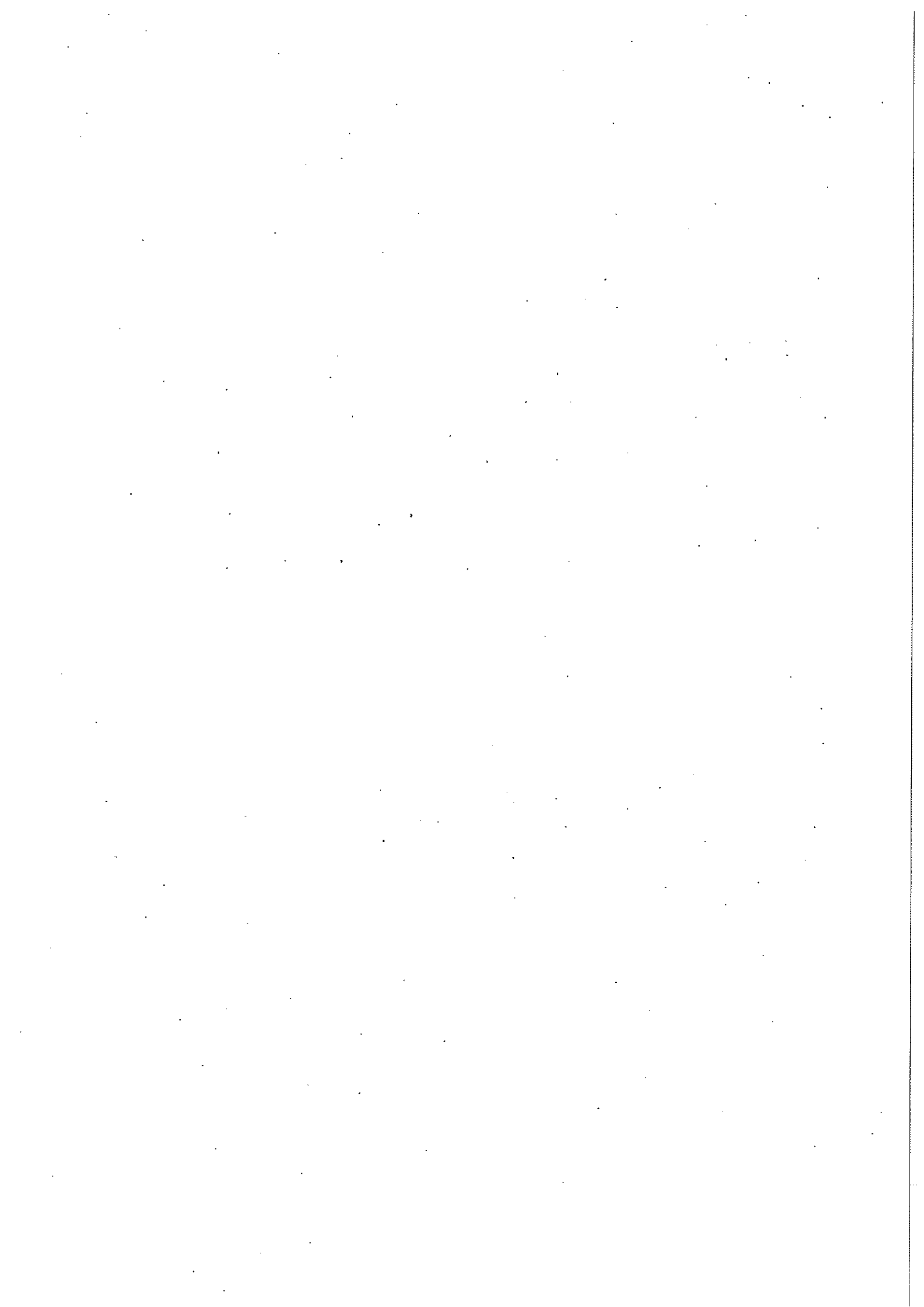
Yours sincerely

Eddie Fry
Chair

Attachment D

Draft 'foreword' from ILC Chairperson, Mr Eddle Fry

DOCUMENT 7



Petty, Barry

From: Nguyen, Tri
Sent: Wednesday, 13 January 2016 10:46 AM
To: Kemble, Alice
Cc: Gumley, Kate
Subject: RE: Board paper - consideration of the SLA Bill.docx
Attachments: Board paper - consideration of the SLA Bill.doc

Thanks Alice,

Please see attached. I have not check it against the then Board's resolution so someone should check to make sure we have captured it all.

You should also add the standard paragraph before the recommendation section to say that Finance and Legal have reviewed the paper.

Cheers

Tri

From: Kemble, Alice
Sent: Wednesday, 13 January 2016 10:40 AM
To: Nguyen, Tri
Cc: Gumley, Kate
Subject: Board paper - consideration of the SLA Bill.docx

Hi Tri

Attached is a draft board paper on the SLA Bill for your comment please.

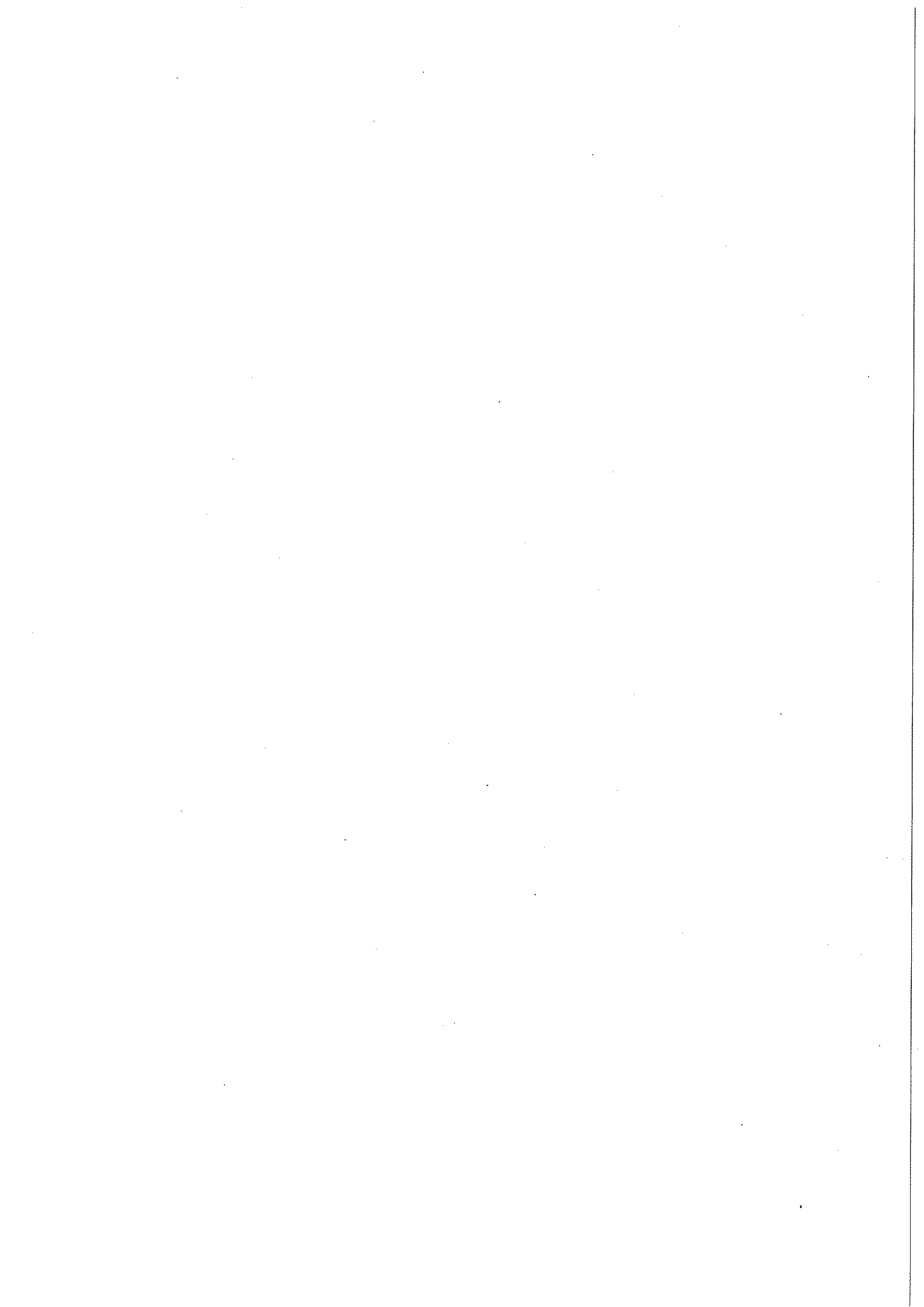
Happy for you to track in any changes you would like. Happy to discuss too.

Apologies for the timing, I understand Leo is keen to see this later this morning.

I am just working on the other two papers – the ARR public inquiry and the annual report – and will have these to you for review shortly.

Thanks

Alice





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

**CONSIDERATION OF THE ABORIGINAL AND TORRES STRAIT ISLANDER
(A STRONGER LAND ACCOUNT) BILL 2014**

Purpose

To seek the Board's consideration of the Board's support for the Aboriginal and Torres Strait Islander (A Stronger Land Account) Bill 2014

Recommendation

That the Board:

- *Agrees to cease the ILC's pursuit of legislative change through the Aboriginal and Torres Strait Islander (A Stronger Land Account) Bill 2014*
- *Agrees to continue to work with the Government on measures to increase the Land Account's annual return and real capital value*

Background

Prior to a significant change in ILC Board membership on 19 October 2015, the Board had been pursuing adoption by the Australian Parliament of an amended *Aboriginal and Torres Strait Islander (A Stronger Land Account) Bill 2014* ('SLA Bill'). The SLA Bill was developed in response to a review of the ILC and Indigenous Business Australia by the Minister for Indigenous Affairs in December 2013, with a view to amalgamating the two entities. At that time, the ILC Board was concerned that such an amalgamation would undermine the integrity and purpose of the Land Account, exposing it to pressure to support activities beyond the scope of the ILC's legislated purpose. Additionally, the Board was of the view that the *Aboriginal and Torres Strait Islander Act 2005* in its current form did not adequately define the purpose or significance of the Land Account.

Issues

Aboriginal and Torres Strait Islander (A Stronger Land Account) Bill 2014 ('SLA Bill')

The SLA Bill (at [Attachment A](#)) seeks to:

1. Expand the objects of the Land Account, to properly articulate its purpose and origins.
2. Make sure that the Land Account can be used only as originally legislated.
3. Increase Indigenous involvement in the Land Account and the ILC through various mechanisms.
4. Lock in the highest standards of corporate governance in the ILC.
5. Allow the Land Account to grow in real terms over time—it currently has a fixed capital base.

The SLA Bill was released by the ILC on 24 March 2014, and endorsed in principle by a group of senior Indigenous leaders gathered in Canberra. The SLA Bill was substantially adopted by the Australian Greens and introduced into the Senate on 24 June 2014 by Senator Rachel Siewert.

The SLA Bill was referred for inquiry to the Senate Community Affairs Legislation Committee where the main Committee report recommended the Bill not be enacted, deeming it unnecessary and duplicative of existing requirements and duties that apply under the *Public Governance, Performance and Accountability Act 2013* and the *Aboriginal and Torres Strait Islander Act 2005 (ATSI Act)*.

Following receipt of the Committee's report, the Board resolved (Meeting No 187) to continue to pursue legislative reform via an amended SLA Bill, incorporating feedback from public submissions to the Senate inquiry. It also resolved to engage concurrently with the Government on other measures to increase the capital balance of the Land Account. Despite efforts to address concerns raised by the Senate Committee, there has been no indication that Parliament is likely to adopt the SLA Bill in its entirety.

The Land Account

The Land Account was set up to provide a secure source of funding to the ILC in perpetuity. The Land Account has a fixed capital base, which is designed to grow from its 2004 balance with inflation (CPI) – ie maintain a real capital value. The ATSI Act currently provides that the ILC receive an annual payment of \$45 million, indexed by the (CPI), from the Land Account. Additional payments can be made to the ILC where the actual capital value of the Land Account exceeds the real capital value.

As the size of the Indigenous estate grows and the Indigenous population increases, Land Account revenues are proving increasingly inadequate to meet the land acquisition and land management needs generated across Indigenous Australia.

The SLA Bill proposed a small amendment to the Land Account which would enable half of any excess payments currently flowing to the ILC to be reinvested back into the Land Account to ensure growth in the capital base over time. In addition to the proposed Land Account change in the SLA Bill, the ILC Board has been pursuing discussions with Government to support higher rate of returns from the Land Account.

The ILC has proposed the Government amend relevant legislation to allow a broadening of the investment parameters of the Land Account and allow the Land Account to be managed by the Future Fund Agency, similar to the other special purpose funds that it manages. The Government has already indicated a willingness to consider broadening the investment parameters, which would also involve legislative change.

Deloitte have modelled an assumed 1% increase in long-term Land Account returns from widened investment parameters (ie CPI +3.5%); such an increase would potentially build the Land Account by some \$450m by 2030. Annually this would provide around \$20m additional income to the ILC which would assist substantially in the payment of both principal and interest on the ARR debt, and ultimately enabling the ILC to fund land acquisition and management above pre ARR acquisition levels.

Suggested Way Forward

Given the increasing demands on the revenue of the ILC and the lack of Parliamentary support for the SLA Bill, it is recommended the ILC Board focus its efforts on engaging with Government to develop specific legislative measures aimed at broadening the investment parameters of the Land Account and a higher rate of return.

Should the Board agree to cease pursuing the SLA Bill and focus its efforts on the Land Account parameters and revenue, it is recommended that the Chair write to Government, the Opposition, the Greens and key Indigenous Stakeholders previously corresponded with on the SLA Bill of the new approach, the rationale and seeking their support.

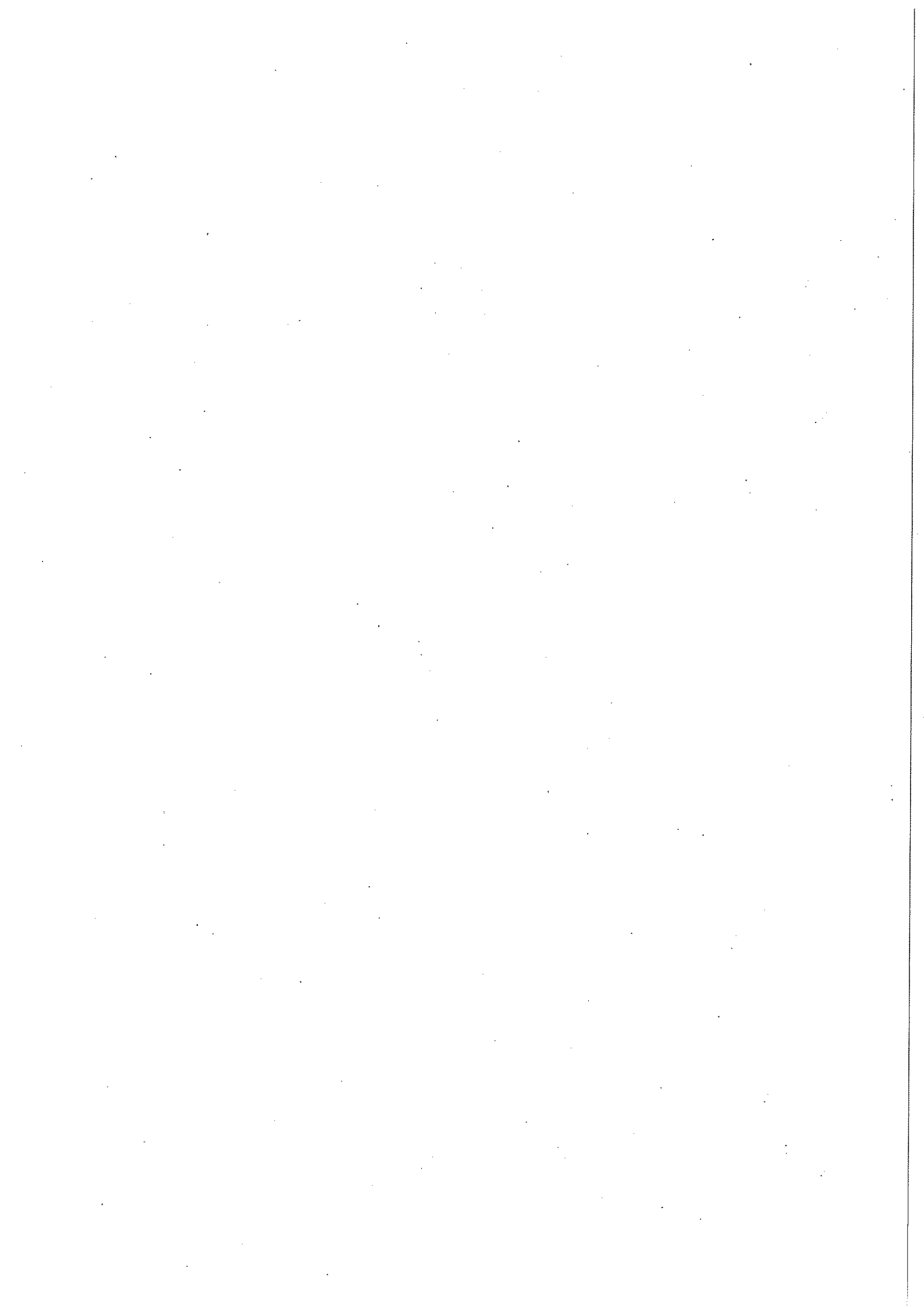
Recommendation

That the Board:

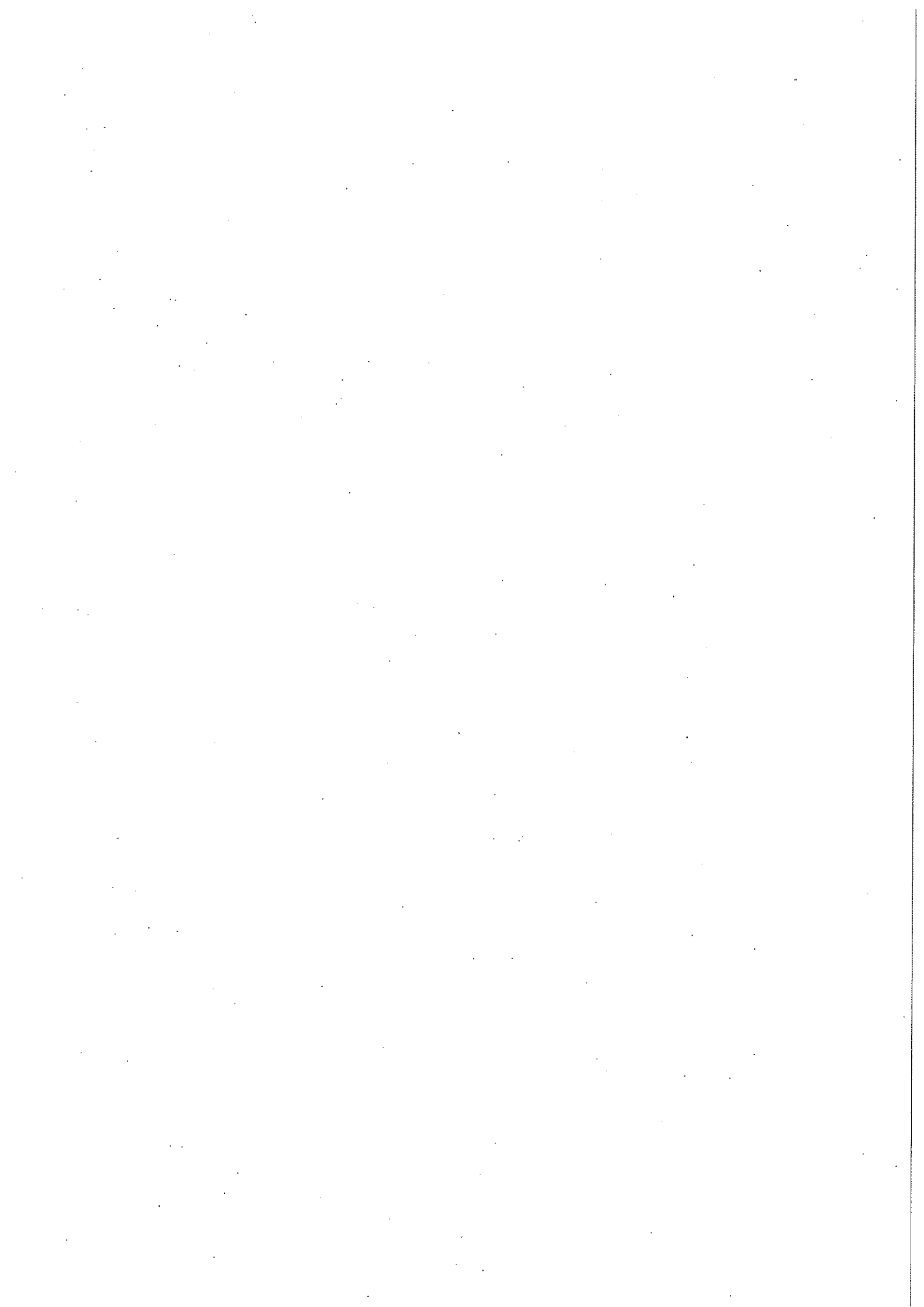
- Agrees to cease the ILC's pursuit of legislative change through the *Aboriginal and Torres Strait Islander (A Stronger Land Account) Bill 2014*
- Agrees to continue to work with Government on measures to increase the Land Account's annual return and real capital value
- Agrees the Chair write to key stakeholders advising of the decision.

Endorsements

<p>Prepared by:</p> <p>13 January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>Chief Executive Officer</p> <p>13 January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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DOCUMENT 7A



Petty, Barry

From: Kemble, Alice
Sent: Wednesday, 13 January 2016 1:38 PM
To: McFadyen, Denise
Cc: Gumley, Kate; Nguyen, Tri
Subject: Board paper - Consideration of AR - Draft
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2) (2) (3) (4) (3) (3).docx

Hi Denise

The attached paper has been amended to reflect comments from Leo and has now been cleared by Leo.

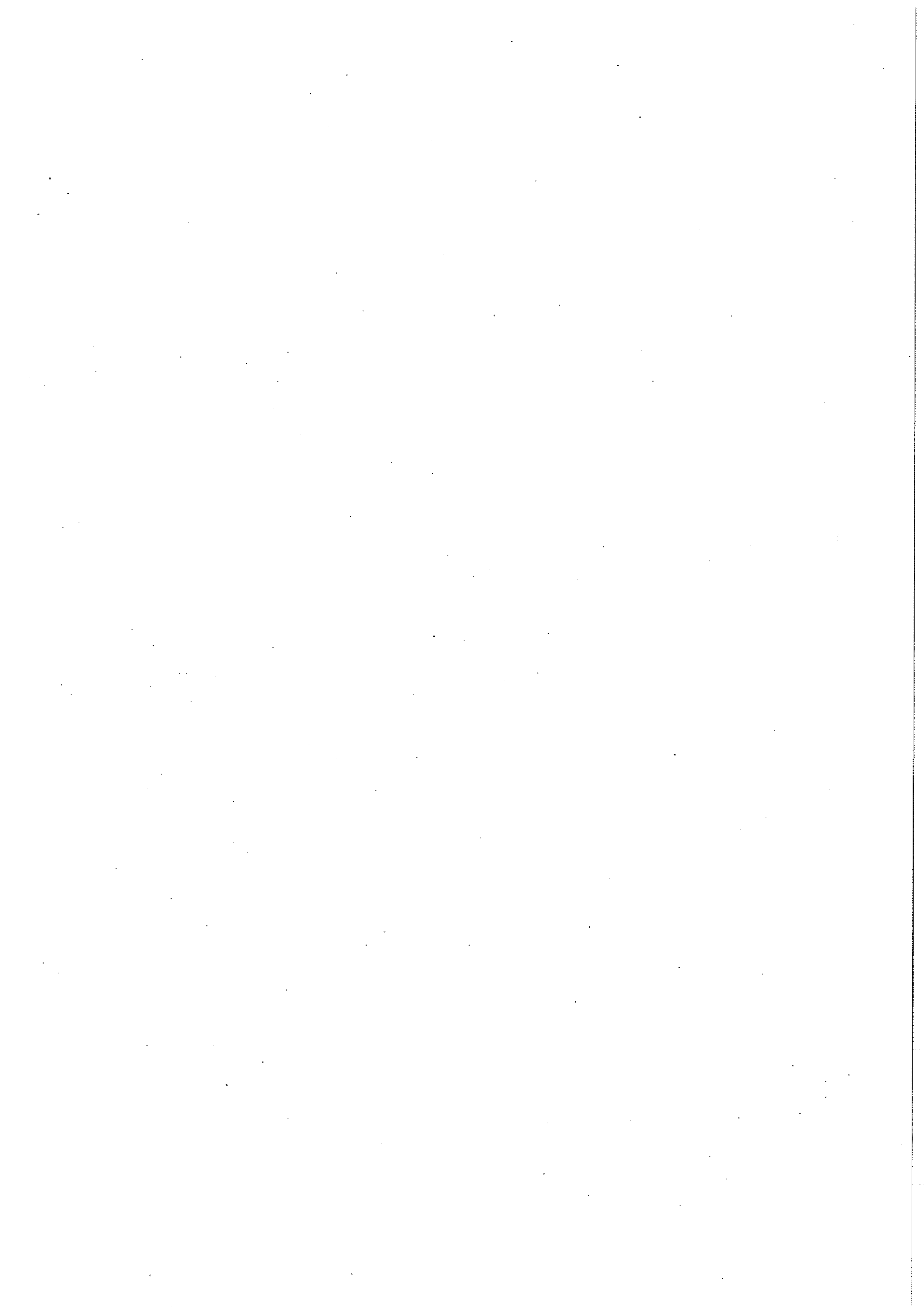
Are you please able to include the two attachments and do a final edit only check.

Leo is still keen to see the draft foreword and I said I will email this to him when we have a version settled between us.

Many thanks Denise.

Kate – will give you a call.

Alice





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER

BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's consideration of a revised foreword to the ILC Annual Report 2014–15.

Recommendation

That the Board:

- ***Agrees the draft Chairman's foreword at Attachment A and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.***

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2015 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling. The Minister is required to table the report for Parliament's consideration with 15 sitting days. More than 15 sitting days have passed since the report was transmitted.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer, Mr Leo Bator, that the Minister will not agree to table the ILC Annual Report 2014–15 in its current form, because the Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

The Chairperson is keen for the ILC to establish a strong and positive relationship with the Minister, so as to support favourable consideration of issues essential to the ILC's

future, including negotiating legislative change to enable the capital balance of the Land Account to grow and increase annual returns to the ILC, developing an agreed approach to refinancing the debt on Ayers Rock Resort, and above all delivering the best outcomes for Indigenous Australians and the Indigenous estate. It is in this context that the Minister's request could be considered.

It would not be appropriate to remove those parts of the former Chairperson's report that the Minister considers inaccurate, given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

An alternative, preferred option would be to replace the foreword in its entirety. This option would ameliorate the Minister's concerns and facilitate the tabling of the Annual Report. It would also provide an opportunity for the new Chairperson and Board to set out their aspirations for the ILC. A draft replacement foreword is at Attachment B.

Notwithstanding the positive approach reflected in the new Chairperson's foreword, any significant amendment to the draft annual report is likely to be noticed by members of the former Board and could result in public questioning, including at Senate Estimates.

Legal, Policy and Financial Compliance

This paper has been quality assured by the Legal, Policy and Finance sections, and matters raised during the quality assurance process have been resolved. The decision sheet has been cleared by the ILC Legal Section.

Recommendation

That the Board:

- Agrees the draft foreword at Attachment B and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment A

Chairperson's report, ILC Annual Report 2014–15

[PDF]

Attachment B

Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

The Indigenous Land Corporation (ILC) was set up in 1995 to provide land-related benefits to Indigenous Australians. This report provides ample evidence of the achievements of the ILC's land acquisition and land management programs and of its three subsidiaries, Voyages Indigenous Tourism Australia, National Indigenous Pastoral Enterprises (NIPE) and the National Centre of Indigenous Excellence over the 2014–15 financial year.

The ILC Board appointed in October 2015 will be meeting next month for an in-depth discussion of our strategic priorities and vision for the future; we will be setting of our approach to delivering the ILC's functions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

We have already established the basis of a new, open and productive relationship with the Australian Government and will be providing strong support (within our legislative remit) to Government policy priorities.

We also need to work with Government to forge a common approach to two particular issues of concern to the Board.

The first is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We are seeking an option that minimises the ILC's interest-payment obligations, so the ILC has more resources for its programs and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections.

A second major concern for Directors is that returns from Aboriginal and Torres Strait Land Account, whose revenues fund the ILC's operations, are generally inadequate to meet the demands being made on the corporation. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 *Report to COAG on Indigenous Land Administration and Use*. I look forward to discussing with the Minister for Indigenous Affairs and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three subsidiaries, are essential given the Board's desire to play a greater role in supporting

the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around one third of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises operates an extensive cattle business across 13 properties. The *White Paper on Developing Northern Australia*, released in June 2015, highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

I am very excited by the prospects I see for the ILC, working in tandem with the other Australian Government agency that I chair, Indigenous Business Australia (IBA). I am committed to building and leveraging the two agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the ILC and IBA need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

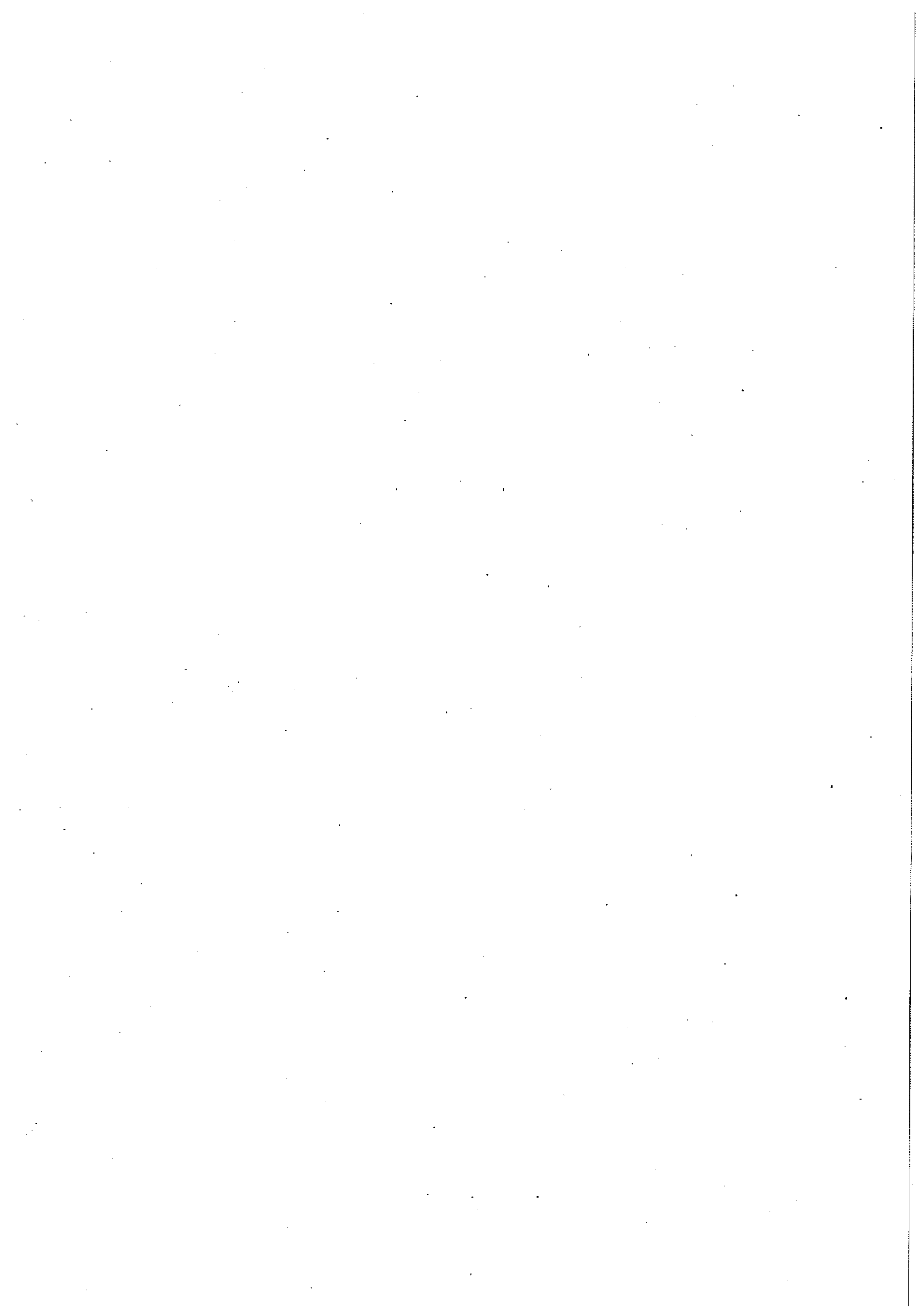
The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it.

Finally, I would like to thank the former Board in place during the 2014–15 financial year, including the Chairperson, Dr Dawn Casey. We will build on their good work.

Eddie Fry
Chair

Xxx January 2016

DOCUMENT 8



Petty, Barry

From: Gumley, Kate
Sent: Wednesday, 13 January 2016 11:50 AM
To: Kemble, Alice; Nguyen, Tri; Lindsay, Jodie
Subject: FW: Board paper - Consideration of AR - Draft
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2) (3).docx

Here are some new words

Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

From: Kemble, Alice
Sent: Wednesday, 13 January 2016 10:59 AM
To: Gumley, Kate; Nguyen, Tri
Subject: Board paper - Consideration of AR - Draft

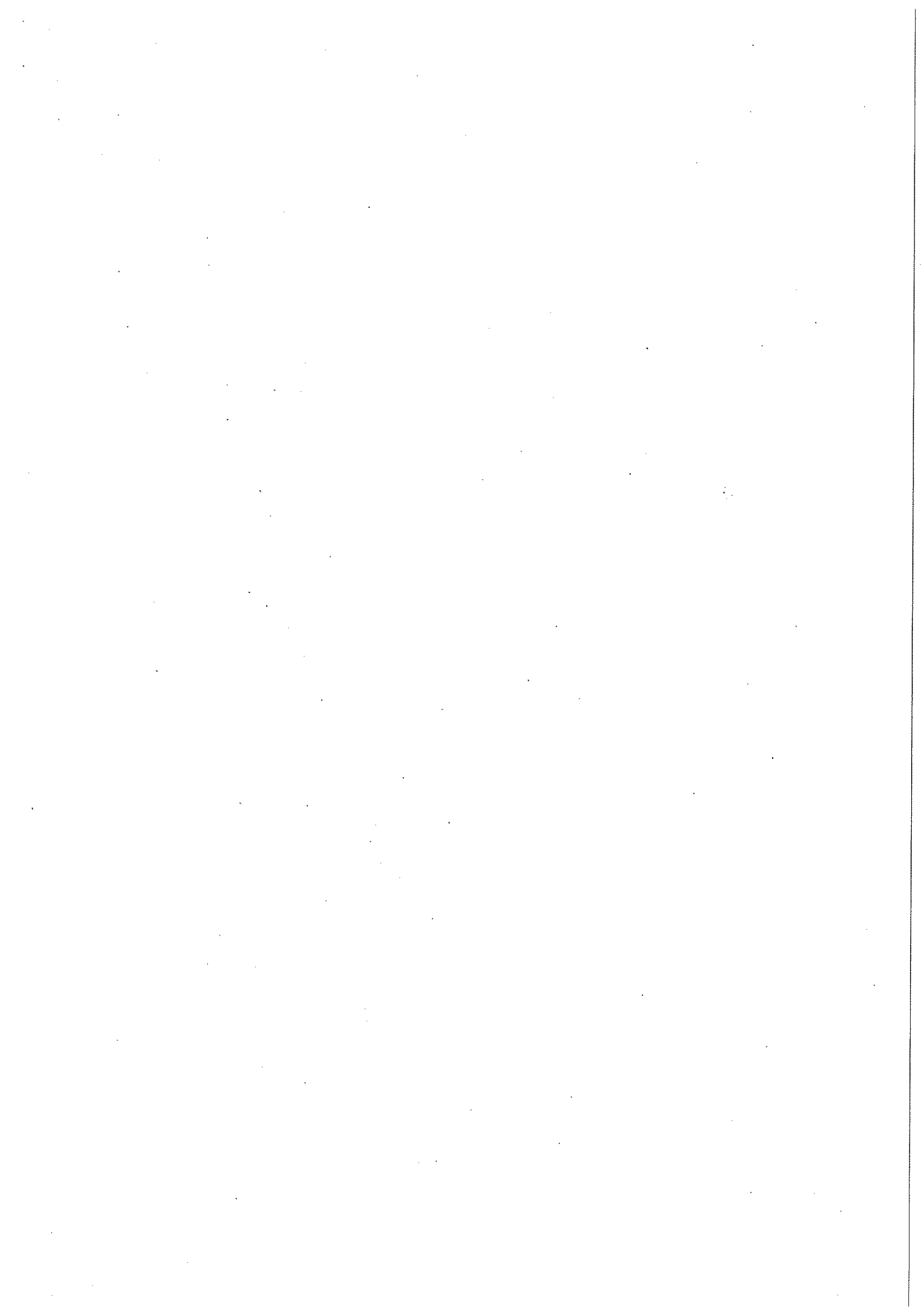
Hi Kate and Tri

I am still working on the attachments (a revised foreword), but I am just about to head into a meeting and wanted to get this to you now for your comment.

The meeting should only go for 30mins and I then be able to talk through any changes you would like, also great if you want to track in any changes.

Thanks

Alice





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's reconsideration of the ILC Annual Report 2014–15 prior to its tabling.

Recommendation

That the Board:

- *Agrees to one of the options proposed, or an alternative to respond to - arising request from the Office of the Minister for Indigenous Affairs to amend the ILC Annual Report 2014–15*
- *If Option 1 is chosen, provide feedback on draft letter at Attachment C, including whether or not to proceed with a retrospective inquiry into ILC operations for the previous five years in the previous Chairperson's tenure*
- *If Option 2 is chosen, delete paragraph of concern to the Minister in foreword*
- *If Option 3 is chosen, considers and approves the new Chairperson's report at Attachment D*

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2016 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling. The Minister has no authority to approve the Annual Report as the ILC is independent of Government; he can only do this by issuing a general direction under the ATSI Act. The Minister's role is to table it for Parliament's consideration, and he must do that within 15 sitting days of completion of the ILC's Annual Report. X sitting days have passed since we transmitted the report.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer, Mr Leo Bator, that the Minister will not agree to table the draft ILC Annual Report 2014–15 in its current form, because the

Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board:

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister enclosed all relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

This correspondence to the ILC was made public. Documents in the ILC's possession (many of which have been made public through Freedom of Information processes. It is clear from Minister Cormann's letter.) indicate that the former Chairperson's account of the matters currently in contention is accurate. See the correspondence from the Minister for Finance at Attachment B.

The request from the Minister's Office therefore places the Board in a difficult position. The report under review covers the tenure of the former Chairperson and Board. The ILC's amending or deleting Dr Casey's report could be viewed as unethical, given the legislated independence of the ILC Board and Australian standards of corporate governance the ILC's commitment to the highest governance standards. Any amendment is highly likely to be noticed by members of the former Board and likely to give rise to some public controversy, including questions directed at the current Board and potential questioning at Senate Estimates.

The Board may wish to consider the following options to expedite tabling of the Annual Report:

1. Retaining the current foreword of the former Chairperson and providing a strongly worded letter to the Minister that responds to the issues, including stating the current Board's position (to be determined) on the need for an independent inquiry into the ARR purchase. The letter would commit the ILC to

strong and open engagement with the Government to achieve Indigenous benefits, support Government policy priorities and work collaboratively on challenges currently facing the Board. This letter would be published on the ILC website. A draft letter is at Attachment C.

- It should be noted that this draft includes a commitment made by the Chairperson to ~~discuss with the Board~~ an operational review of the ILC, including decisions taken by the former Board and their consequences. The terms of reference for such a review, together with indicative costs, will be brought to the next Board meeting.
- The draft also reflects the Chairperson's personal views on two matters advocated by the former Board and that are currently before this Board: namely, support for Stronger Land Account Bill and the need for a public inquiry into the ARR purchase. The draft would be altered depending on Board decisions made on these matters.

Pursuing option 1 could result in the Minister's continuing to refuse to table the Annual Report. As the ILC has fulfilled its obligations for the Annual Report under Section 193 (k) of the ATSI Act and the PGPA Acts, the ILC could choose to publish the report on its website.

Comment [g1]: What happens then

2. Removing those parts of the former Chairperson's report that the Minister considers inaccurate, in particular references to requests for an investigation into the ARR purchase.

Option 2 may be considered inappropriate given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

3. Replace the report by the former Chairperson, and retransmit the report with a 'foreword' by the current Chairperson. The current Board inherited the responsibilities of the former Board and retains ownership of the report throughout the pre-tabling processes. A new Chairperson's report, to be signed by the current Chairperson, has been drafted for the Board's consideration. See Attachment D.

Both options 2 and 3 may result in negative commentary by former Directors or other stakeholders.

Recommendation

That the Board:

- Considers the options arising from the Office of the Minister for Indigenous Affairs' request to amend the ILC Annual Report 2014-15
- Option 1 is chosen, provide feedback on draft letter at Attachment C, including whether or not to proceed with a retrospective inquiry in the previous Chairperson's tenure

- If Option 2 is chosen, delete paragraph of concern to the Minister in foreword
- If option 3 is chosen, considers and approves the new Chairperson's report at Attachment D.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator</p> <p>A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of Interest</i></p>
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Attachment A

Chairperson's report, ILC Annual Report 2014–15

[PDF]

Attachment B

Letter from the Minister for Finance, Senator the Hon Mathias Cormann to Dr Dawn Casey, ILC Chairperson, 19 December 2014

[PDF]

Attachment C

Draft letter to the Minister for Indigenous Affairs

January 2016

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

Dear Minister

I refer to the Indigenous Land Corporation (ILC) Annual Report covering the period from 1 July 2014 to 30 June 2015 in which the outgoing Chairperson, Dr Dawn Casey, puts certain matters on the record, and urges certain actions on incoming Directors and myself as her successor.

The new ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting new directions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

In 2016 I am also embarking on a schedule of visits to prominent Indigenous leaders to discuss their aspirations for their communities and how both the ILC and Indigenous Business Australia (IBA) can assist. I will brief you on the outcomes of these meetings; however, a number of broad directions and required tasks are already clear to me.

First and foremost, I want to put on the record the ILC Board's strong commitment to collaboration with the Australian Government and to meeting all requirements of our overarching legislation, the *Public Governance, Performance and Accountability Act 2013*. We will be working with the Government to achieve the ILC's legislative purpose and providing support (within our legislative remit) to policy priorities of the Government. As Directors we recognise the benefits, to the ILC and the Indigenous people it serves, of a close, cooperative and productive relationship with the Government, characterised by open communication. I am convinced the provisions of the current *Aboriginal and Torres Strait Islander Act 2005* are adequate in defining the ILC's purpose and governance.

Second, I will be discussing with my fellow Directors the need for a bottom-up review of the ILC's operations, by independent consultants, to inform our future processes and strategies. The review should also consider significant past decisions and their consequences, with a report to be provided to Parliament in the ILC Annual Report 2015-16.

As concurrent Chair of IBA, I will be working to forge stronger links between IBA and the ILC and to build and leverage the agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As you know, an immediate challenge facing the ILC is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We look forward to working with you and your department to develop for Government consideration an alternative refinancing option that we hope will minimise the ILC's interest-payment obligations, so the ILC has more resources for its core functions and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. I do not believe that the original transaction needs to be investigated any further than it already has been.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Land Account are generally inadequate to meet the demands being made on the ILC. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 report to COAG on Indigenous land administration and use. I look forward to discussing with you and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three commercial subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around 30 per cent of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises (NIPE) operates an extensive cattle business across 13 properties. The White Paper on Developing Northern Australia highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC

is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the two agencies I chair need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it. The new Board marks a new era for the ILC. I look forward to working with you over the coming years.

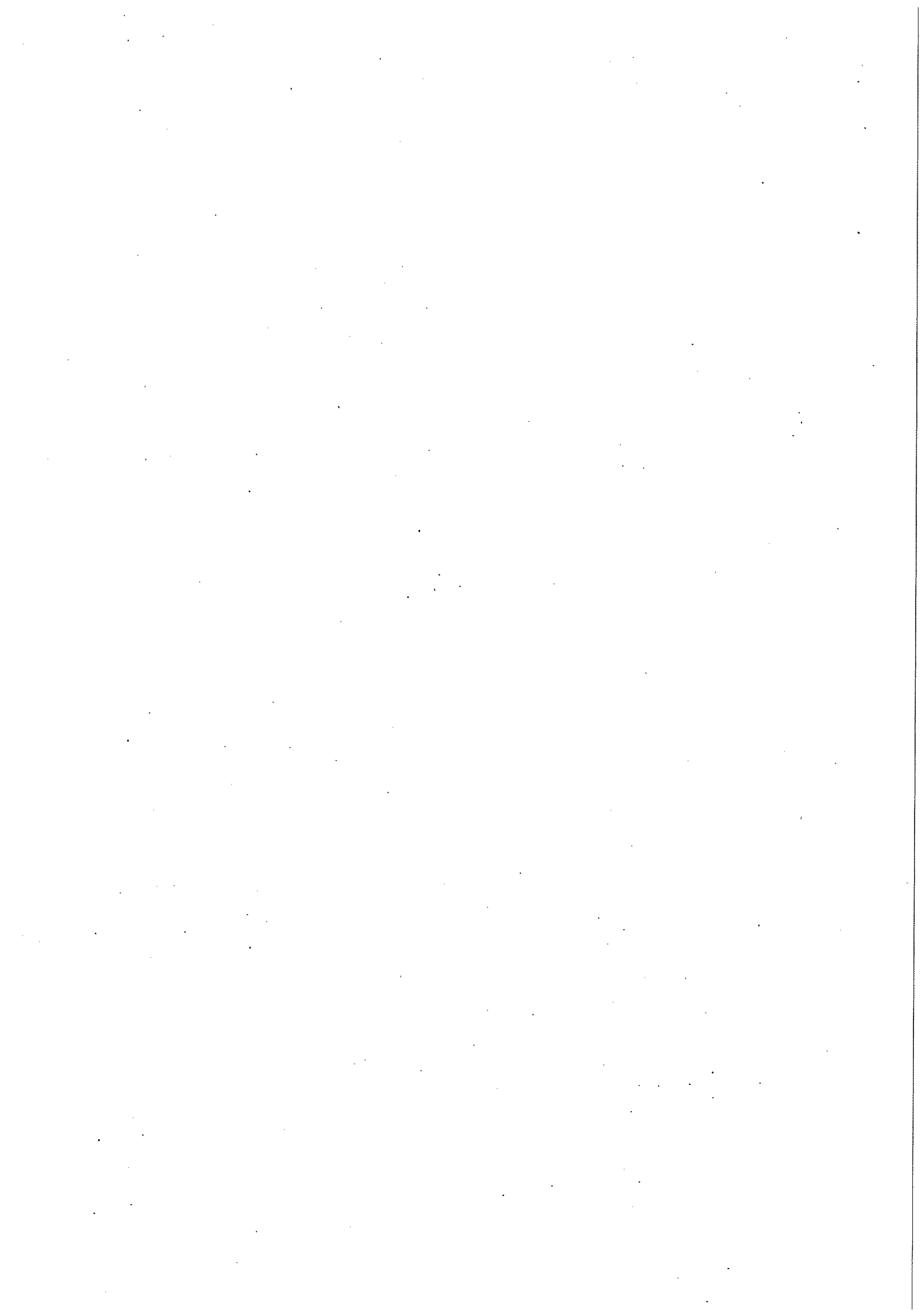
Yours sincerely

Eddie Fry
Chair

Attachment D

Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

DOCUMENT 9



Petty, Barry

From: Kemble, Alice
Sent: Wednesday, 13 January 2016 3:23 PM
To: Bator, Leo
Subject: Board paper - Consideration of Annual Report - Final draft for approval now with foreword
Attachments: Pages from 17290 ILC 2015 AR internals draft 07-10-15.pdf - Adobe Acroba....pdf; Board paper - Consideration of AR - Draft (2) (2) (2) (2) (3) (4) (3) (3) (2) (2).docx

Hi Leo

Final one, hopefully!

The paper now includes a suggested replacement foreword that draws from the previous letter.

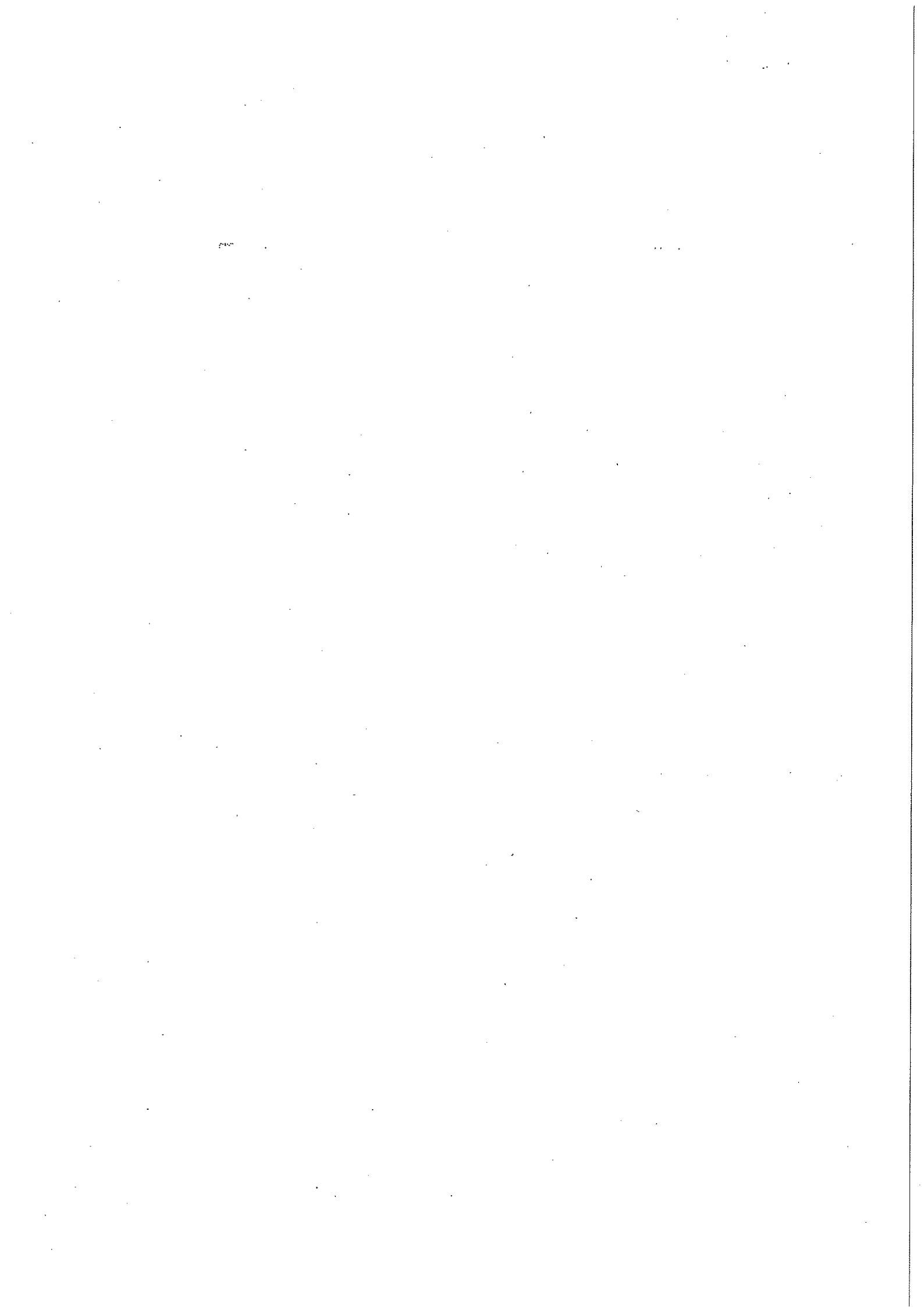
Please let me know if you would like any changes to the foreword. The paper is as discussed.

My mobile is 0413034011 if it is easier to talk through any changes you would like.

Once you are OK with this paper, Sue will be ready to send the papers to the Board.

Thanks

Alice



Chairperson's report

2014-15 was a year of significant reform and reorientation of the ILC's effort to better position the corporation to assist in meeting the land-based challenges confronting Indigenous Australians.



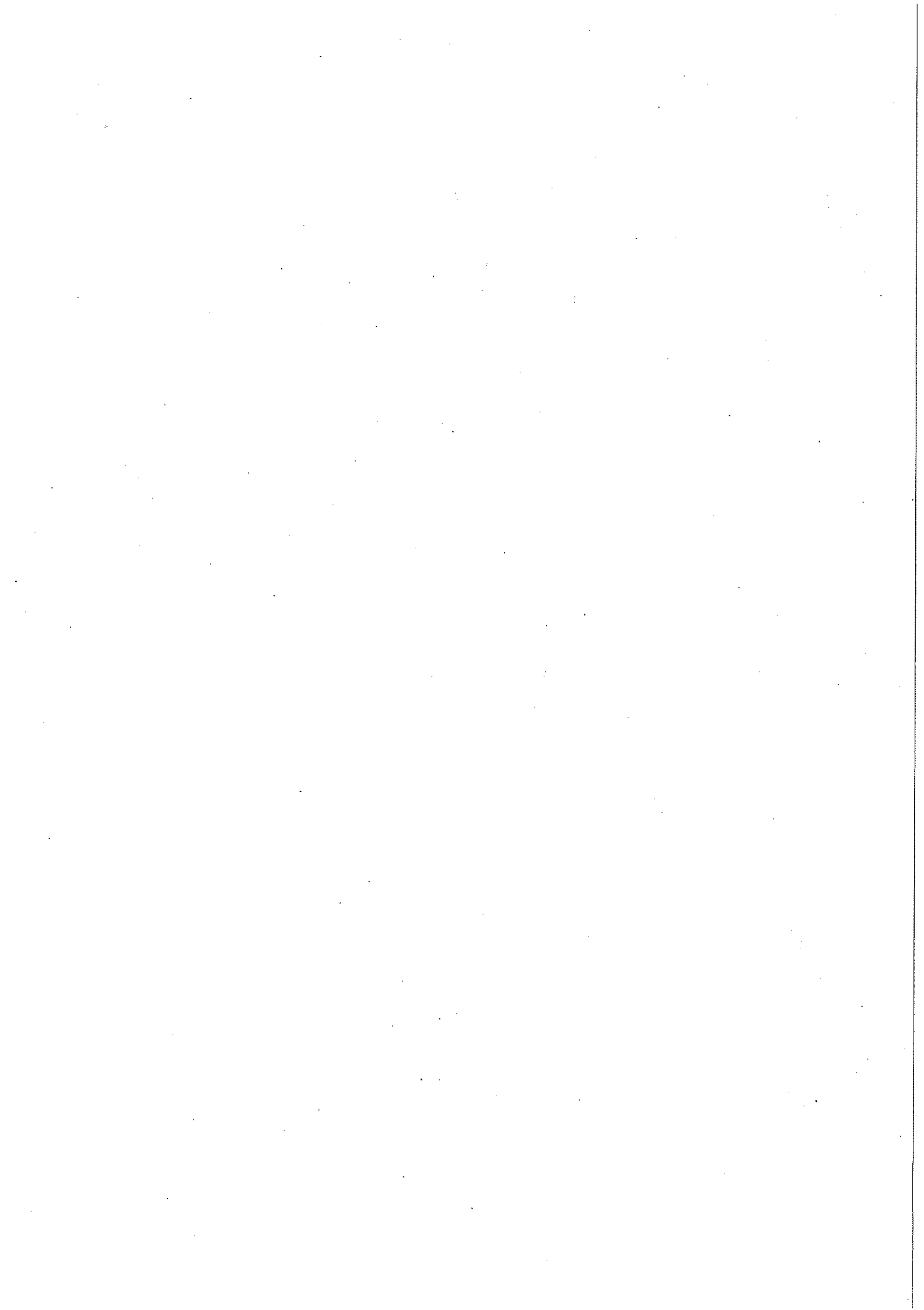
I would like to thank my fellow Board members, and the ILC's hard-working Board committees, for their considered deliberations and commitment over the last year, and in previous years. I would also like to thank the management and staff of the ILC and its subsidiary companies who made great efforts this year to advance the Board's priorities, including better governance, accelerated grant of properties and putting in place new ways of working with Indigenous land owners.

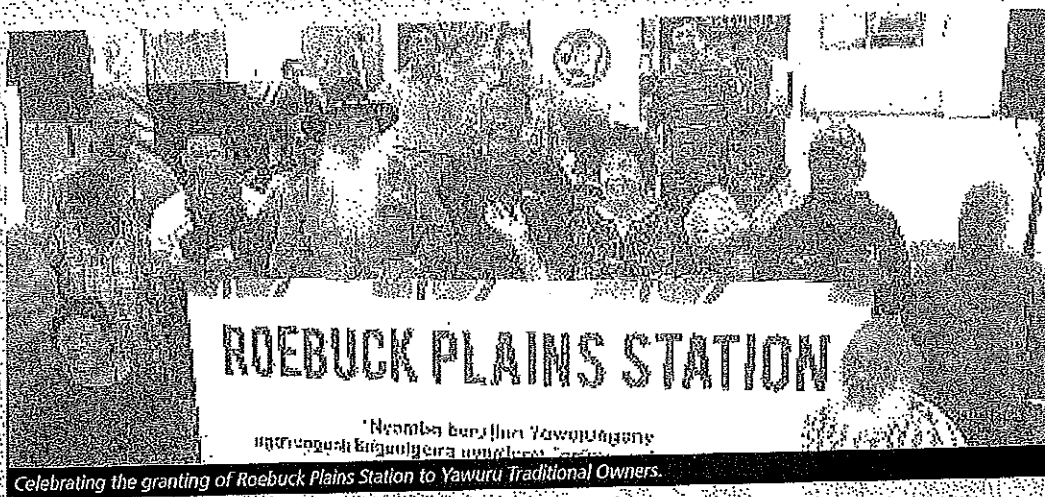
The ILC began operations on 1 June 1995 and is celebrating its 20th anniversary in 2015. This anniversary has served to shine a strong light on the origins of the ILC and of the Aboriginal and Torres Strait Islander Land Account (the Land Account) whose revenues fund the ILC's land acquisition and land management programmes. The ILC and Land Account were legislated together, initially in 1995, as part of the complex political settlement negotiated between the then Australian Government and Indigenous leaders after the *Mabo* judgment recognised native title to land in June 1992. They were intended to provide some compensation for Indigenous peoples' widespread loss of land. The recognition of native title and subsequent legislation of the *Native Title Act 1993* were going to benefit many Indigenous groups, but would not reverse the long history of Indigenous dispossession across the most productive areas of Australia.

Wider developments

2014-15 saw a continuing rising trend in native title determinations, enlarging the Indigenous estate that now covers up to 30 per cent of the continent, the vast majority of it in economically marginal country across remote northern and central Australia.

Indigenous land and native title rights are emerging strongly as a national policy issue, especially given the widely held view (not shared by the ILC) that communal tenure inhibits economic development on Indigenous land. In November 2014 the Council of Australian Governments (COAG) began an investigation into Indigenous land administration and use, advised by an appointed Expert Indigenous Working Group. In May 2015 the Australian Human Rights Commission convened a roundtable in Broome, WA, on Indigenous economic development and property rights attended by senior Indigenous leaders including ILC Deputy Chairperson, Ian Trust. In June 2015 the Australian Law Reform Commission (ALRC) released *Connection to Country*, its review of the *Native Title Act 1993*. The ALRC's recommendations include the need for statutory reform to recognise that native title rights include the





right to trade resources linked to land and seas. The Australian Government's *White Paper on Developing Northern Australia*, also released in June 2015, canvassed the need to 'simplify and modernise land arrangements in the north', because of their supposedly adverse effect on economic development and Indigenous development in particular.

Over the last 20 years the ILC has played a central and increasing role in partnering with Indigenous land owners to develop their land, based on local aspirations and working across a range of tenure types. The ILC is able to bring its own experience to bear in informing debates on these policy issues, and, given greater resources, could build on its demonstrated successes in bringing land into production in partnership with Indigenous land owners.

Land acquisition and grant

The ILC purchased one property in 2014–15, reflecting the fact that in recent years the ILC's land management function has been taking precedence over land acquisition. As was reportedly observed at the May 2015 roundtable convened by the Australian Human Rights Commission, Indigenous Australia is passing from a 'land claims phase to a land rights use phase'.

Twenty properties were approved to be granted to Indigenous corporations this financial year and 14 formal property transfers were achieved (against five divestments in 2013–14), in line with the current Board's policy of active divestment. The ILC has now granted more than 75 per cent of the properties it has acquired over 20 years.

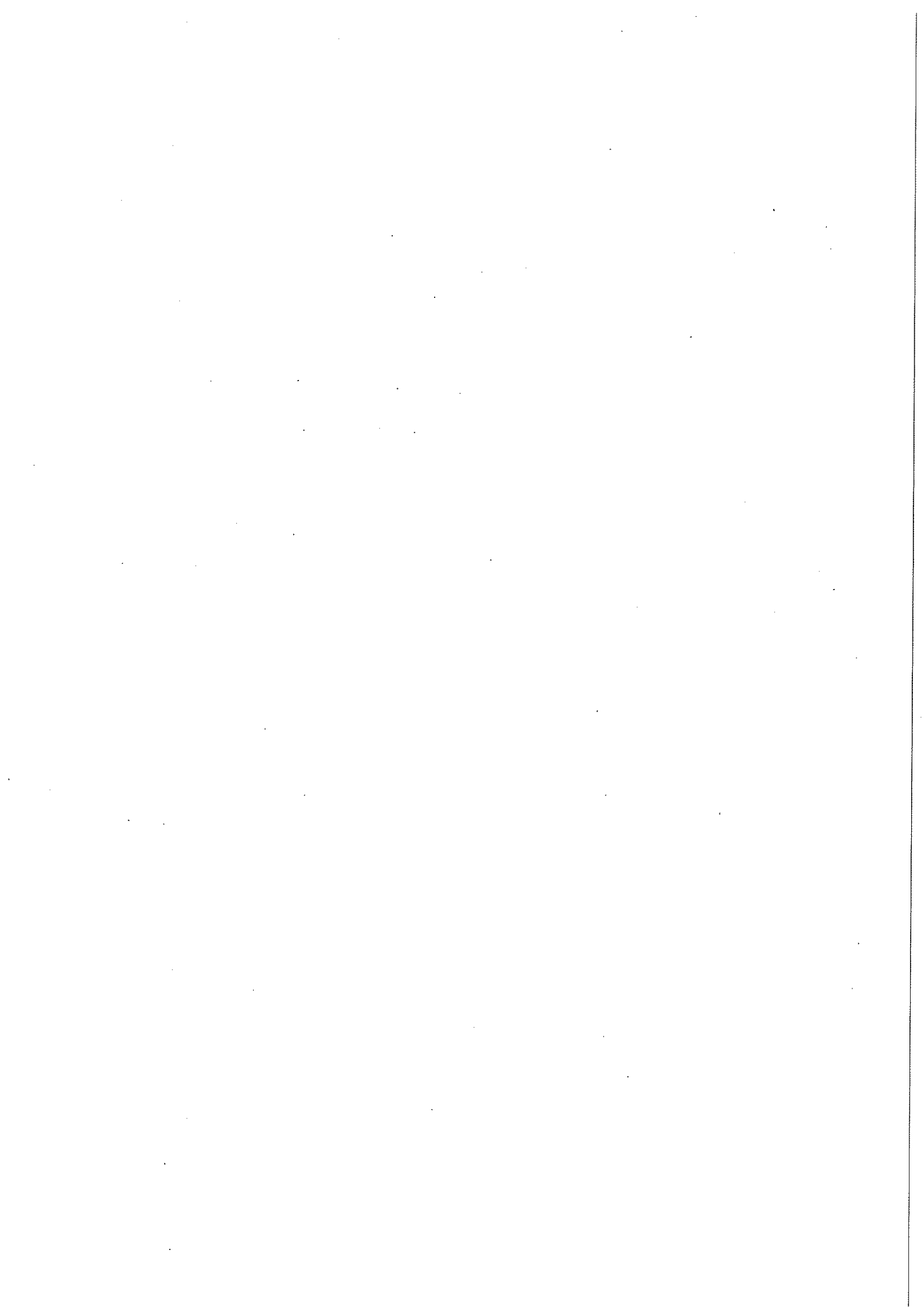
Roebuck Plains Station, near Broome, WA, was the most significant grant and also provides a model of the way the ILC wants to work with other Indigenous groups. The property was acquired by the ILC in 1999, and subsequent ILC investment has made it one of the foremost cattle properties in Australia. In September 2014, the title to Roebuck Plains Station was transferred to the Nyamba Buru Yawuru Ltd, and the cattle operations simultaneously leased back by ILC subsidiary National Indigenous Pastoral Enterprises Pty Ltd for 15 years. The Yawuru will receive income from the lease, as well as ILC funding to manage an environmentally and culturally sensitive area of the property as a future Indigenous Protected Area.

Land management

ILC land management projects consistently seek to balance protection of country and Indigenous cultural and social wellbeing with (where practical) the generation of economic benefits. ILC projects achieved improved land management on 154

properties during 2014–15. Over this and the previous financial year, and consistent with the ILC's Native Title Policy, around 30 per cent of the ILC's small land management funding was provided to Prescribed Bodies Corporate, the corporations established under the Native Title Act to hold determined native title locally. These organisations are critical to realising native title holders' land-based aspirations, but so far receive little support from government.

The current Board also recognises the growing importance of environmental and heritage management in generating income on Indigenous land. The ILC continues to be a major innovator in



the emerging Indigenous carbon economy. The ILC's Fish River and Merepah Fire Projects in the Northern Territory and Queensland are informing the development of other Indigenous savanna burning projects across northern Australia.

Revised programme arrangements, entitled *Our Land Our Future*, were launched in March 2015, to position the ILC as an even more effective partner for Indigenous land-owning groups. The arrangements came with a commitment of up to \$30 million over three years for land-based projects over \$100,000. Features of *Our Land Our Future* include open timelines, simplified processes, and a strong commitment to collaboration, longer term investment and capacity building in the development of successful projects.

Businesses and subsidiaries

As part of its land management function, the ILC has created businesses in a private-sector environment to provide benefits for local Indigenous people, to bring Indigenous land into production and as a base for quality training leading to real jobs. In 2014–15 the 14 ILC businesses hosted 370 trainees and directly employed 521 Indigenous people, making the ILC one of the largest employers of Indigenous people in remote Australia.

The businesses are managed by three wholly-owned subsidiaries. Voyages Indigenous Tourism Australia (Voyages) Pty Ltd oversees three tourism businesses operating on 259,000 hectares of land, including the ILC's most significant acquisition, Ayers Rock Resort. A further 2.15 million hectares of land, owned or leased from Indigenous land holders by the ILC, is under production in the pastoral industry through National Indigenous Pastoral Enterprises (NIPE) Pty Ltd; 13 of the 14 NIPE businesses are cattle operations in northern Australia. The third ILC subsidiary, the National Centre of Indigenous Excellence Ltd (NCIE), oversees an inner-Sydney facility that enables young Indigenous people from across Australia to participate in life-changing programmes.

Our Land Our Jobs

The ILC's former Training to Employment Programme was relaunched this year as *Our Land Our Jobs*, with operational responsibility for training and employment transferred from the ILC to subsidiaries. In 2014–15 the ILC invested \$3.74 million in *Our Land Our Jobs*, with the Australian Government

committing \$3.19 million through the Indigenous Advancement Strategy, over 12 months from February 2015 to provide more than 300 Indigenous jobs. The jobs will be delivered by NIPE, Voyages and the ILC-operated Merriman Shearing School near Brewarrina, NSW. NIPE and Voyages can provide training resources on a scale not matched by similar employers in rural and remote Australia. Trainees benefit from accredited training integrated with the operation of the businesses, combined with mentoring and life skills support. Graduates are guaranteed the offer of a job in an ILC business or another enterprise.

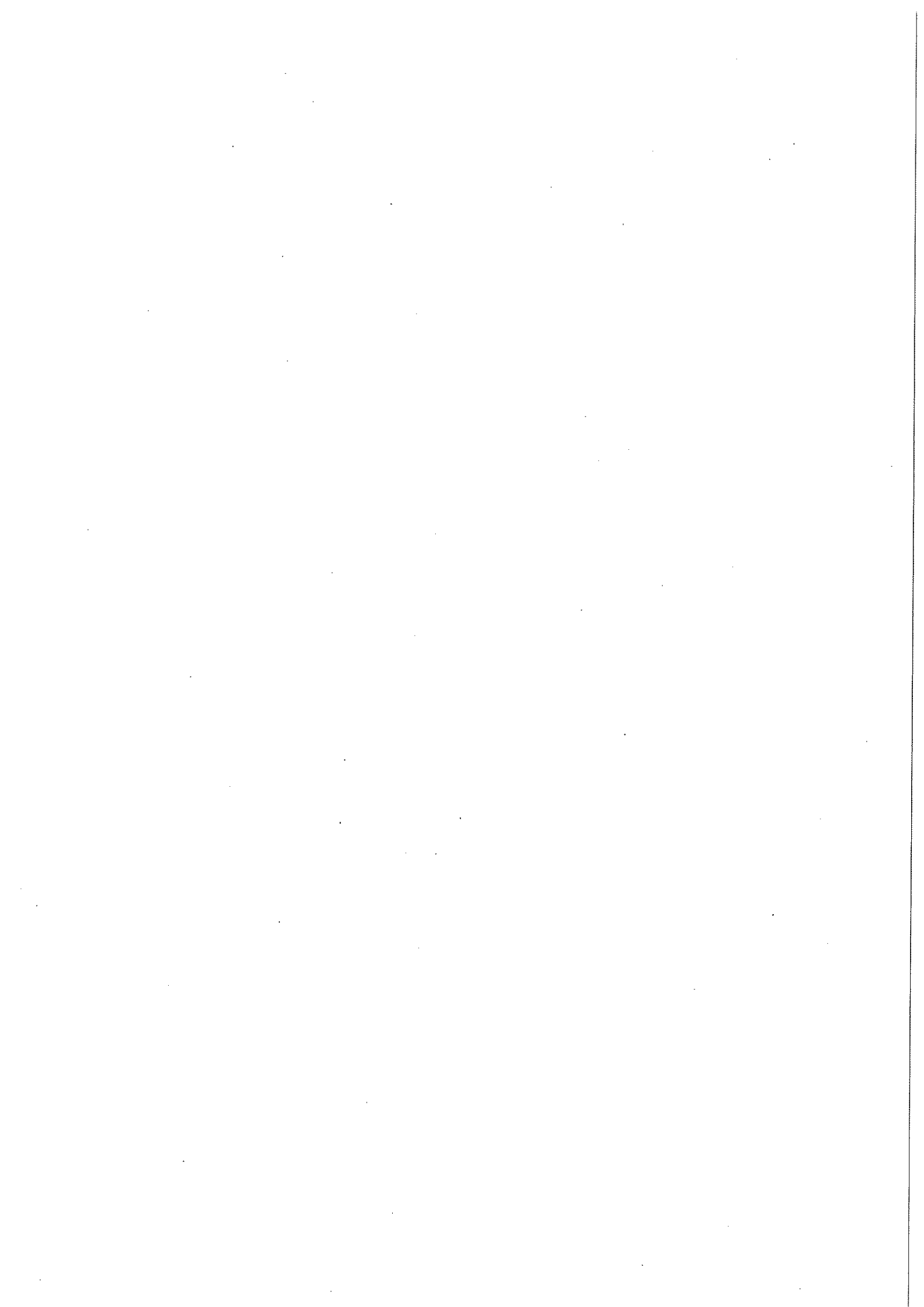
In addition to *Our Land Our Jobs*, ILC land acquisition and management projects enabled 2,677 training outcomes and 902 employment outcomes in 2014–15 through partnerships with third parties.

Governance

Following major reforms to the governance of the ILC during the term of the current Board, Directors this year focused on strengthening the governance of ILC subsidiaries. Statements of Expectations were issued to each subsidiary in pursuit of greater consistency in our combined operations, as required by both the *Aboriginal and Torres Strait Islander Act 2005 (ATSIA Act)* and the *Public Governance, Performance and Accountability Act 2013*. NIPE, originally established in 2004 to employ labour on ILC rural businesses, became a fully functioning company with an expanded board. This has given NIPE more operational flexibility, including the ability to partner in commercial ventures with third parties. The operations of the NCIE were reviewed, particularly in the light of the increasing ILC subsidy required to support the centre's operations. In response to this review, the ILC Board made changes to the NCIE board. ILC management has temporarily provided greater assistance to the NCIE, pending recruitment of a new NCIE Chief Executive Officer.

Stronger Land Account Bill

Last financial year I reported on the short review of the ILC and another statutory authority, Indigenous Business Australia (IBA), initiated by the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion. The ILC Board believed the review was established to justify an amalgamation of the ILC and IBA to form a larger agency focused primarily on Indigenous economic development, and that such a merger would be a threat to the Land Account. In a merged agency, the Land Account's revenues

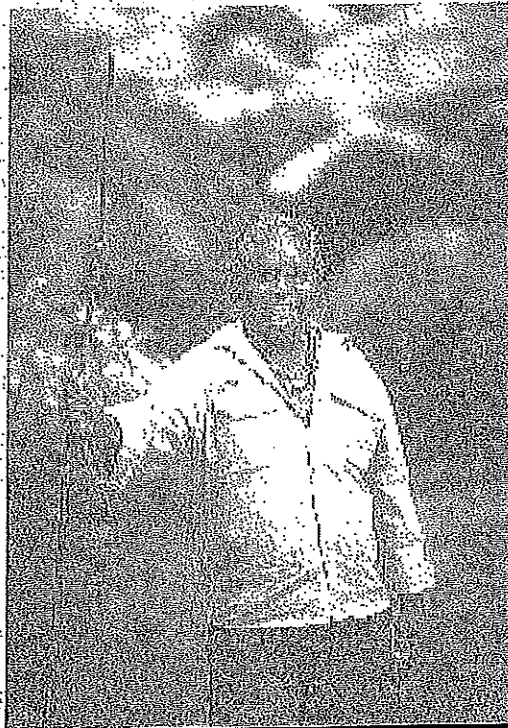


would inevitably be used, sooner or later, for purposes other than those originally legislated. The Minister has stated (October 2014) that any plans for changes to current arrangements are 'not under consideration'. The ILC Board nevertheless remains concerned that the Land Account is vulnerable, and was disappointed that the Stronger Land Account Bill, introduced to the Senate by the Australian Greens in June 2014, has not been supported by the Government or the Opposition.

The Bill's main purposes are to spell out the purpose of the Land Account in the ATSI Act, and to ensure the Land Account can be used only as originally intended: to acquire and manage land for Indigenous Australians. It also advances three other important areas of reform: mandating the highest standards of corporate governance in the ILC, increasing Indigenous input in the ILC and Land Account, and enabling the Land Account to grow in real terms. The proposed reforms to governance are crucial and include staggering and limiting Directors' terms, and maintaining an independent chair of the Audit and Assurance Committee.

After its introduction to Parliament, the Stronger Land Account Bill was sent for inquiry to the Senate Community Affairs Legislation Committee. The ILC made two submissions to the committee during 2014-15, and gave evidence at a public hearing in February 2015. Eighteen other submissions were made, most from significant Indigenous organisations representing extensive Indigenous constituencies. Sixteen of the submissions supported the Bill's purposes and mechanisms. The majority report of the committee, released in March 2015, recommended against the Senate's passing the Bill, with Labor members of the committee providing additional comments and Senator Siewert dissenting. The majority report's findings were based almost exclusively on concerns expressed by two government departments, Finance and Prime Minister and Cabinet, despite wide Indigenous support for the Bill.

The ILC Board remains committed to pursuing the important reforms in the Stronger Land Account Bill and to working with the committee, government departments, Senators and Indigenous stakeholders to consult on and refine aspects of the Bill. The ILC agrees with many of the suggestions for amending the Bill advanced by those making submissions to the committee, in particular the Torres Strait Regional Authority's recommendation that the ILC's remit be expanded to include sea in addition to land, as it is now established that Indigenous property rights can extend out to sea.



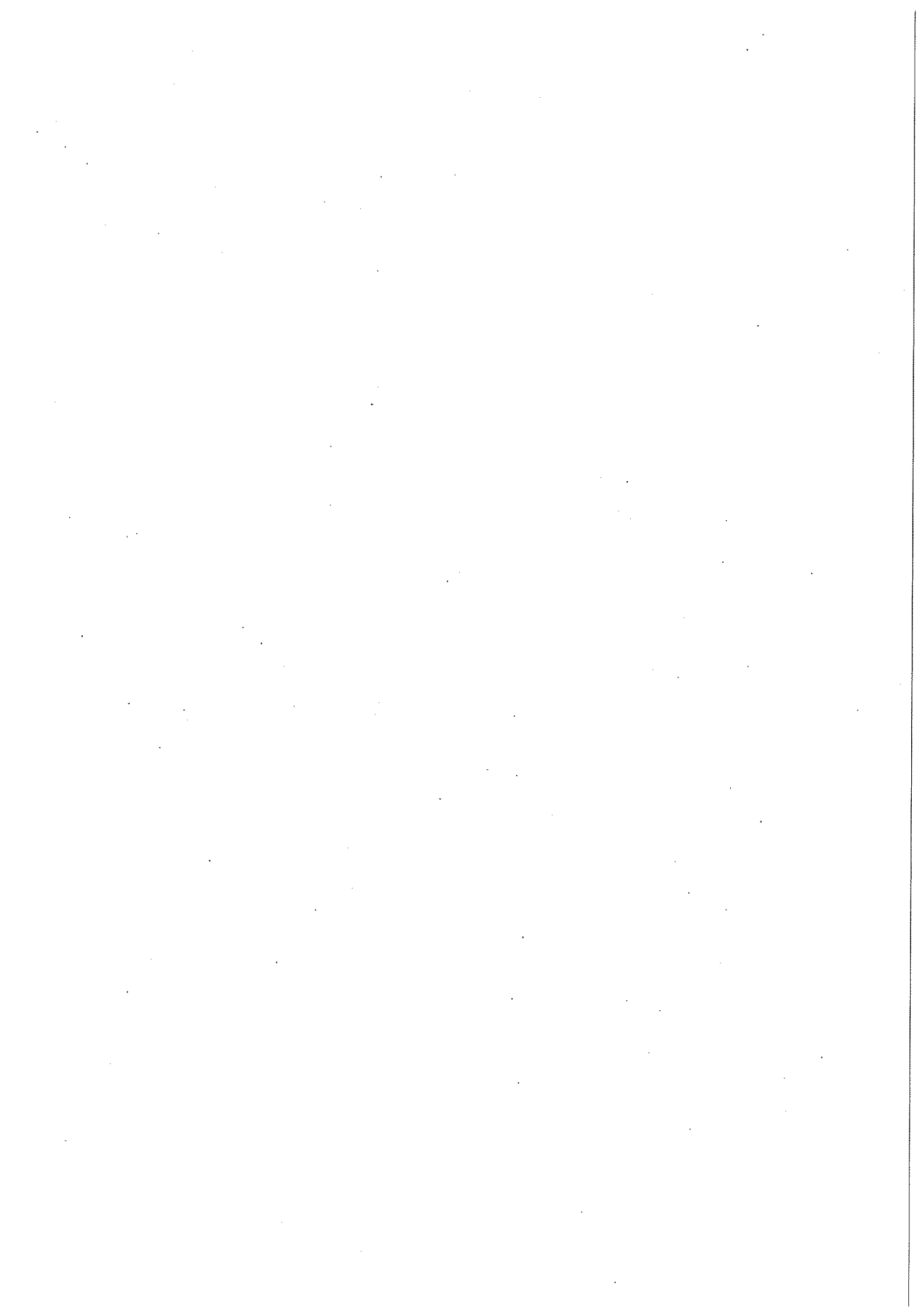
Roy Gibson has been a driving force behind the development of Mossman Gorge Centre.

Ayers Rock Resort

Since November 2013 the ILC Board has been calling for an independent public inquiry into the purchase of Ayers Rock Resort. The resort was acquired in 2010-11 by a former Board for in excess of \$300 million. As a result the ILC has borrowings of \$215 million against an asset valued on the ILC's books at \$248 million.

Last financial year a detailed investigation into the Ayers Rock Resort transaction commissioned by the ILC from consultants McGrathNicol found flaws in the due diligence and governance practices underpinning the acquisition. The ILC has also sought and obtained legal advice from a Senior Counsel regarding compliance with the *Commonwealth Authorities and Companies Act 1997* (legislation in force at the time of the acquisition) by certain former Directors and officers.

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public-sector authorities) and to the then Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister



Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister identified a range of relevant documents and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

The Ayers Rock Resort borrowings are compromising the ILC's ability to fund our land acquisition and land management programmes. In a worst case scenario up to 40 per cent of the annual revenues flowing from the Land Account to the ILC could be diverted to pay principal and interest on these loans, depending on the financial contribution made by the Resort's revenues. This financial year considerable Board attention has been allocated to the need to refinance, by May 2016, most of the borrowings on Ayers Rock Resort. Expert financial advice commissioned by the ILC indicates that a proportion of the debt—some \$60 million—is likely to attract interest rates of up to 10 per cent.

At the same time the current Board has never wavered in its support for Ayers Rock Resort, owned and operated by Voyages. Capital expenditure at the Resort has been accelerated, visitation and revenues are growing, and Indigenous participation at the Resort (employees, trainees and contractors) stands at around 32 per cent.

Legislative proposals to government

The ILC Board recently put two proposals to the Australian Government that are critical to the ILC's future ability to meet the increasing demands made on it.

The first proposal is to enable a one-off loan from the Land Account to the ILC, at the Land Account's normal rate of return, to help service the debt on Ayers Rock Resort at lower cost. It is estimated that such a loan would save \$32 million in interest payments over the life of the debt. The alternative is a commercial funding package that would see \$94 million in Indigenous funds being diverted to private-sector financiers.

The second proposal is to legislate to broaden the investment parameters of the Land Account to enable the capital balance to grow in real terms and provide more revenue to the ILC for its land acquisition and land management functions in the future. The ILC

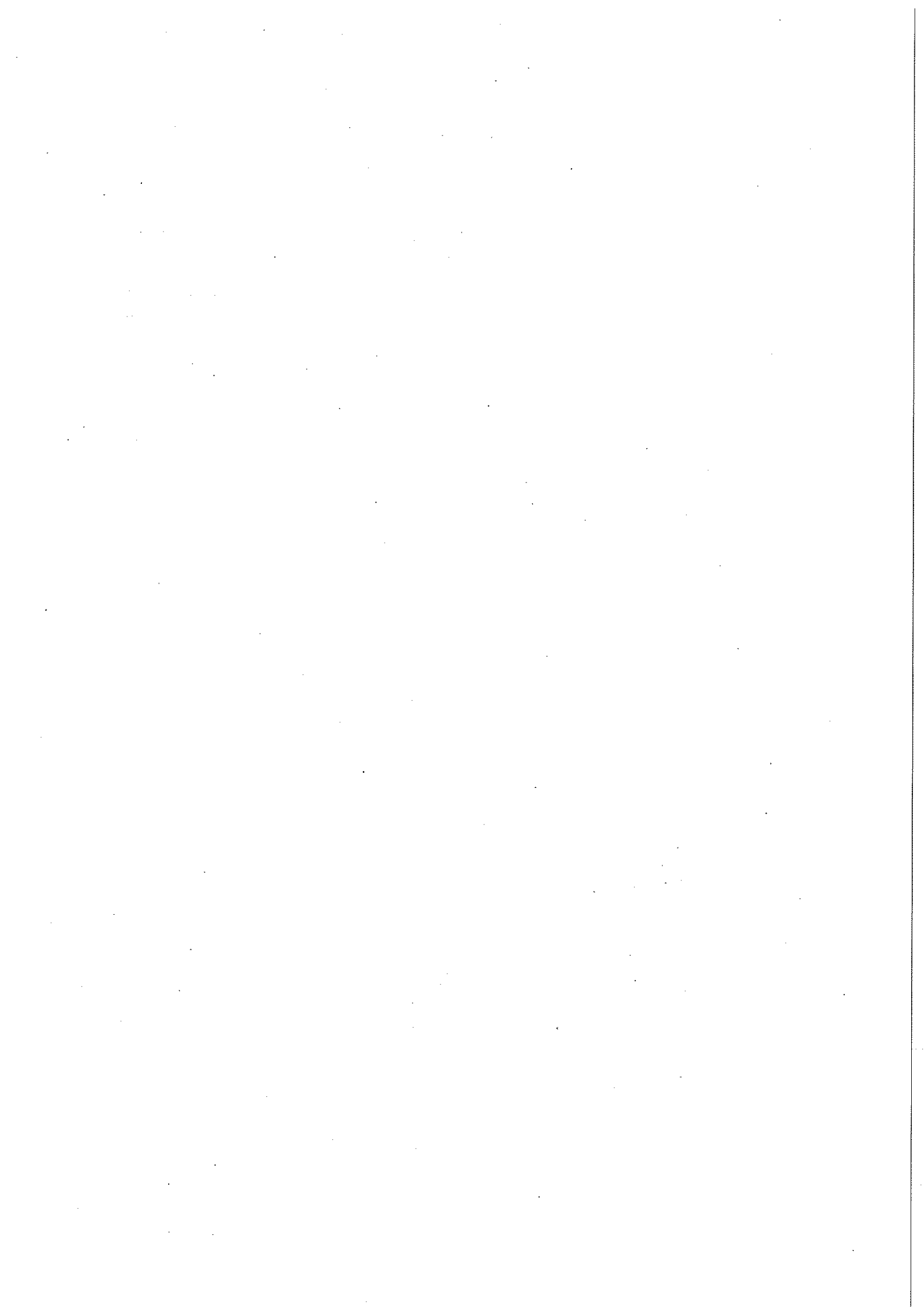
also proposes that management of the Land Account be transferred to the Future Fund Management Agency. It is estimated that over the last ten years the Land Account would be around \$450 million better off if its investments had not been largely confined to bank deposits and government bonds.

Looking forward

As the ILC enters its third decade, the corporation will continue to face a number of strategic challenges. Above all, Land Account revenues, generated from a capital fund fixed in real terms, will be increasingly inadequate to meet the land acquisition and, in particular, land management needs generated across Indigenous Australia. The financial consequences of the Ayers Rock Resort purchase will continue to exacerbate these pressures. The current conversations on 'unlocking' Indigenous land for development are in themselves an argument for more resources to the ILC.

Minister Scullion has already announced that my appointed successor, Mr Edward Fry, will take up his position on 20 October 2015, when my term as Chairperson ends. The terms of four other Directors also end at this time. I urge the incoming Chairperson and Board to carry on the important reforms to governance, policy and programmes, developed by the current Board. I ask that incoming Directors lend their voices to supporting the Stronger Land Account Bill to ensure the Land Account is protected and strengthened. If the Government is not persuaded to support this Bill, as seems likely, I ask that Directors advance the two legislative proposals recently put to the Government. Both are necessary if the ILC is to go on fulfilling its core responsibilities to Indigenous Australians.

Dr Dawn Casey PSM, FAHA
Chairperson





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER

BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's consideration of a revised foreword to the ILC Annual Report 2014–15.

Recommendation

That the Board:

- ***Agrees the draft Chairman's foreword at Attachment A and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.***

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2015 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling. The Minister is required to table the report for Parliament's consideration with 15 sitting days. More than 15 sitting days have passed since the report was transmitted.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer, Mr Leo Bator, that the Minister will not agree to table the ILC Annual Report 2014–15 in its current form, because the Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

The Chairperson is keen for the ILC to establish a strong and positive relationship with the Minister, so as to support favourable consideration of refinancing the debt on

Ayers Rock Resort, and into the future, negotiate legislative change to enable the capital balance of the Land Account to grow and increase annual returns to the ILC, and above all, deliver the best outcomes for Indigenous Australians and the Indigenous estate. It is in this context that the Minister's request could be considered.

It would not be appropriate to remove those parts of the former Chairperson's report that the Minister considers inaccurate, given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

An alternative, preferred option would be to replace the foreword in its entirety. This option would ameliorate the Minister's concerns and facilitate the tabling of the Annual Report. It would also provide an opportunity for the new Chairperson and Board to set out their aspirations for the ILC. A draft replacement foreword is at Attachment B.

Notwithstanding the positive approach reflected in the new Chairperson's foreword, any significant amendment to the draft annual report is likely to be noticed by members of the former Board and could result in public questioning, including at Senate Estimates.

Legal, Policy and Financial Compliance

This paper has been quality assured by the Legal, Policy and Finance sections, and matters raised during the quality assurance process have been resolved. The decision sheet has been cleared by the ILC Legal Section.

Recommendation

That the Board:

- Agrees the draft foreword at Attachment B and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.

Endorsements

<p>Prepared by: Leo Bator A/g Chief Executive Officer 13 January 2016 <i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by: Leo Bator A/g Chief Executive Officer 13 January 2016 <i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment B – Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

The Indigenous Land Corporation (ILC) was set up in 1995 to provide land-related benefits to Indigenous Australians. This report provides ample evidence of the achievements of the ILC's land acquisition and land management programs and of its three subsidiaries, Voyages Indigenous Tourism Australia, National Indigenous Pastoral Enterprises (NIPE) and the National Centre of Indigenous Excellence over the 2014–15 financial year.

The ILC Board appointed in October 2015 will be meeting next month for an in-depth discussion of our strategic priorities and vision for the future; we will be setting of our approach to delivering the ILC's functions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

We have already established the basis of a new, open and productive relationship with the Australian Government and will be providing strong support (within our legislative remit) to Government policy priorities.

We also need to work with Government to forge a common approach to two particular issues of concern to the Board.

The first is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We are seeking an option that minimises the ILC's interest-payment obligations, so the ILC has more resources for its programs and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections.

A second major concern for Directors is that returns from Aboriginal and Torres Strait Land Account, whose revenues fund the ILC's operations, are generally inadequate to meet the demands being made on the corporation. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 *Report to COAG on Indigenous Land Administration and Use*. I look forward to discussing with the Minister for Indigenous Affairs and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is

a major provider of training-to-employment programs, especially in remote Australia, and around one third of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises operates an extensive cattle business across 13 properties. The *White Paper on Developing Northern Australia*, released in June 2015, highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

I am very excited by the prospects I see for the ILC, working in tandem with the other Australian Government agency that I chair, Indigenous Business Australia (IBA). I am committed to building and leveraging the two agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

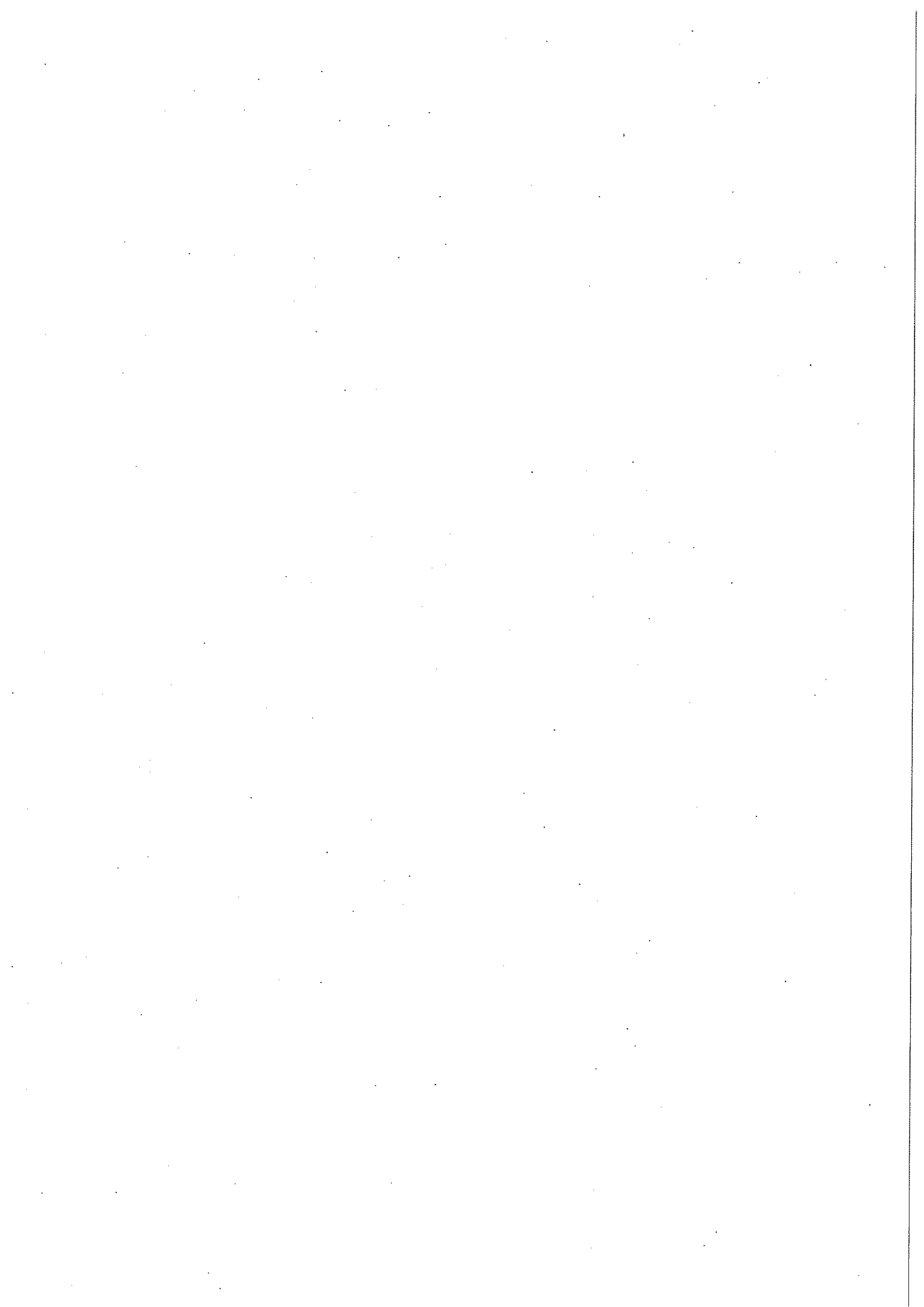
As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the ILC and IBA need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it.

Finally, I would like to thank the former Board in place during the 2014–15 financial year, including the Chairperson, Dr Dawn Casey. We will build on their good work.

Eddie Fry
Chair

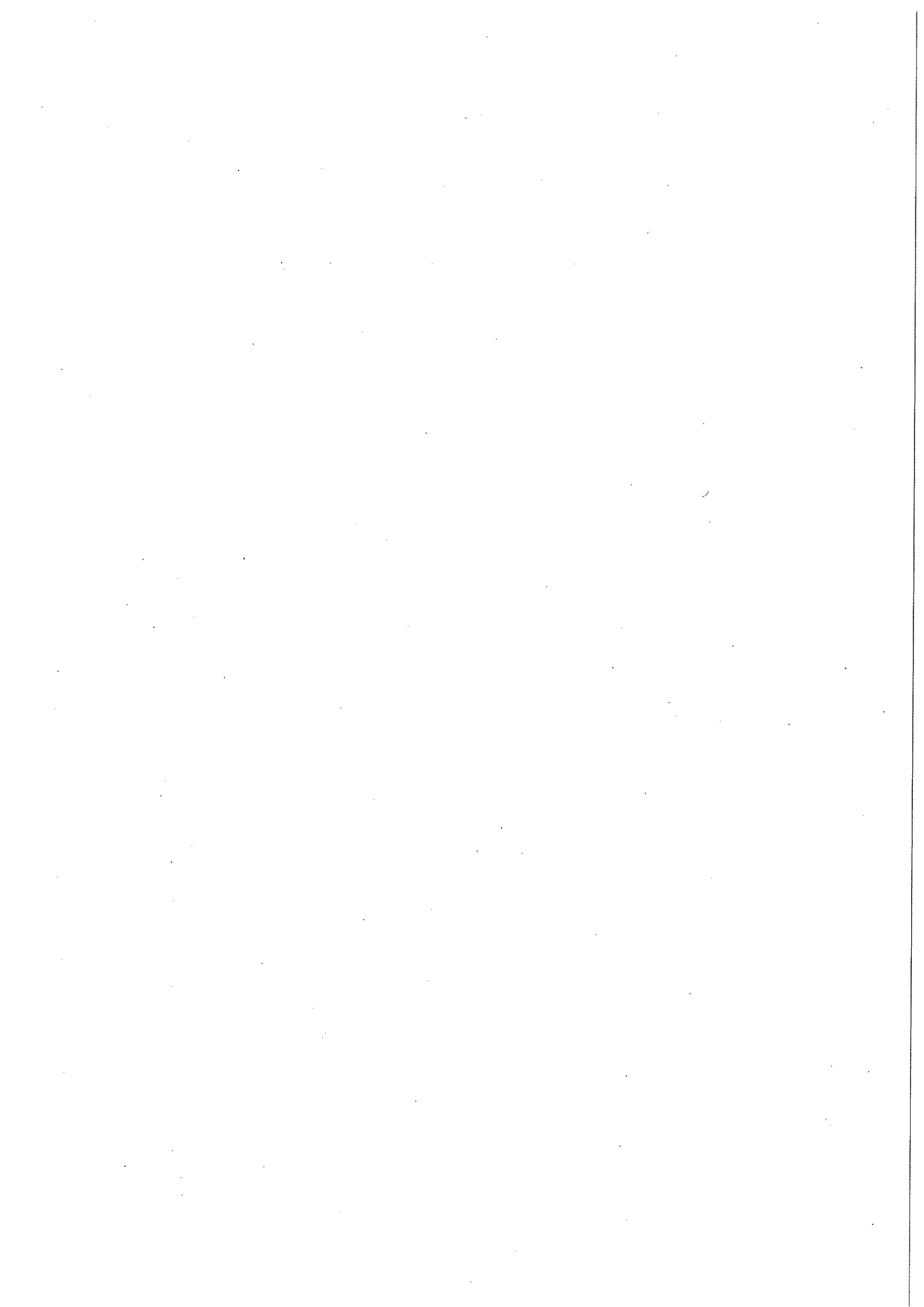
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Petty, Barry

From: McFadyen, Denise
Sent: Wednesday, 13 January 2016 2:32 PM
To: Kemble, Alice
Subject: Board paper - Consideration of AR - Draft (2) (2) (2) (2) (3) (4) (3) (3).docx
Attachments: Board paper - Consideration of AR - Draft (2) (2) (2) (2) (3) (4) (3) (3).docx

I made some changes to the paper itself – mainly style, not substance, and I have included a draft foreword. D





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER

BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014–15

Purpose

To seek the Board's consideration of a revised foreword to the ILC Annual Report 2014–15.

Recommendation

That the Board:

- ***Agrees the draft Chairman's foreword at Attachment A and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.***

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2015 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling. The Minister is required to table the report for Parliament's consideration with 15 sitting days. More than 15 sitting days have passed since the report was transmitted.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer, Mr Leo Bator, that the Minister will not agree to table the ILC Annual Report 2014–15 in its current form, because the Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

The Chairperson is keen for the ILC to establish a strong and positive relationship with the Minister, so as to support favourable consideration of issues essential to the ILC's

future, including negotiating legislative change to enable the capital balance of the Land Account to grow and increase annual returns to the ILC, developing an agreed approach to refinancing the debt on Ayers Rock Resort, and above all delivering the best outcomes for Indigenous Australians and the Indigenous estate. It is in this context that the Minister's request could be considered.

It would not be appropriate to remove those parts of the former Chairperson's report that the Minister considers inaccurate, given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

An alternative, preferred option would be to replace the foreword in its entirety. This option would ameliorate the Minister's concerns and facilitate the tabling of the Annual Report. It would also provide an opportunity for the new Chairperson and Board to set out their aspirations for the ILC. A draft replacement foreword is at Attachment B.

Notwithstanding the positive approach reflected in the new Chairperson's foreword, any significant amendment to the draft annual report is likely to be noticed by members of the former Board and could result in public questioning, including at Senate Estimates.

Legal, Policy and Financial Compliance

This paper has been quality assured by the Legal, Policy and Finance sections, and matters raised during the quality assurance process have been resolved. The decision sheet has been cleared by the ILC Legal Section.

Recommendation

That the Board:

- Agrees the draft foreword at Attachment B and to retransmit the ILC Annual Report 2014–15 to the Minister for Indigenous Affairs.

Endorsements

<p>Prepared by:</p> <p>January 2016</p> <p><i>In preparing this recommendation, I declare I have no conflict of interest</i></p>	<p>Approved by:</p> <p>Leo Bator A/g Chief Executive Officer</p> <p>January 2016</p> <p><i>In approving this recommendation, I declare I have no conflict of interest</i></p>
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Attachment A

Chairperson's report, ILC Annual Report 2014–15

[PDF]

Attachment B

Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

The Indigenous Land Corporation (ILC) was set up in 1995 to provide land-related benefits to Indigenous Australians. This report provides ample evidence of the achievements of the ILC's land acquisition and land management programs and of its three subsidiaries, Voyages Indigenous Tourism Australia, National Indigenous Pastoral Enterprises (NIPE) and the National Centre of Indigenous Excellence over the 2014–15 financial year.

The ILC Board appointed in October 2015 will be meeting next month for an in-depth discussion of our strategic priorities and vision for the future; we will be setting of our approach to delivering the ILC's functions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

We have already established the basis of a new, open and productive relationship with the Australian Government and will be providing strong support (within our legislative remit) to Government policy priorities.

We also need to work with Government to forge a common approach to two particular issues of concern to the Board.

The first is refinancing, in the first half of this year, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We are seeking an option that minimises the ILC's interest-payment obligations, so the ILC has more resources for its programs and to support the outstanding Indigenous job-creation outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections.

A second major concern for Directors is that returns from Aboriginal and Torres Strait Land Account, whose revenues fund the ILC's operations, are generally inadequate to meet the demands being made on the corporation. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 *Report to COAG on Indigenous Land Administration and Use*. I look forward to discussing with the Minister for Indigenous Affairs and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three subsidiaries, are essential given the Board's desire to play a greater role in supporting

the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around one third of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary National Indigenous Pastoral Enterprises operates an extensive cattle business across 13 properties. The *White Paper on Developing Northern Australia*, released in June 2015, highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and water management.

I am very excited by the prospects I see for the ILC, working in tandem with the other Australian Government agency that I chair, Indigenous Business Australia (IBA). I am committed to building and leveraging the two agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of Closing the Gap and of the scale of the resources needed to make progress for Indigenous Australians. I believe the ILC and IBA need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

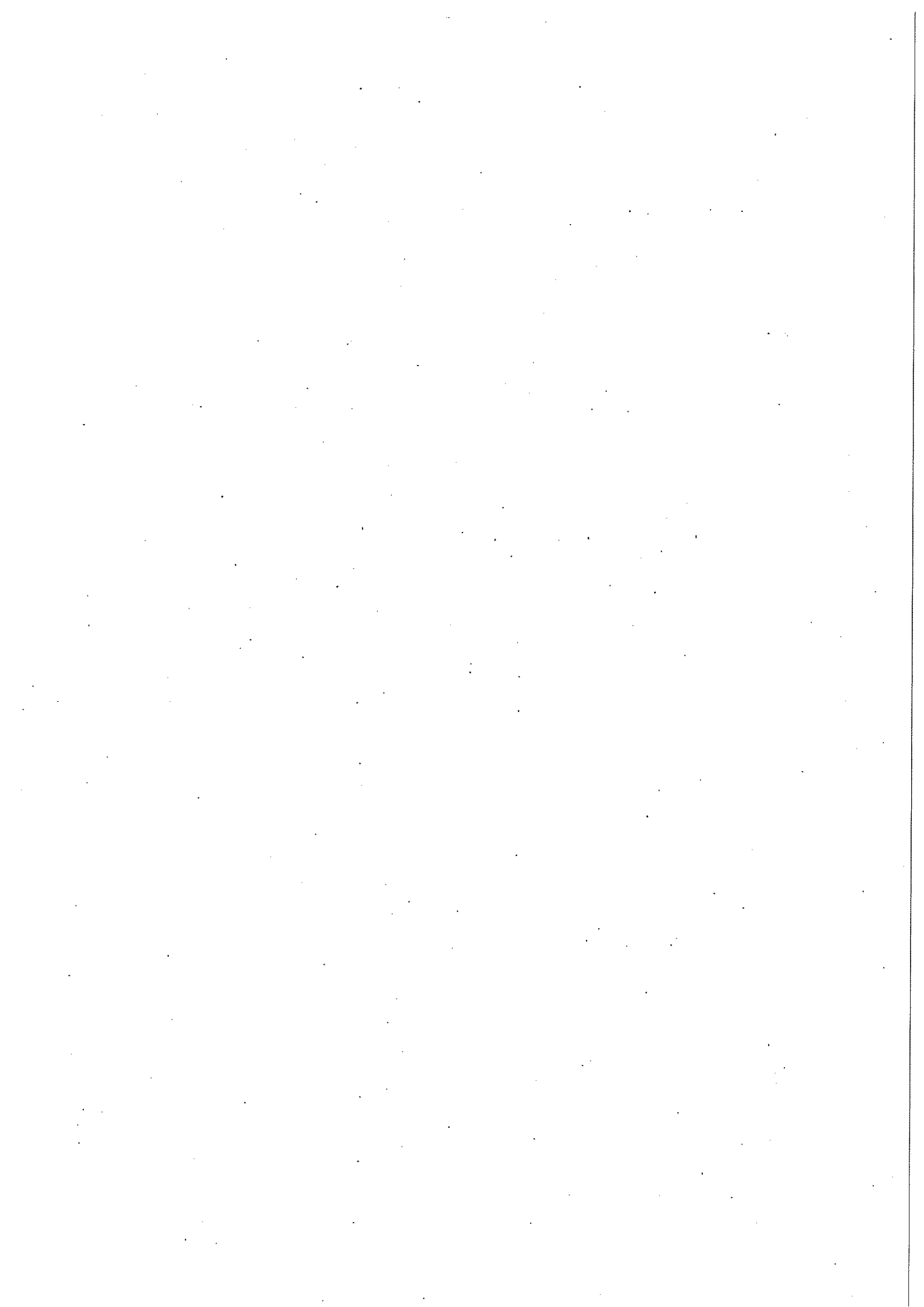
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Finally, I would like to thank the former Board in place during the 2014–15 financial year, including the Chairperson, Dr Dawn Casey. We will build on their good work.

Eddie Fry
Chair

Xxx January 2016

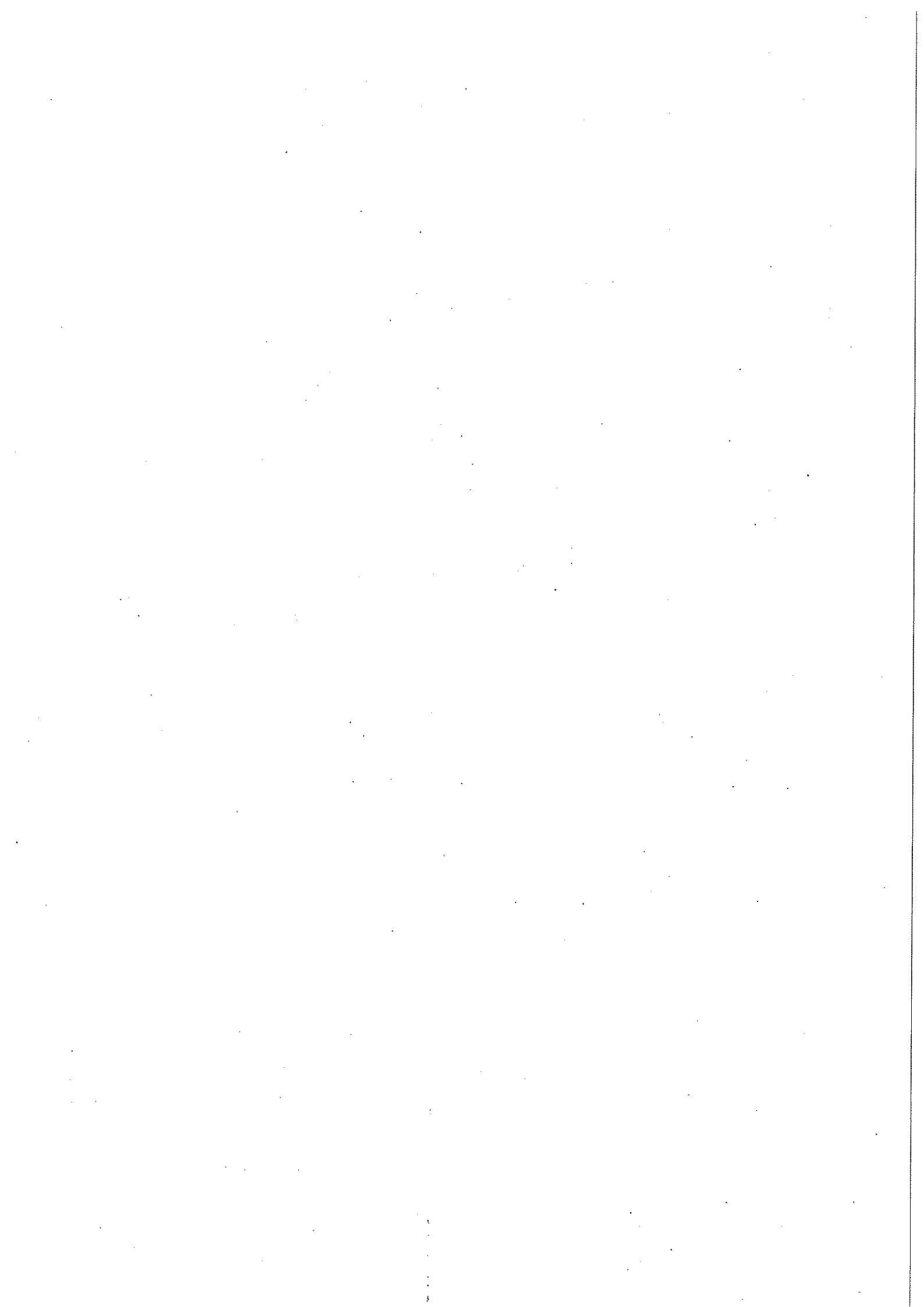
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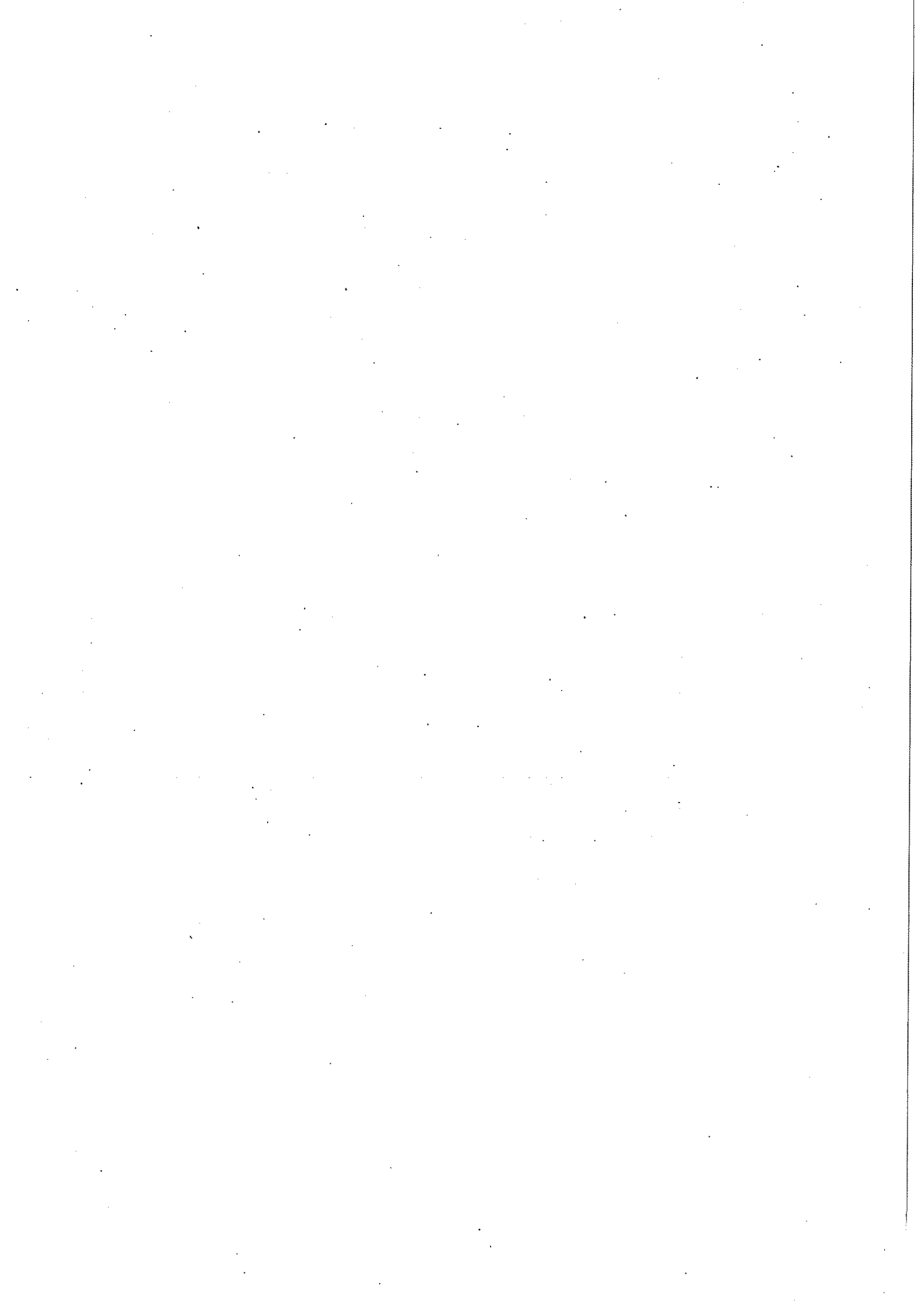
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DOCUMENT 11





Australian Government
Indigenous Land Corporation

BOARD BRIEFING PAPER
BOARD MEETING No 197—18 January 2016

RECONSIDERATION OF ILC ANNUAL REPORT 2014-15

Purpose

To seek the Board's consideration of a revised foreword to the ILC Annual Report 2014-15.

Recommendation

That the Board agrees the draft Chairman's foreword at Attachment A and to re-transmit the ILC Annual Report 2014-15 to the Minister for Indigenous Affairs.

Background

The ILC is required to submit an annual report and have it tabled in Parliament. The report for the period 1 July 2014 to 30 June 2015 was transmitted to the Minister on 21 September 2015 by former Chairperson, Dr Dawn Casey, after which it has been subject to ministerial review prior to tabling. The Minister is required to table the report for Parliament's consideration within 15 sitting days. More than 15 sitting days have passed since the report was transmitted.

Issues

The Office of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, has advised the ILC's acting Chief Executive Officer that the Minister will not agree to table the ILC Annual Report 2014-15 in its current form, because the Minister believes there are inaccuracies in Dr Casey's overarching report on the performance of the ILC which forms a 'foreword' to the report. This text is at Attachment A.

It is understood that the Minister's concerns centre on references to the Government's position on the need for an independent public inquiry into the purchase of the Ayers Rock Resort (ARR), an inquiry that was strongly advocated by the former ILC Board. The Minister's Office would like the matter settled quickly so the report can be tabled ahead of Senate Estimates on 18 February 2016.

The Chair is keen for the ILC to establish a strong and positive relationship with the Minister, so as to support favourable consideration of refinancing the debt on Ayers Rock Resort, and into the future, negotiate legislative change to enable the capital balance of the Land Account to grow and increase annual returns to the ILC, and above all, deliver the best outcomes for Indigenous Australians and the Indigenous estate. It is in this context that the Minister's request could be considered.

It would not be appropriate to remove those parts of the former Chairperson's report that the Minister considers inaccurate, given the Chairperson's foreword was signed by Dr Casey and her signature would remain on the altered document.

An alternative, preferred option would be to replace the foreword in its entirety. This option would ameliorate the Minister's concerns and facilitate the tabling of the Annual Report. It would also provide an opportunity for the new Chair and Board to set out their aspirations for the ILC. A draft replacement foreword is at Attachment B.

Notwithstanding the positive approach reflected in the new Chair's foreword, any significant amendment to the draft annual report is likely to be noticed by members of the former Board and could result in public questioning, including at Senate Estimates.

Legal, Policy and Financial Compliance

This paper has been quality assured by the Legal, Policy and Finance sections, and matters raised during the quality assurance process have been resolved.

Recommendation

That the Board agrees the draft foreword at Attachment B and to re-transmit the ILC Annual Report 2014-15 to the Minister for Indigenous Affairs.

LEO BATOR

Acting Chief Executive Officer

13 January 2016



Australian Government
Indigenous Land Corporation

Board in Confidence
BOARD DECISION

Decision No

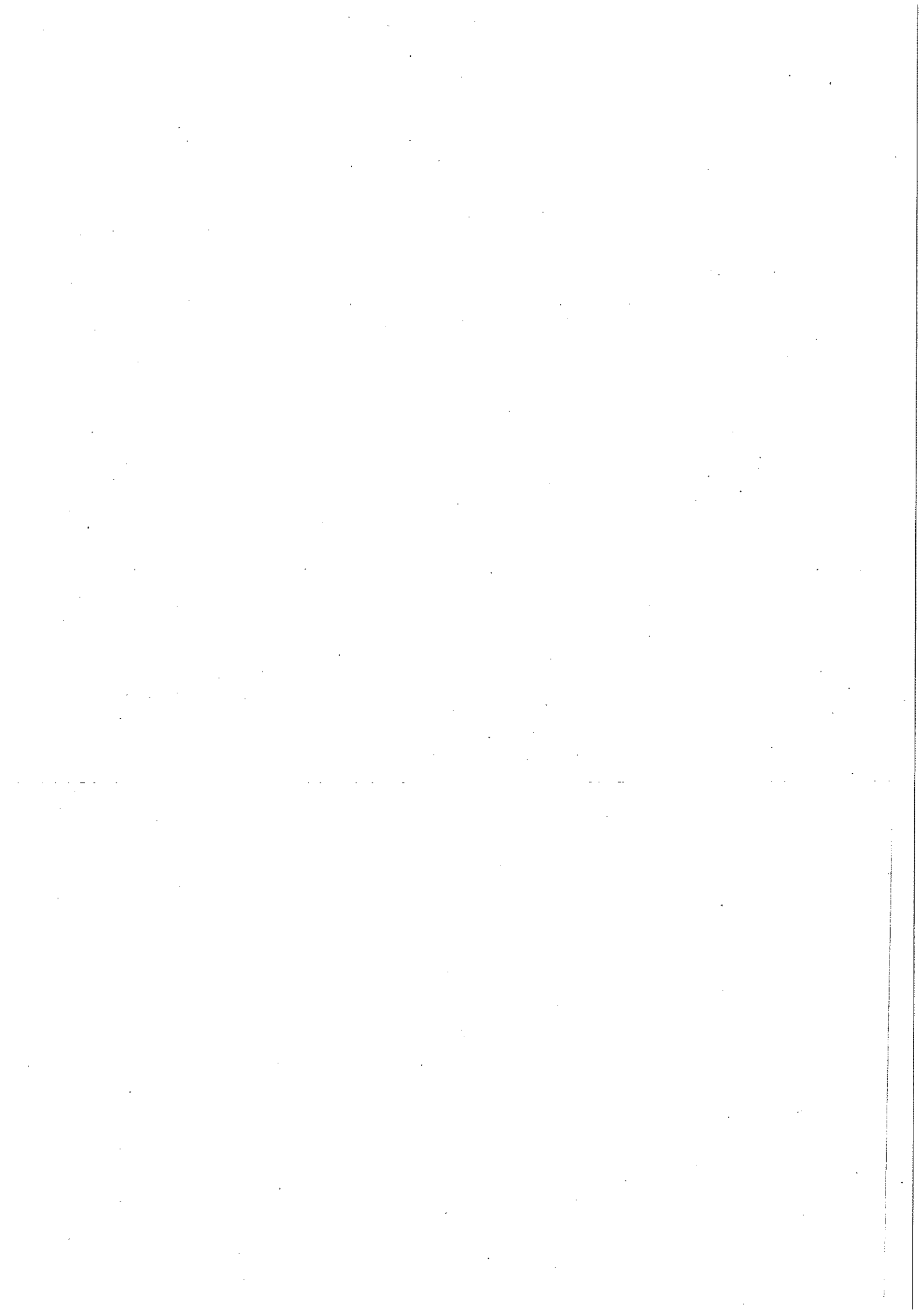
BOARD MEETING No: 197
MEETING DATE: 18 January 2016
BRIEFING PAPER: Reconsideration of the ILC 2014-15 Annual Report

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND CORPORATION:

1. **Notes** the briefing paper entitled *Reconsideration of the ILC 2014-15 Annual Report* and its attachments.
2. **Agrees** to include in the ILC Annual Report 2014-15 the Chairman's Foreword provided at Attachment A to the briefing paper.
3. **Agrees** to re-transmit the ILC Annual Report 2014-15 to the Minister for Indigenous Affairs.

SIGNED, Edward Fry, Chair

.....
Date: 18.01.16





Australian Government
Indigenous Land Corporation

ATTACHMENT B

Draft 'foreword' from ILC Chairperson, Mr Eddie Fry

The Indigenous Land Corporation (ILC) was set up in 1995 to provide land-related benefits to Indigenous Australians. This report provides ample evidence of the achievements of the ILC's land acquisition and land management programs and of its three subsidiaries, Voyages Indigenous Tourism Australia, National Indigenous Pastoral Enterprises (NIPE) and the National Centre of Indigenous Excellence over the 2014-15 financial year.

The ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting our approach to delivering the ILC's functions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

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The Government is prioritising the development of northern Australia where ILC subsidiary NIPE operates an extensive cattle business across 13 properties. The *White Paper on Developing Northern Australia*, released in June 2015, highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

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As Chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of *Closing the Gap* and of the scale of the resources needed to make progress for Indigenous Australians. I believe the ILC and IBA need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. We will learn from the past and move on. The ILC was established to benefit Indigenous Australians and that is what I will ask my fellow Board members to focus on because Indigenous people across Australia depend on what we do, and how well we do it.

Finally, I would like to thank the former Board in place during the 2014-15 financial year, including the Chairperson, Dr Dawn Casey. We will build on their good work.

Eddie Fry
Chair

Chairperson's report

2014-15 was a year of significant reform and reorientation of the ILC's effort to better position the corporation to assist in meeting the land-based challenges confronting Indigenous Australians.



I would like to thank my fellow Board members, and the ILC's hard-working Board committees, for their considered deliberations and commitment over the last year, and in previous years. I would also like to thank the management and staff of the ILC and its subsidiary companies who made great efforts this year to advance the Board's priorities, including better governance, accelerated grant of properties and putting in place new ways of working with Indigenous land owners.

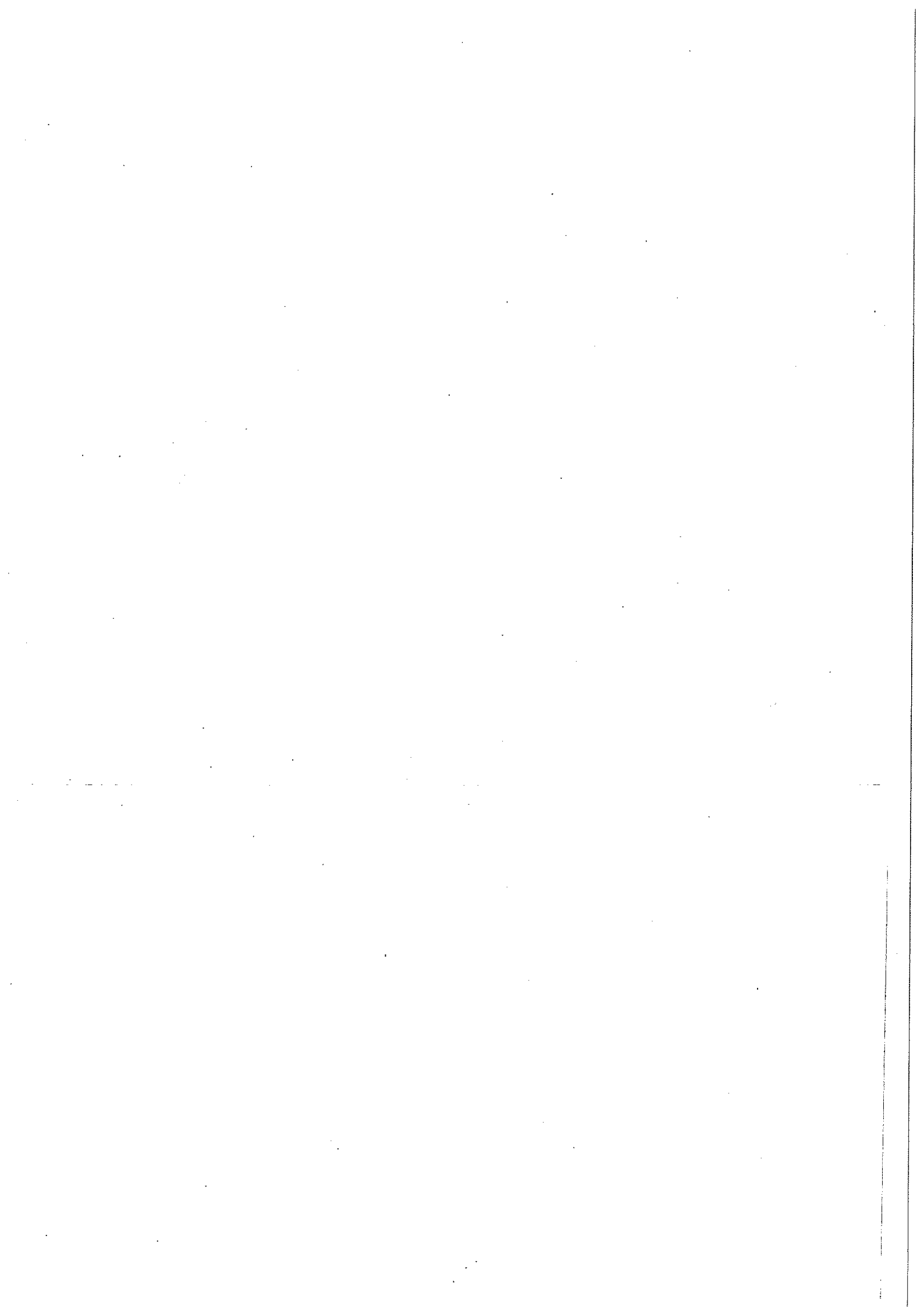
The ILC began operations on 1 June 1995 and is celebrating its 20th anniversary in 2015. This anniversary has served to shine a strong light on the origins of the ILC and of the Aboriginal and Torres Strait Islander Land Account (the Land Account) whose revenues fund the ILC's land acquisition and land management programmes. The ILC and Land Account were legislated together, initially in 1995, as part of the complex political settlement negotiated between the then Australian Government and Indigenous leaders after the *Mabo* judgment recognised native title to land in June 1992. They were intended to provide some compensation for Indigenous peoples' widespread loss of land. The recognition of native title and subsequent legislation of the *Native Title Act 1993* were going to benefit many Indigenous groups, but would not reverse the long history of Indigenous dispossession across the most productive areas of Australia.

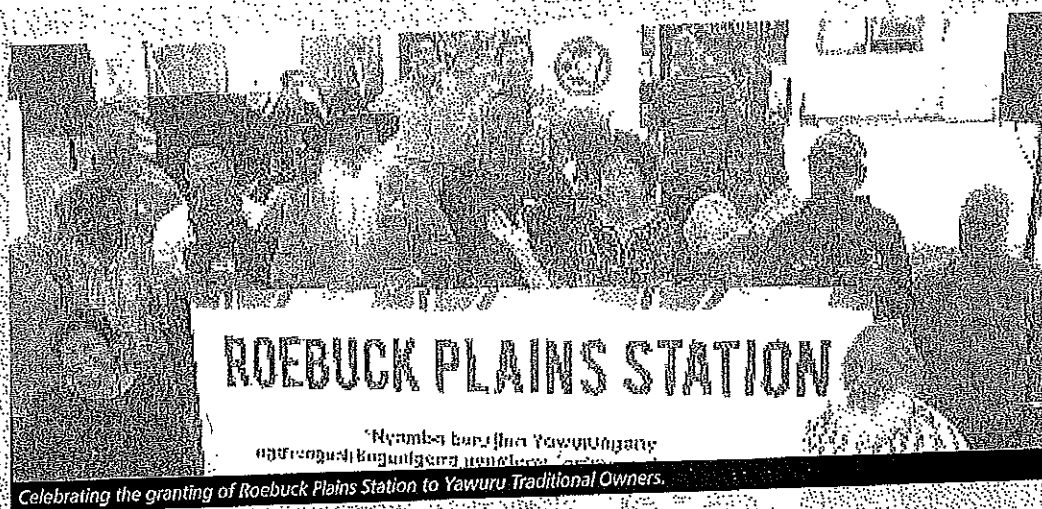
Wider developments

2014-15 saw a continuing rising trend in native title determinations, enlarging the Indigenous estate that now covers up to 30 per cent of the continent, the vast majority of it in economically marginal country across remote northern and central Australia.

Indigenous land and native title rights are emerging strongly as a national policy issue, especially given the widely held view (not shared by the ILC) that communal tenure inhibits economic development

on Indigenous land. In November 2014 the Council of Australian Governments (COAG) began an investigation into Indigenous land administration and use, advised by an appointed Expert Indigenous Working Group. In May 2015 the Australian Human Rights Commission convened a roundtable in Broome, WA, on Indigenous economic development and property rights attended by senior Indigenous leaders including ILC Deputy Chairperson, Ian Trust. In June 2015 the Australian Law Reform Commission (ALRC) released *Connection to Country*, its review of the *Native Title Act 1993*. The ALRC's recommendations include the need for statutory reform to recognise that native title rights include the





right to trade resources linked to land and seas. The Australian Government's *White Paper on Developing Northern Australia*, also released in June 2015, canvassed the need to 'simplify and modernise land arrangements in the north', because of their supposedly adverse effect on economic development and Indigenous development in particular.

Over the last 20 years the ILC has played a central and increasing role in partnering with Indigenous land owners to develop their land, based on local aspirations and working across a range of tenure types. The ILC is able to bring its own experience to bear in informing debates on these policy issues, and, given greater resources, could build on its demonstrated successes in bringing land into production in partnership with Indigenous land owners.

Land acquisition and grant

The ILC purchased one property in 2014–15, reflecting the fact that in recent years the ILC's land management function has been taking precedence over land acquisition. As was reportedly observed at the May 2015 roundtable convened by the Australian Human Rights Commission, Indigenous Australia is passing from a 'land claims phase to a land rights use phase'.

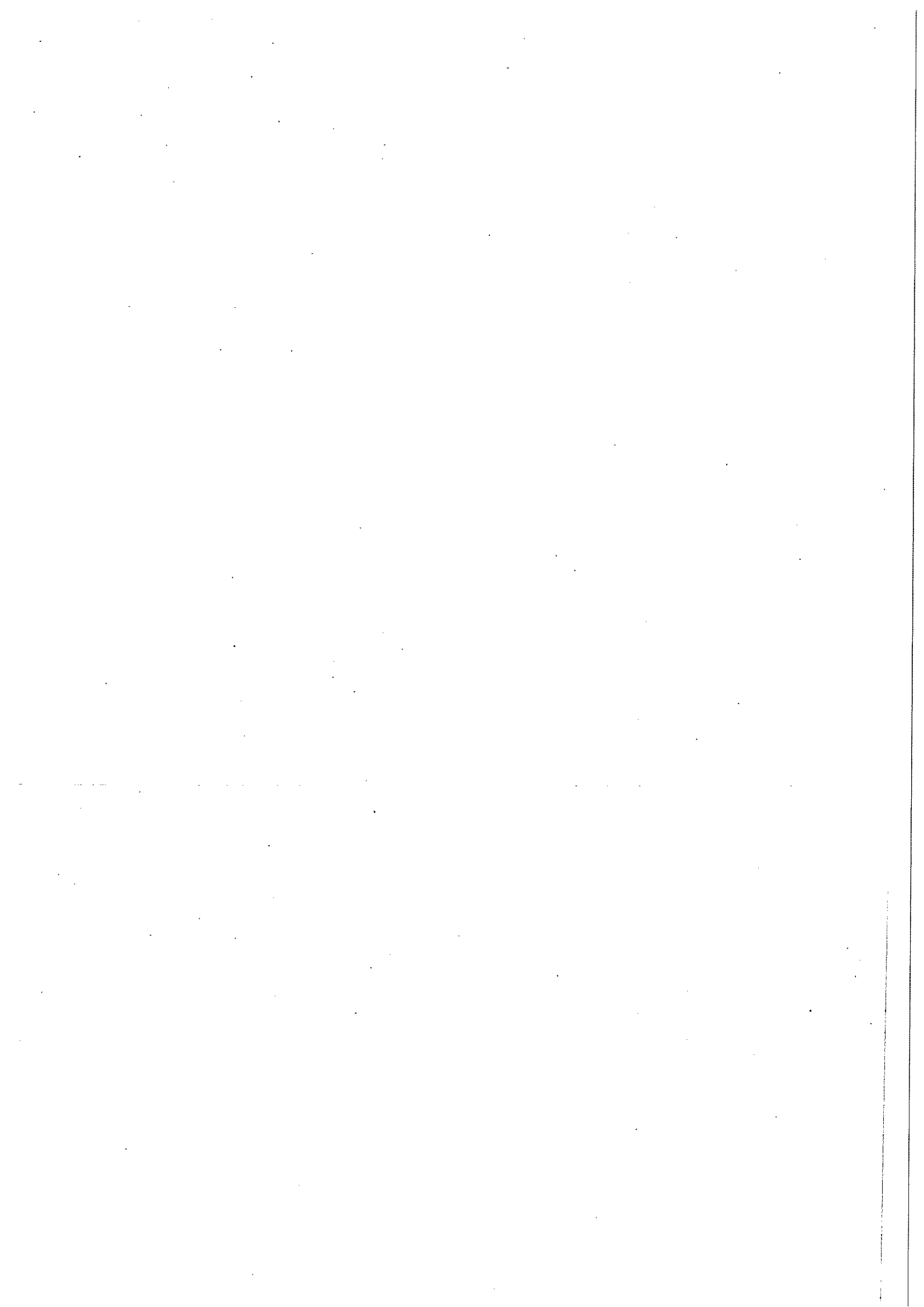
Twenty properties were approved to be granted to Indigenous corporations this financial year and 14 formal property transfers were achieved (against five divestments in 2013–14), in line with the current Board's policy of active divestment. The ILC has now granted more than 75 per cent of the properties it has acquired over 20 years.

Roebuck Plains Station, near Broome, WA, was the most significant grant and also provides a model of the way the ILC wants to work with other Indigenous groups. The property was acquired by the ILC in 1999, and subsequent ILC investment has made it one of the foremost cattle properties in Australia. In September 2014, the title to Roebuck Plains Station was transferred to the Nyamba Buru Yawuru Ltd, and the cattle operations simultaneously leased back by ILC subsidiary National Indigenous Pastoral Enterprises Pty Ltd for 15 years. The Yawuru will receive income from the lease, as well as ILC funding to manage an environmentally and culturally sensitive area of the property as a future Indigenous Protected Area.

Land management

ILC land management projects consistently seek to balance protection of country and Indigenous cultural and social wellbeing with (where practical) the generation of economic benefits. ILC projects achieved improved land management on 154 properties during 2014–15. Over this and the previous financial year, and consistent with the ILC's Native Title Policy, around 30 per cent of the ILC's small land management funding was provided to Prescribed Bodies Corporate, the corporations established under the Native Title Act to hold determined native title locally. These organisations are critical to realising native title holders' land-based aspirations, but so far receive little support from government.

The current Board also recognises the growing importance of environmental and heritage management in generating income on Indigenous land. The ILC continues to be a major innovator in



the emerging Indigenous carbon economy. The ILC's Fish River and Merepah Fire Projects in the Northern Territory and Queensland are informing the development of other Indigenous savanna burning projects across northern Australia.

Revised programme arrangements, entitled *Our Land Our Future*, were launched in March 2015, to position the ILC as an even more effective partner for Indigenous land owning groups. The arrangements came with a commitment of up to \$30 million over three years for land-based projects over \$100,000. Features of *Our Land Our Future* include open timelines, simplified processes, and a strong commitment to collaboration, longer term investment and capacity building in the development of successful projects.

Businesses and subsidiaries

As part of its land management function, the ILC has created businesses in a private sector environment to provide benefits for local Indigenous people, to bring Indigenous land into production and as a base for quality training leading to real jobs. In 2014-15 the 14 ILC businesses hosted 370 trainees and directly employed 521 Indigenous people, making the ILC one of the largest employers of Indigenous people in remote Australia.

The businesses are managed by three wholly-owned subsidiaries. Voyages Indigenous Tourism Australia (Voyages) Pty Ltd oversees three tourism businesses operating on 259,000 hectares of land, including the ILC's most significant acquisition, Ayers Rock Resort. A further 2.15 million hectares of land, owned or leased from Indigenous land holders by the ILC, is under production in the pastoral industry through National Indigenous Pastoral Enterprises (NIPE) Pty Ltd. 13 of the 14 NIPE businesses are cattle operations in northern Australia. The third ILC subsidiary, the National Centre of Indigenous Excellence Ltd (NCIE), oversees an inner-Sydney facility that enables young Indigenous people from across Australia to participate in life-changing programmes.

Our Land Our Jobs

The ILC's former Training to Employment Programme was relaunched this year as *Our Land Our Jobs*, with operational responsibility for training and employment transferred from the ILC to subsidiaries. In 2014-15 the ILC invested \$3.74 million in *Our Land Our Jobs*, with the Australian Government

committing \$3.19 million through the Indigenous Advancement Strategy, over 12 months from February 2015 to provide more than 300 Indigenous jobs. The jobs will be delivered by NIPE, Voyages and the ILC-operated Merriman Shearing School near Brewarrina, NSW. NIPE and Voyages can provide training resources on a scale not matched by similar employers in rural and remote Australia. Trainees benefit from accredited training integrated with the operation of the businesses, combined with mentoring and life skills support. Graduates are guaranteed the offer of a job in an ILC business or another enterprise.

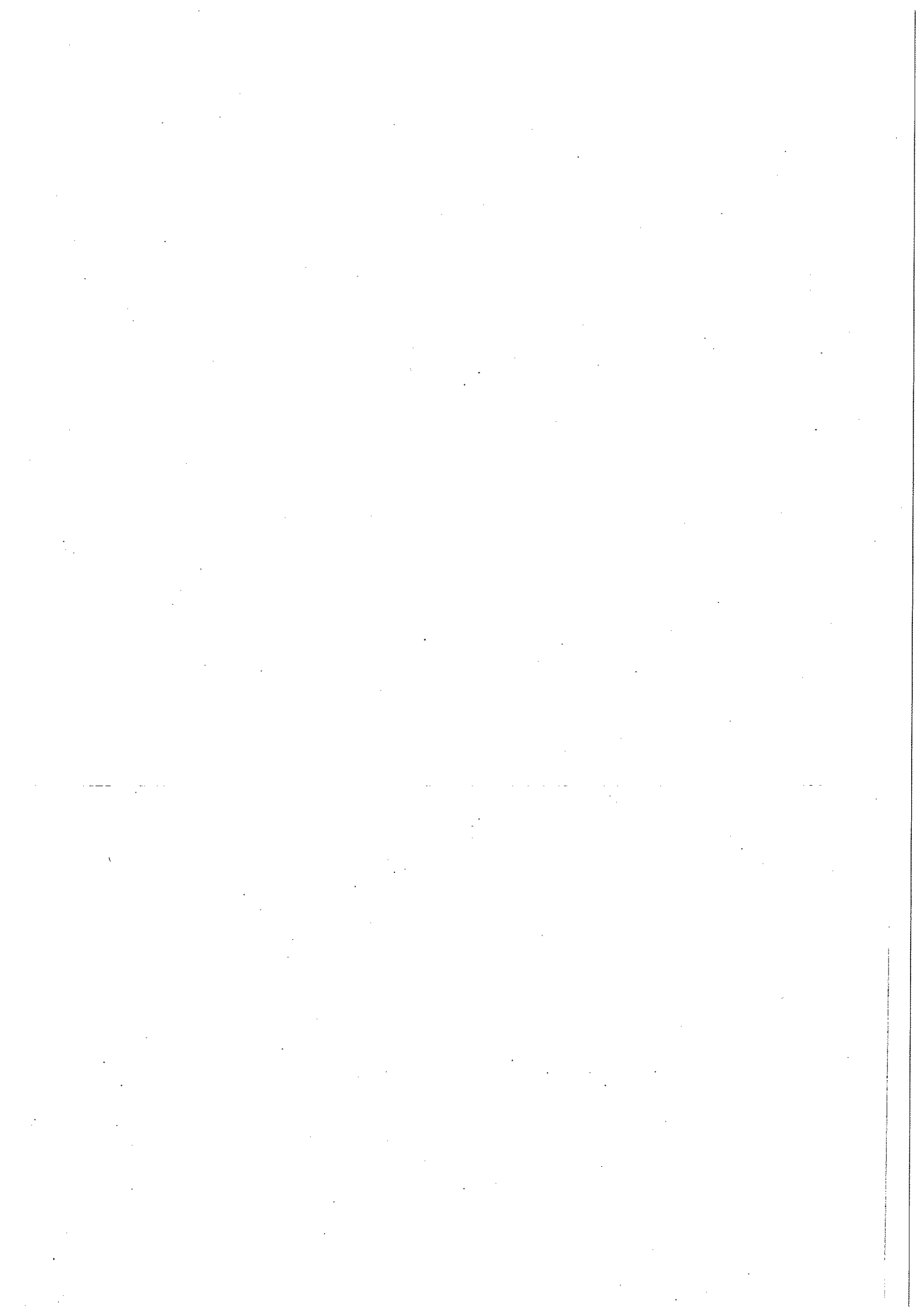
In addition to *Our Land Our Jobs*, ILC land acquisition and management projects enabled 2,677 training outcomes and 902 employment outcomes in 2014-15 through partnerships with third parties.

Governance

Following major reforms to the governance of the ILC during the term of the current Board, Directors this year focused on strengthening the governance of ILC subsidiaries. Statements of Expectations were issued to each subsidiary in pursuit of greater consistency in our combined operations, as required by both the *Aboriginal and Torres Strait Islander Act 2005* (ATSIA Act) and the *Public Governance, Performance and Accountability Act 2013*. NIPE, originally established in 2004 to employ labour on ILC rural businesses, became a fully functioning company with an expanded board. This has given NIPE more operational flexibility, including the ability to partner in commercial ventures with third parties. The operations of the NCIE were reviewed, particularly in the light of the increasing ILC subsidy required to support the centre's operations. In response to this review, the ILC Board made changes to the NCIE board. ILC management has temporarily provided greater assistance to the NCIE, pending recruitment of a new NCIE Chief Executive Officer.

Stronger Land Account Bill

Last financial year I reported on the short review of the ILC and another statutory authority, Indigenous Business Australia (IBA), initiated by the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion. The ILC Board believed the review was established to justify an amalgamation of the ILC and IBA to form a larger agency focused primarily on Indigenous economic development, and that such a merger would be a threat to the Land Account. In a merged agency, the Land Account's revenues



would inevitably be used, sooner or later, for purposes other than those originally legislated. The Minister has stated (October 2014) that any plans for changes to current arrangements are 'not under consideration'. The ILC Board nevertheless remains concerned that the Land Account is vulnerable, and was disappointed that the Stronger Land Account Bill, introduced to the Senate by the Australian Greens in June 2014, has not been supported by the Government or the Opposition.

The Bill's main purposes are to spell out the purpose of the Land Account in the ATSI Act, and to ensure the Land Account can be used only as originally intended: to acquire and manage land for Indigenous Australians. It also advances three other important areas of reform: mandating the highest standards of corporate governance in the ILC, increasing Indigenous input in the ILC and Land Account, and enabling the Land Account to grow in real terms. The proposed reforms to governance are crucial and include staggering and limiting Directors' terms, and maintaining an independent chair of the Audit and Assurance Committee.

After its introduction to Parliament, the Stronger Land Account Bill was sent for inquiry to the Senate Community Affairs Legislation Committee. The ILC made two submissions to the committee during 2014-15, and gave evidence at a public hearing in February 2015. Eighteen other submissions were made, most from significant Indigenous organisations representing extensive Indigenous constituencies. Sixteen of the submissions supported the Bill's purposes and mechanisms. The majority report of the committee, released in March 2015, recommended against the Senate's passing the Bill, with Labor members of the committee providing additional comments and Senator Siewert dissenting. The majority report's findings were based almost exclusively on concerns expressed by two government departments, Finance and Prime Minister and Cabinet, despite wide Indigenous support for the Bill.

The ILC Board remains committed to pursuing the important reforms in the Stronger Land Account Bill and to working with the committee, government departments, Senators and Indigenous stakeholders to consult on and refine aspects of the Bill. The ILC agrees with many of the suggestions for amending the Bill advanced by those making submissions to the committee, in particular the Torres Strait Regional Authority's recommendation that the ILC's remit be expanded to include sea in addition to land, as it is now established that Indigenous property rights can extend out to sea.



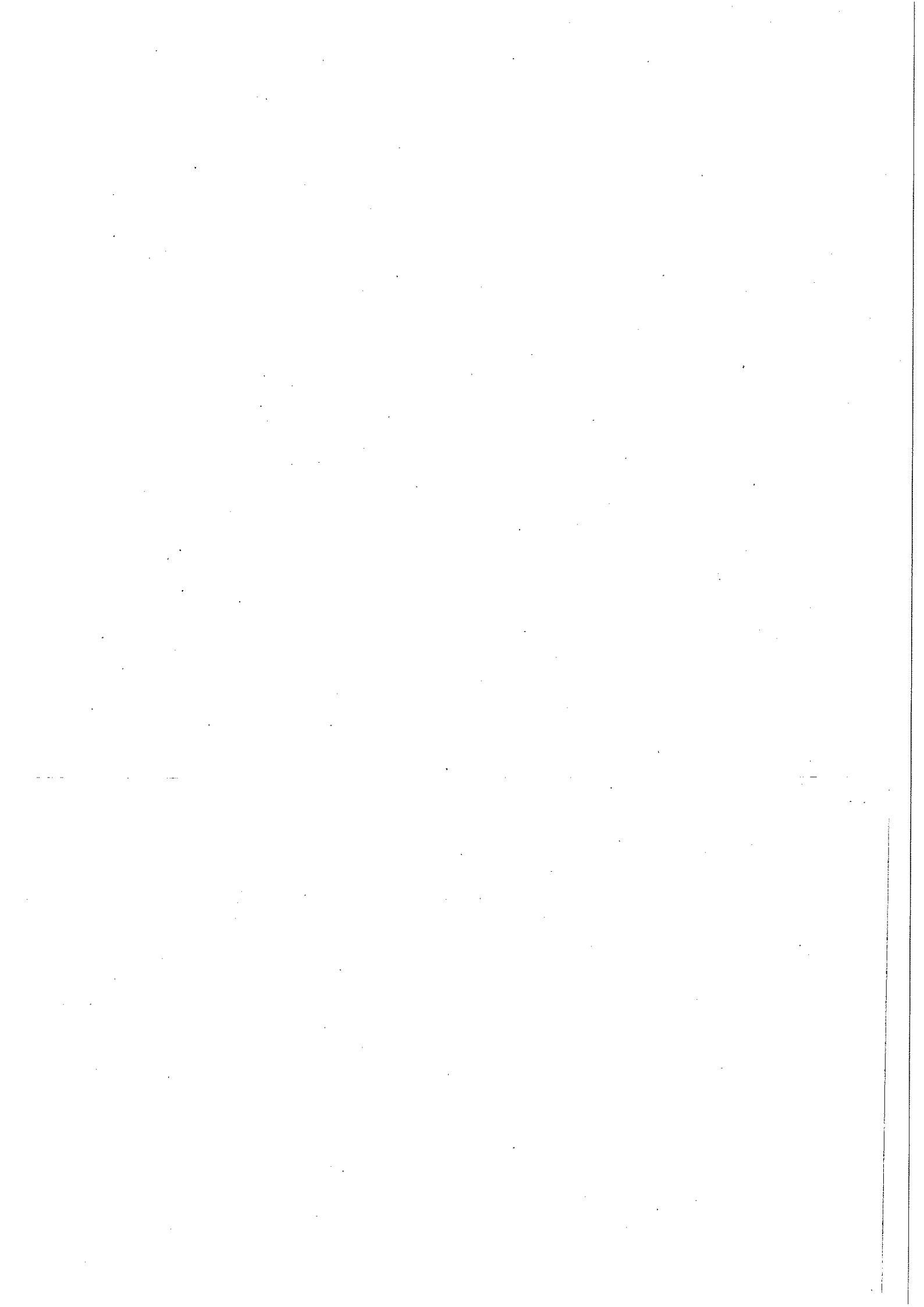
Roy Gibson has been a driving force behind the development of Mossman Gorge Centre.

Ayers Rock Resort

Since November 2013 the ILC Board has been calling for an independent public inquiry into the purchase of Ayers Rock Resort. The resort was acquired in 2010-11 by a former Board for in excess of \$300 million. As a result the ILC has borrowings of \$215 million against an asset valued on the ILC's books at \$248 million.

Last financial year a detailed investigation into the Ayers Rock Resort transaction commissioned by the ILC from consultants McGrathNicol found flaws in the due diligence and governance practices underpinning the acquisition. The ILC has also sought and obtained legal advice from a Senior Counsel regarding compliance with the *Commonwealth Authorities and Companies Act 1997* (legislation in force at the time of the acquisition) by certain former Directors and officers.

The Australian Government has continued to refuse the ILC's requests for an investigation, despite many representations to Minister Scullion, to the Minister for Finance, the Hon Matthias Cormann MP (in his role as regulator of public sector authorities) and to the then Prime Minister, the Hon Tony Abbott MP. In correspondence dated December 2014, Minister Cormann indicated he agreed to an inquiry, but referred the matter to Minister Scullion. Minister



Scullion refused to initiate an inquiry on the basis that the matter had already been investigated. Challenged to provide 'new information', the ILC once again examined all the records in its possession and in May 2015 wrote to the Prime Minister adding to the extensive information already supplied to the Government. The letter to the Prime Minister identified a range of relevant documents, and detailed five particularly concerning features of the transaction process. No substantive response had been received at the time of preparing this report.

The Ayers Rock Resort borrowings are compromising the ILC's ability to fund our land acquisition and land management programmes. In a worst case scenario up to 40 per cent of the annual revenues flowing from the Land Account to the ILC could be diverted to pay principal and interest on these loans, depending on the financial contribution made by the Resort's revenues. This financial year considerable Board attention has been allocated to the need to refinance, by May 2016, most of the borrowings on Ayers Rock Resort. Expert financial advice commissioned by the ILC indicates that a proportion of the debt—some \$60 million—is likely to attract interest rates of up to 10 per cent.

At the same time the current Board has never wavered in its support for Ayers Rock Resort, owned and operated by Voyages. Capital expenditure at the Resort has been accelerated, visitation and revenues are growing, and Indigenous participation at the Resort (employees, trainees and contractors) stands at around 32 per cent.

Legislative proposals to government

The ILC Board recently put two proposals to the Australian Government that are critical to the ILC's future ability to meet the increasing demands made on it:

The first proposal is to enable a one-off loan from the Land Account to the ILC, at the Land Account's normal rate of return, to help service the debt on Ayers Rock Resort at lower cost. It is estimated that such a loan would save \$32 million in interest payments over the life of the debt. The alternative is a commercial funding package that would see \$94 million in Indigenous funds being diverted to private-sector financiers.

The second proposal is to legislate to broaden the investment parameters of the Land Account to enable the capital balance to grow in real terms and provide more revenue to the ILC for its land acquisition and land management functions in the future. The ILC

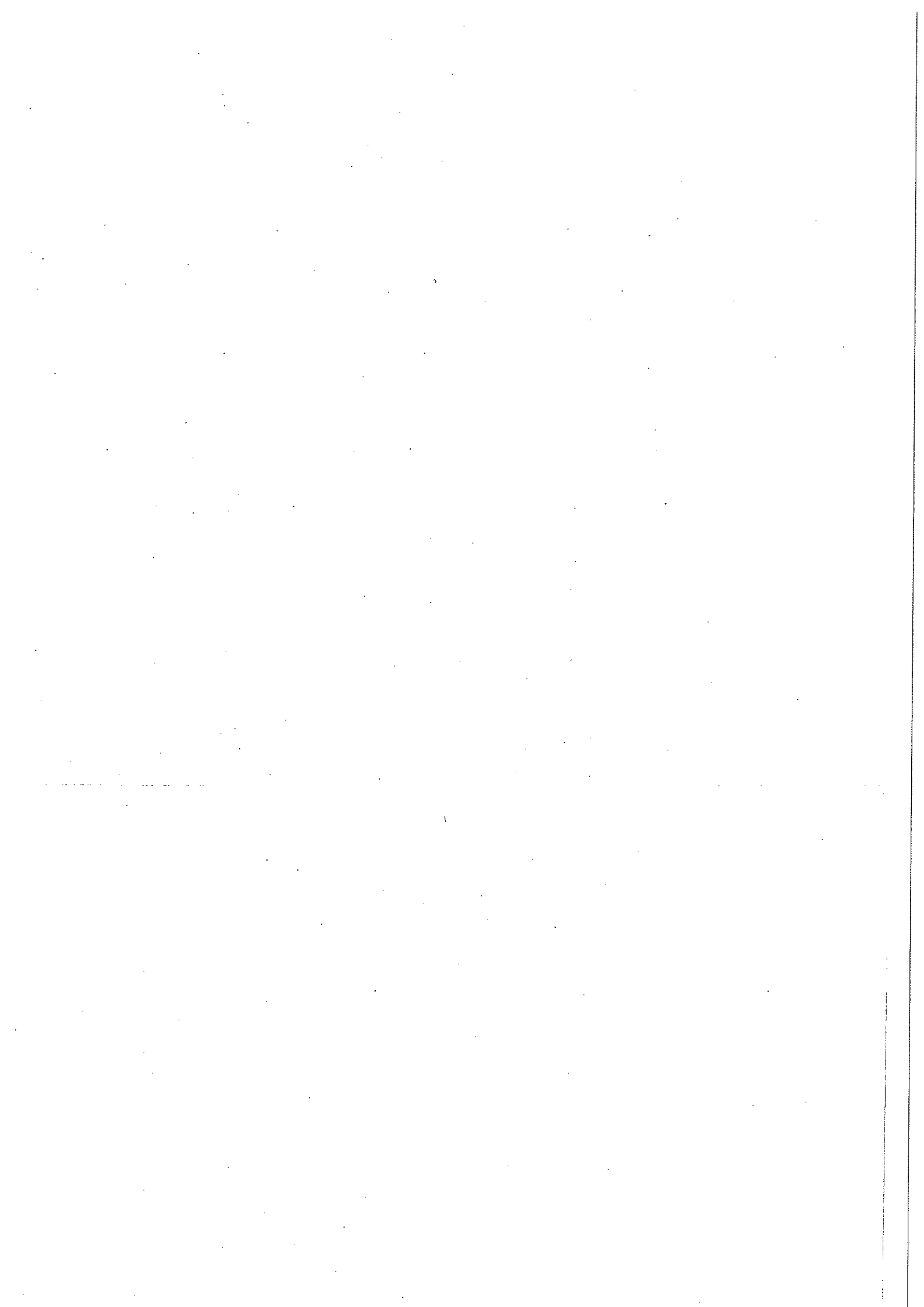
also proposes that management of the Land Account be transferred to the Future Fund Management Agency. It is estimated that over the last ten years the Land Account would be around \$450 million better off if its investments had not been largely confined to bank deposits and government bonds.

Looking forward

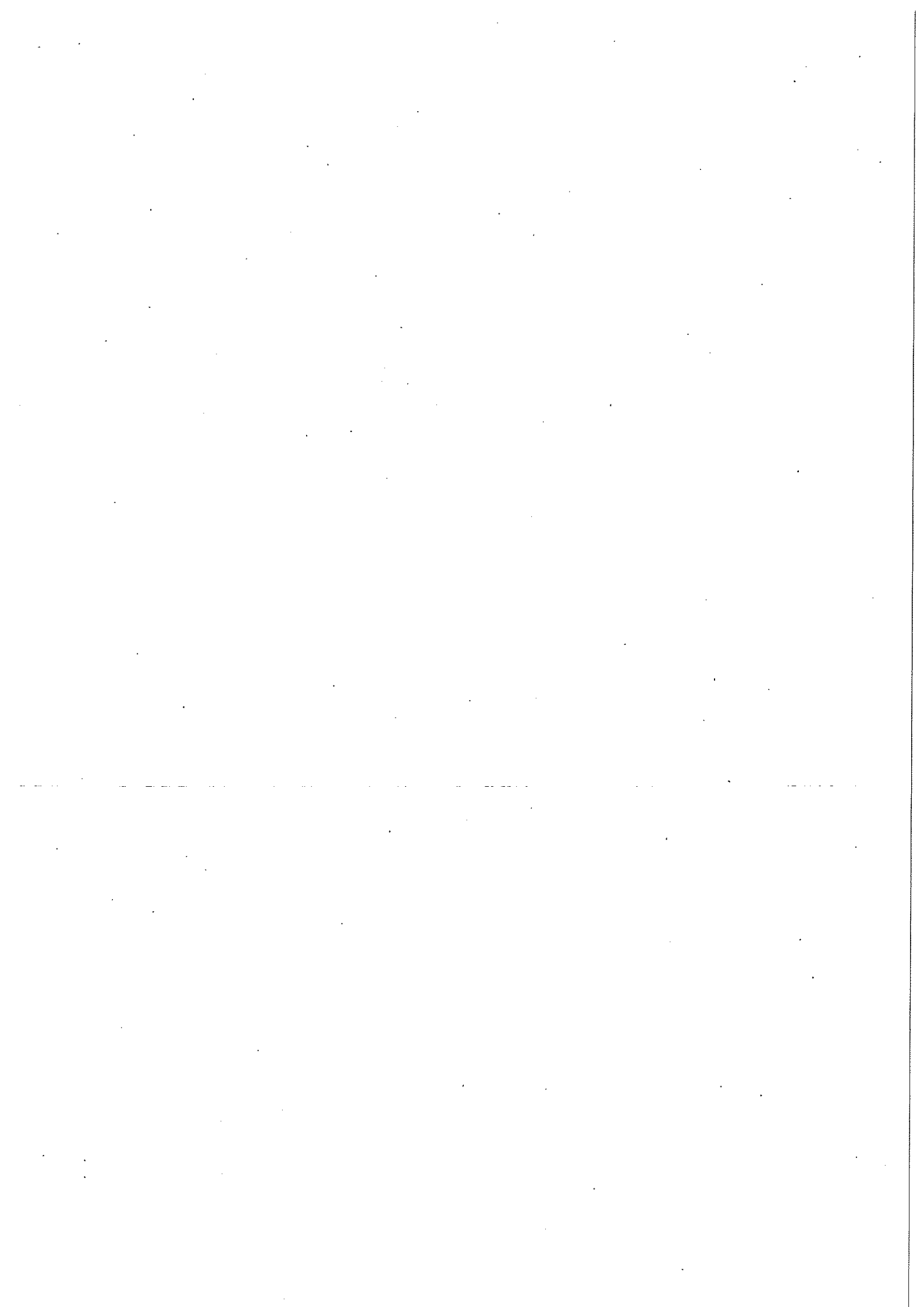
As the ILC enters its third decade, the corporation will continue to face a number of strategic challenges. Above all, Land Account revenues, generated from a capital fund fixed in real terms, will be increasingly inadequate to meet the land acquisition and, in particular, land management needs generated across Indigenous Australia. The financial consequences of the Ayers Rock Resort purchase will continue to exacerbate these pressures. The current conversations on 'unlocking' Indigenous land for development are in themselves an argument for more resources to the ILC.

Minister Scullion has already announced that my appointed successor, Mr Edward Fry, will take up his position on 20 October 2015, when my term as Chairperson ends. The terms of four other Directors also end at this time. I urge the incoming Chairperson and Board to carry on the important reforms, to governance, policy and programmes, developed by the current Board. I ask that incoming Directors lend their voices to supporting the Stronger Land Account Bill to ensure the Land Account is protected and strengthened. If the Government is not persuaded to support this Bill, as seems likely, I ask that Directors advance the two legislative proposals recently put to the Government. Both are necessary if the ILC is to go on fulfilling its core responsibilities to Indigenous Australians.

Dr Dawn Casey PSM, FAHA
Chairperson



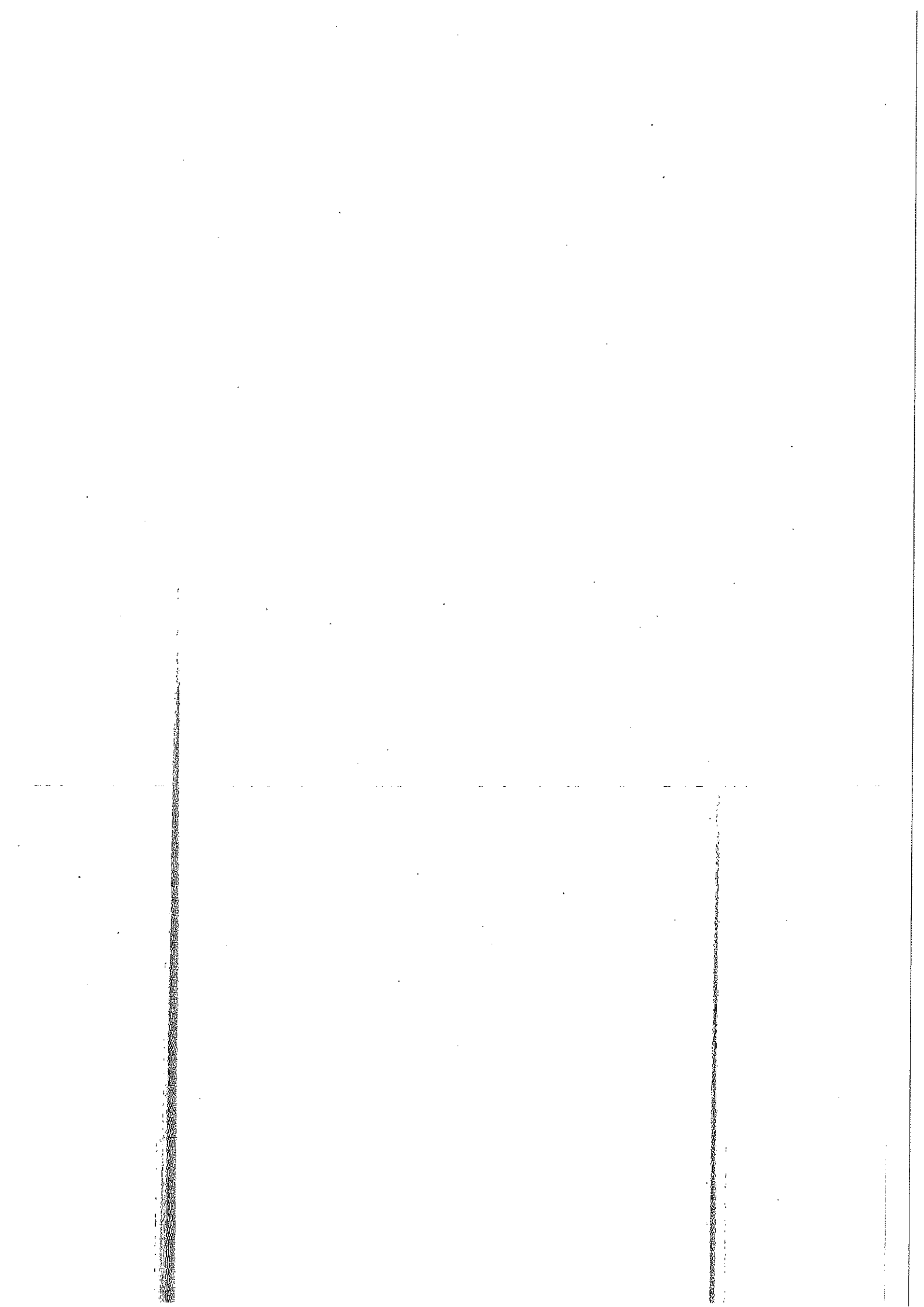
DOCUMENT 12



Petty, Barry

From: McFadyen, Denise
Sent: Monday, 18 January 2016 10:05 AM
To: Kemble, Alice
Subject: Talking points for Eddie Fry.docx
Attachments: Talking points for Eddie Fry.docx

Over to you – I think I included all the points. D



Talking points for Eddie Fry, Board meeting

The ILC is at an impasse with the Minister—an impasse that we cannot allow to continue.

You have a paper before you about reconsideration of the ILC Annual Report 2014–15.

The Minister is of the firm belief that certain matters set out in the foreword signed by the former Chairperson, Dr Dawn Casey, are inaccurate. He will not consent to table the report while these inaccuracies stand.

I understand the inaccuracies relate to the sequence of events around the former Board's call for an independent public inquiry into the ILC's purchase of Ayers Rock Resort.

The paper you have proposes that the foreword to the report signed by the former Chairperson be replaced by a new foreword from me, looking to the future.

Since this paper was signed off, I have had further thoughts about this matter. I now think the best course would be to remove Dr Casey's foreword, without inserting new text from me.

This would be the neatest, and—I would have thought—least offensive course.

Both the CEO and I have had extensive discussions with the Minister's office on this matter. We have discussed various options for resolving the issue, including my writing a letter—to be made public at the time of tabling the report as it stands—committing to work closely with the Government.

The letter as drafted was considered inadequate as it did not directly refute the material the Minister believes is inaccurate.

I think it would not be appropriate for me to repudiate directly what the former Chairperson has written. Nor is it an option to just remove the material that the Minister objects to.

This is why I am now proposing that we remove all of the material written by Dr Casey in order that the report can be tabled.

As you must be aware, over the last couple of years the ILC has had a strained relationship with the Minister—to its detriment.

I see one of my jobs as repairing this relationship. It is imperative that we repair this relationship.

We are currently in delicate negotiations with the Government on matters that are crucial to the ILC's having the resources to go on building a better future for Indigenous Australians—namely, an option to minimise interest payments on refinancing the Ayers Rock Resort debt and coming up with legislative proposals that will enable the capital base of the Land Account to grow.

There are also aspects of Dr Casey's foreword to the annual report that I am unhappy with—including her bid to dictate the actions of this Board. Her material ranges beyond the year directly under review.

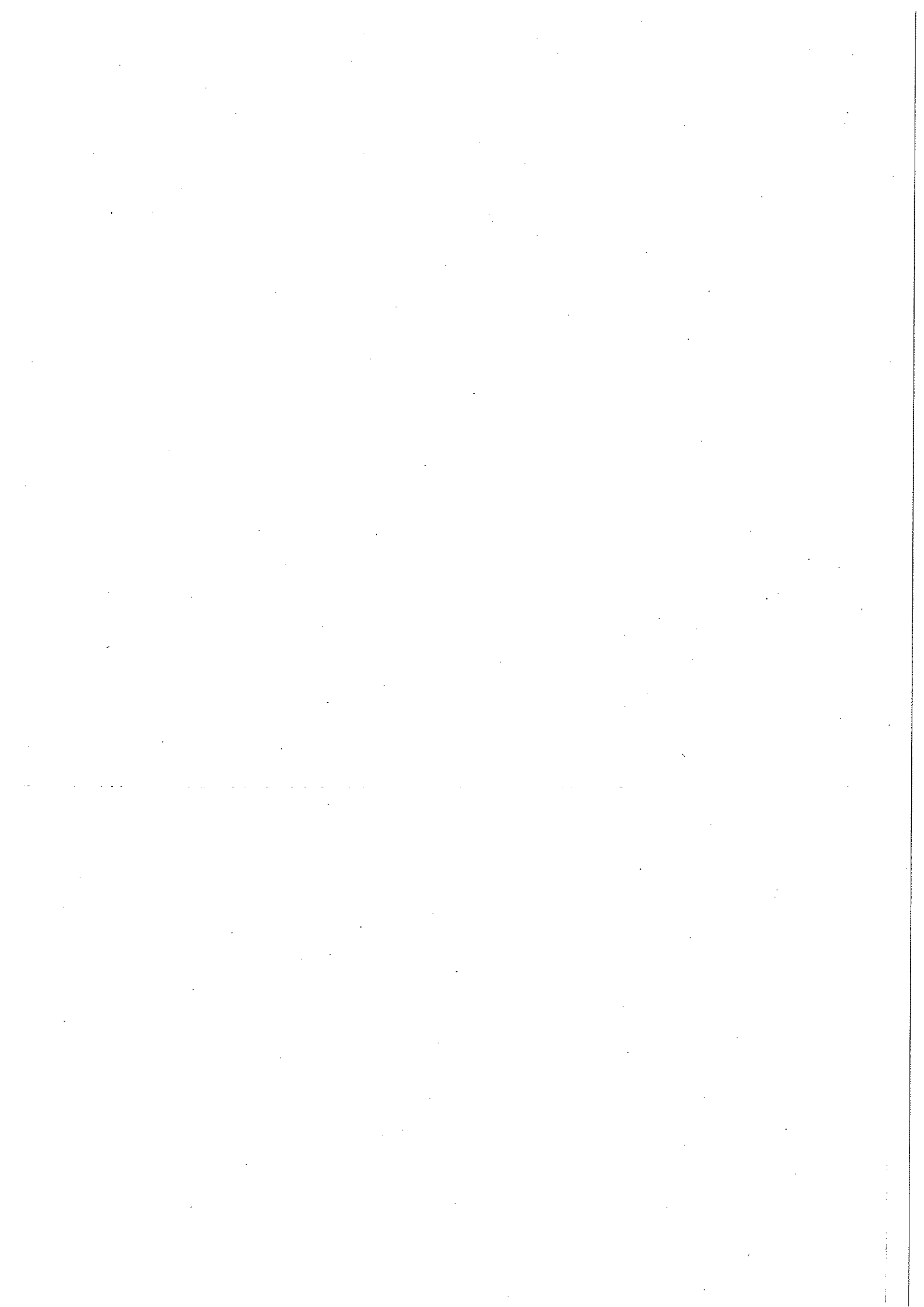
If we do not make a decision to remove Dr Casey's foreword, the ILC will be faced with an unprecedented situation—to not have an annual report tabled for the 2014–15 year.

I also understand there is no legal requirement to include this material.

I ask that you agree with me on this matter, so we can put the past behind us and look to the ILC's future—and, beyond that, look to the future of the Indigenous Australians we serve.

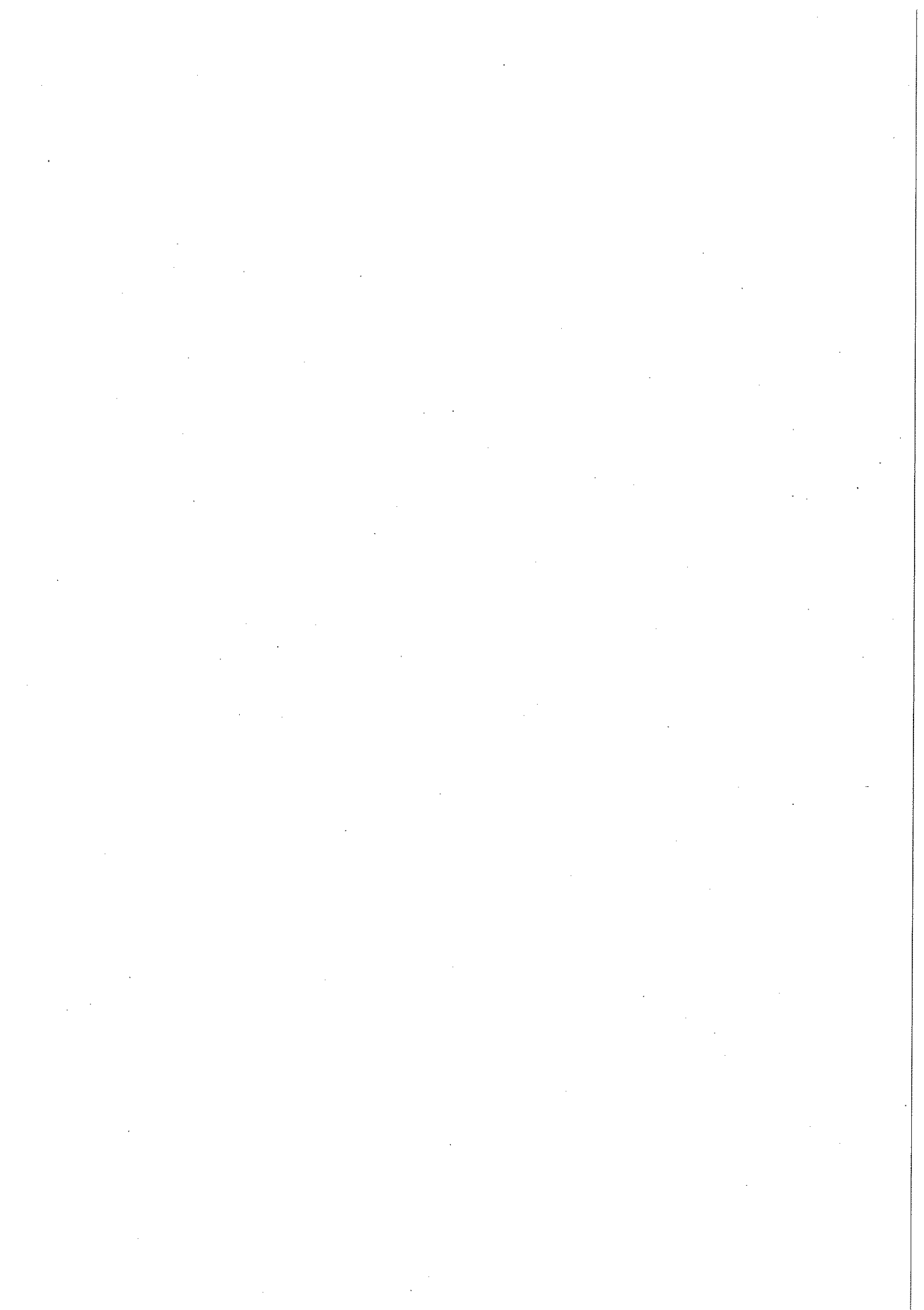
DRAFT

DOCUMENT 12A



Petty, Barry

From: Kemble, Alice
Sent: Monday, 18 January 2016 10:38 AM
To: McFadyen, Denise
Subject: Document12
Attachments: Doc12.docx

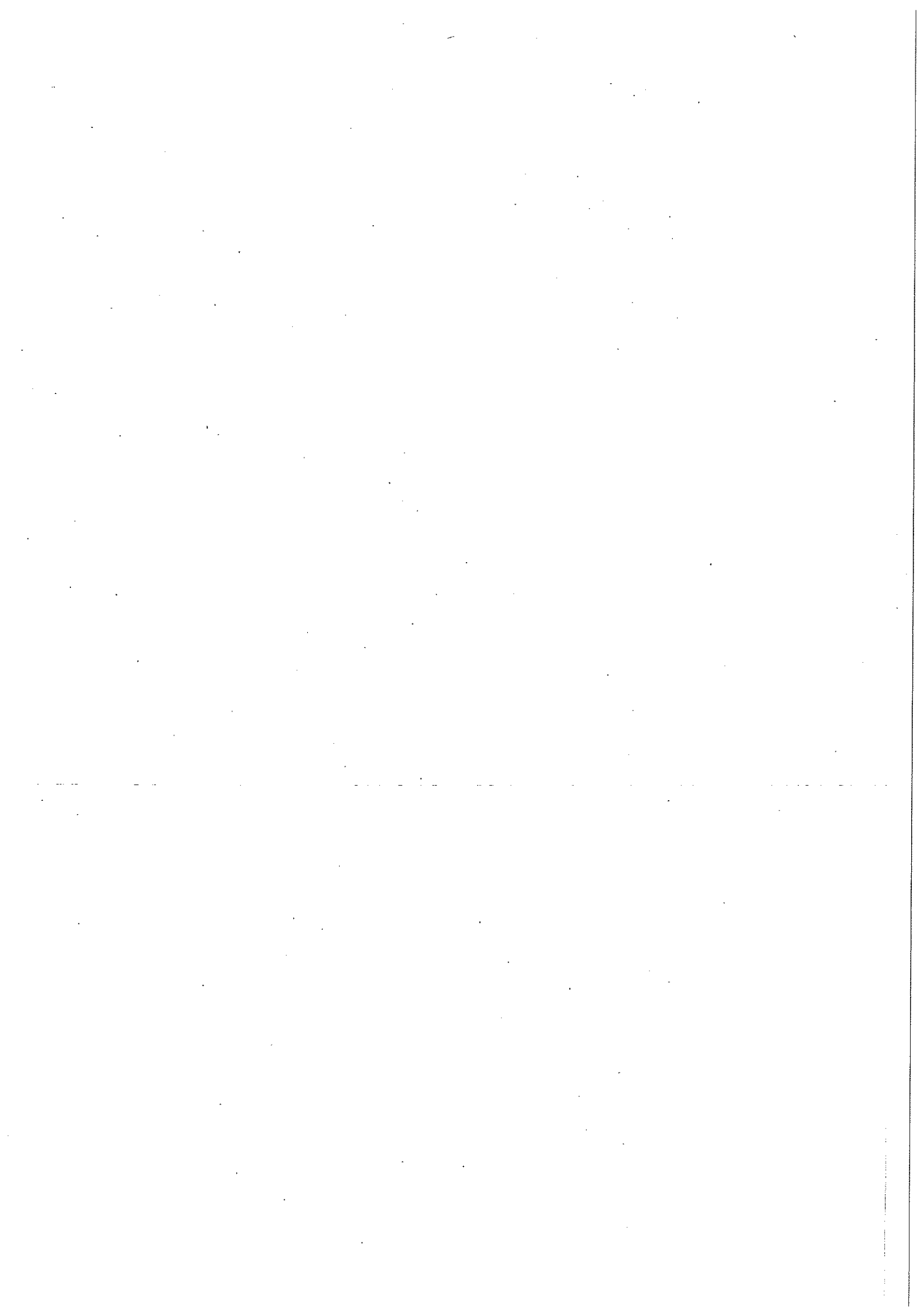


ILC Annual Report – suggested talking points

- You have a paper before you about reconsideration of the ILC Annual Report 2014–15.
- The Minister is of the firm belief that certain matters set out in the foreword signed by the former Chairperson, Dr Dawn Casey, are inaccurate. He will not consent to table the report while these inaccuracies stand.
 - o I understand the inaccuracies relate to the sequence of events around the former Board's call for an independent public inquiry into the ILC's purchase of Ayers Rock Resort.
- I believe it is important that we resolve a way forward to facilitate the publication of the Annual Report, and today.
 - o I am determined to have a positive relationship with the Government for the best interests of the ILC and Indigenous Australians.
- I had previously proposed that I could write to the Minister refuting some of the claims made by the former Chairperson in the foreword and commit the ILC to a strong and positive relationship with the Government for the best interests of Indigenous Australians.
 - o This could allow the Minister to make my letter public at the same time as the tabling of the Annual Report, demonstrating that the ILC is now committed to a strong and positive future.
- However, the Minister was not satisfied with this approach and sought a full repudiation of the claims made in the foreword.
- I think it would not be appropriate for me to repudiate directly what the former Chairperson has written, nor do I think it is possible.
- I also do not believe it is an option to just remove the material that the Minister objects to.
- The option before us recommends that the foreword to the report signed by the former Chairperson be replaced by a new foreword from me, looking to the future.
- An alternative option is that the current foreword is removed without inserting new text from me.
- I believe this would be the neatest, and—I would have thought—least offensive course.
- I do not think it would be appropriate for me to replace the foreword as I would be commenting on a period of time that does not relate to my tenure.

- I understand that Leo has sought legal advice and whilst a foreword to an annual report is generally considered to be good governance practice, there are no legal requirements for one.
- Under this option, the Minister and the ILC will likely still be called to account for the removal of Dr Casey's foreword.
- However, it is my view that Dr Casey's foreword goes beyond an appropriate scope for a foreword – discussing matters outside of the period the Annual Report covers and calls on a new Board and Chair to continue to pursue work that it has yet to consider and reach an independent view on.
- I believe that should we propose to the Minister to remove the current foreword, it would facilitate its tabling ahead of Senate Estimates.
- As you must be aware, over the last couple of years the ILC has had a strained relationship with the Minister—to its detriment.
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- The Government is already showing good faith in our new relationship.
 - o We are currently in delicate negotiations with on matters that are crucial to the ILC's having the resources to go on building a better future for Indigenous Australians—namely, an option to minimise interest payments on refinancing the Ayers Rock Resort debt and coming up with legislative proposals that will enable the capital base of the Land Account to grow.
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- I ask that you agree with me on this matter, so we can put the past behind us and look to the ILC's future—and, beyond that, look to the future of the Indigenous Australians we serve.

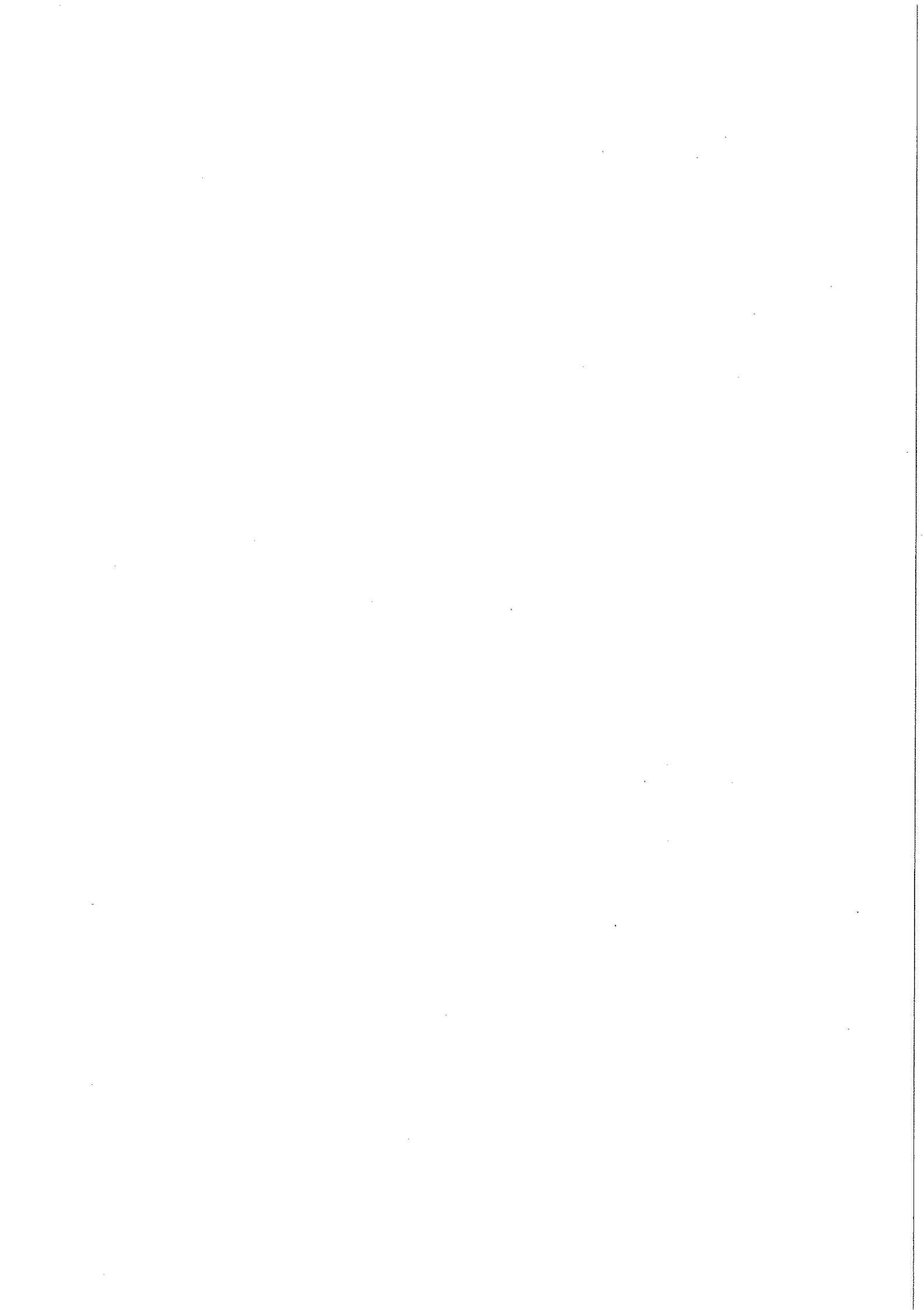
DOCUMENT 12B



Petty, Barry

From: McFadyen, Denise
Sent: Monday, 18 January 2016 10:41 AM
To: Kemble, Alice
Subject: Doc12.docx
Attachments: Doc12.docx

Great – one small correction, but otherwise fine.

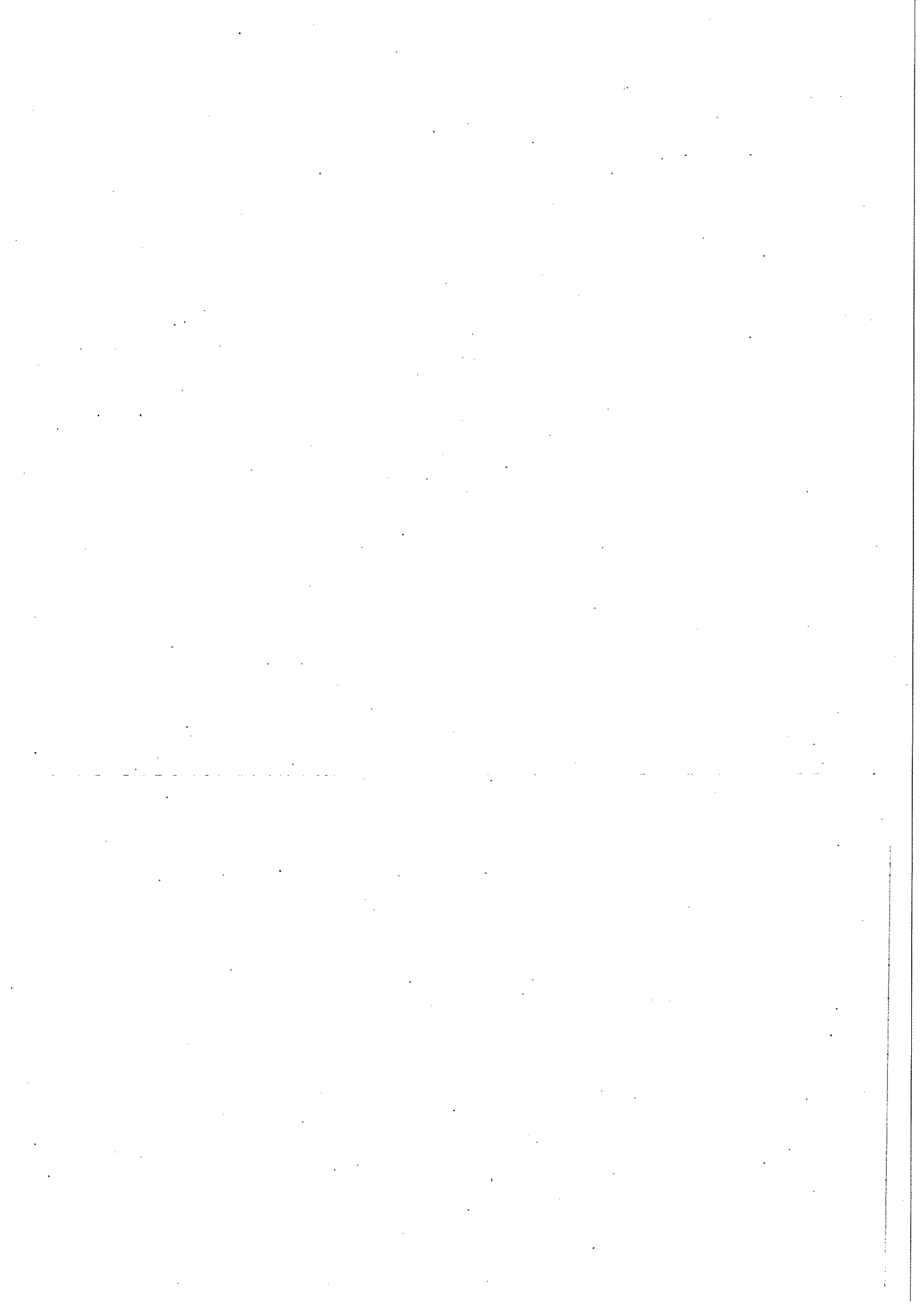


ILC Annual Report – suggested talking points

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- I believe it is important that we resolve a way forward to facilitate the publication of the Annual Report, and today.
 - o I am determined to have a positive relationship with the Government for the best interests of the ILC and Indigenous Australians.
- I had previously proposed that I could write to the Minister refuting some of the claims made by the former Chairperson in the foreword and commit the ILC to a strong and positive relationship with the Government for the best interests of Indigenous Australians.
 - o This could allow the Minister to make my letter public at the same time as the tabling of the Annual Report, demonstrating that the ILC is now committed to a strong and positive future.
- However, the Minister was not satisfied with this approach and sought a full repudiation of the claims made in the foreword.
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- The option before us recommends that the foreword to the report signed by the former Chairperson be replaced by a new foreword from me, looking to the future.
- An alternative option is that the current foreword is removed without inserting new text from me.
- I believe this would be the neatest, and—I would have thought—least offensive course.
- I do not think it would be appropriate for me to replace the foreword as I would be commenting on a period of time that does not relate to my tenure.

- I understand that Leo has sought legal advice and whilst a foreword to an annual report is generally considered to be good governance practice, there are no legal requirements for one.
- Under this option, the Minister and the ILC will likely still be called to account for the removal of Dr Casey's foreword.
- However, it is my view that Dr Casey's foreword goes beyond an appropriate scope for a foreword – discussing matters outside of the period the Annual Report covers and calls on a new Board and Chair to continue to pursue work that it has yet to consider and reach an independent view on.
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- If we do not make a decision to remove Dr Casey's foreword, the ILC will be faced with an unprecedented situation—to not have an annual report tabled for the 2014–15 year.
- I ask that you agree with me on this matter, so we can put the past behind us and look to the ILC's future—and, beyond that, look to the future of the Indigenous Australians we serve.

DOCUMENT 13



Petty, Barry

From: Kemble, Alice
Sent: Monday, 18 January 2016 12:35 PM
To: Gumley, Kate
Subject: FW: suggested AR TPs.docx
Attachments: suggested AR TPs.docx

FYI – the Chair would like to propose an alternative, that is to remove the foreword and with no replacement. Leo asked for some talking points for the Chair reflecting this to speak to it at the meeting. Will text you if I get any advice on the outcomes.

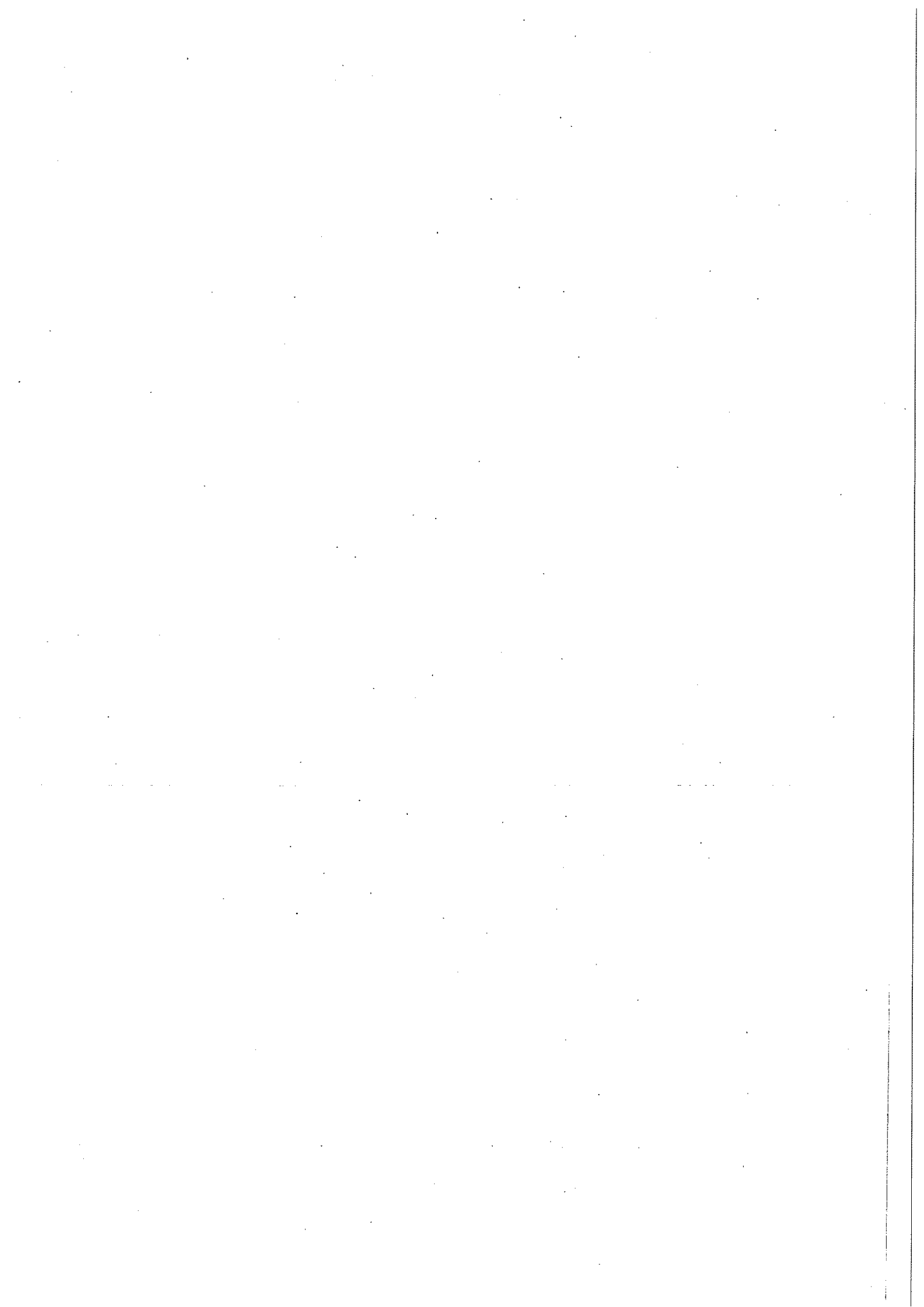
From: Kemble, Alice
Sent: Monday, 18 January 2016 11:16 AM
To: Bator, Leo
Subject: suggested AR TPs.docx

Hi Leo

As discussed, suggested talking points for the Chair.

Happy to make any changes you need.

Alice

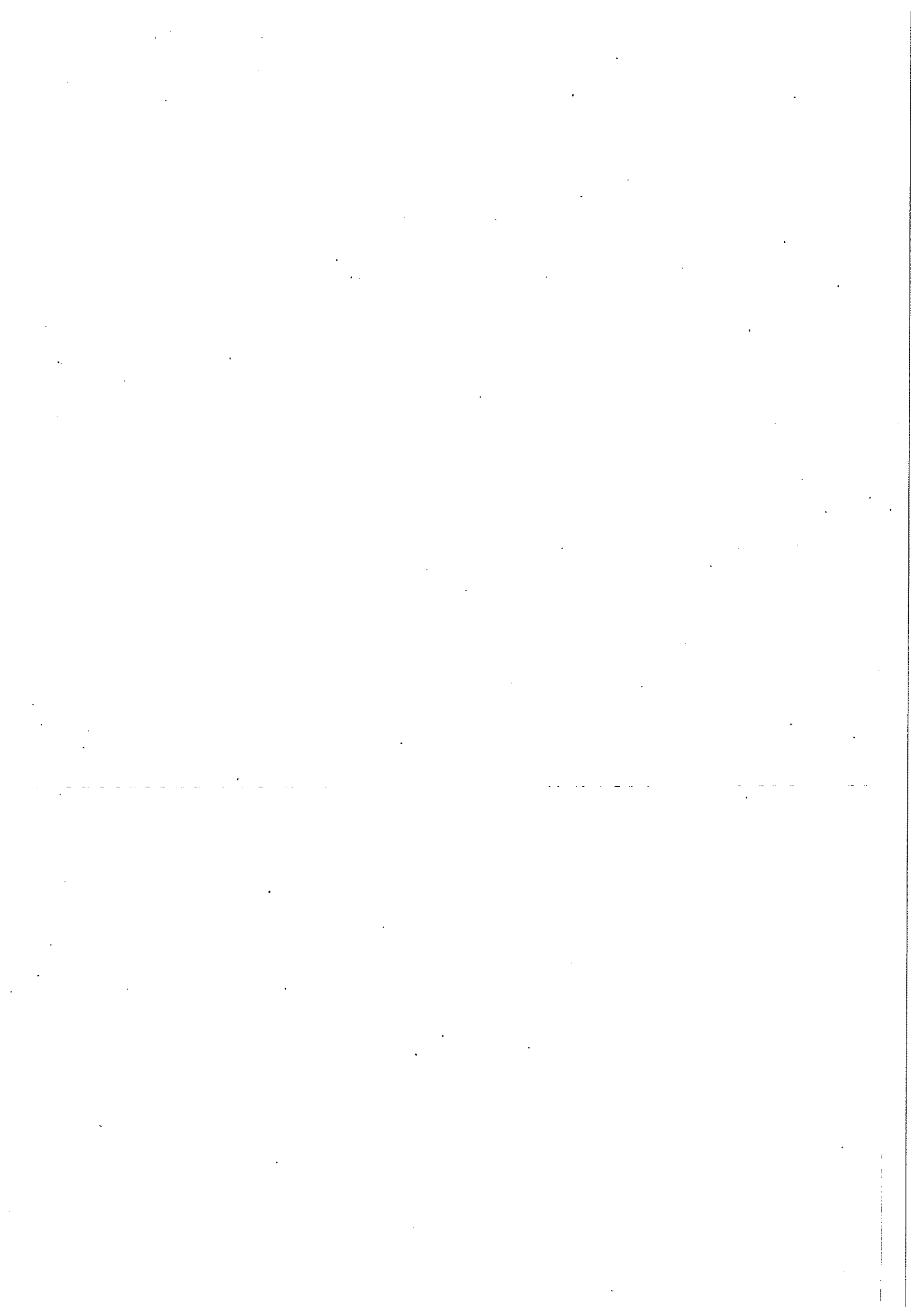


ILC Annual Report – suggested talking points

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- The Minister is of the firm belief that certain matters set out in the foreword signed by the former Chairperson, Dr Dawn Casey, are inaccurate. He will not consent to table the report while these inaccuracies stand.
 - o I understand the inaccuracies relate to the sequence of events around the former Board's call for an independent public inquiry into the ILC's purchase of Ayers Rock Resort.
- I believe it is important that we resolve a way forward to facilitate the publication of the Annual Report, and today.
 - o I am determined to have a positive relationship with the Government for the best interests of the ILC and Indigenous Australians.
- I had previously proposed that I could write to the Minister refuting some of the claims made by the former Chairperson in the foreword and commit the ILC to a strong and positive relationship with the Government for the best interests of Indigenous Australians.
 - o This could allow the Minister to make my letter public at the same time as the tabling of the Annual Report, demonstrating that the ILC is now committed to a strong and positive future.
- However, the Minister was not satisfied with this approach and sought a full repudiation of the claims made in the foreword.
- I think it would not be appropriate for me to repudiate directly what the former Chairperson has written, nor do I think it is possible.
- I also do not believe it is an option to just remove the material that the Minister objects to.
- The option before us recommends that the foreword to the report signed by the former Chairperson be replaced by a new foreword from me, looking to the future.
- An alternative option however is that the current foreword is removed without inserting new text from me.
- I believe this would be the neatest, and—I would have thought—least offensive course.
- I do not think it would be appropriate for me to replace the foreword as I would be commenting on a period of time that does not relate to my tenure.

- I understand that Leo has sought legal advice and whilst a foreword to an annual report is generally considered to be good governance practice, there are no legal requirements for one.
- Under this option, the Minister and the ILC will likely still be called to account for the removal of Dr Casey's foreword.
- However, it is my view that Dr Casey's foreword goes beyond an appropriate scope for a foreword – discussing matters outside of the period the Annual Report covers and calls on a new Board and Chair to continue to pursue work that it has yet to consider and reach an independent view on.
 - o And I believe they are sound reasons for its removal.
- I believe that should we agree today to remove the current foreword, it would facilitate the Minister's tabling of the Annual Report ahead of Senate Estimates.
- As you must be aware, over the last couple of years the ILC has had a strained relationship with the Minister—to its detriment.
- I see one of my jobs as repairing this relationship. It is imperative that we repair this relationship.
- The Government is already showing good faith in our new relationship.
 - o We are currently in delicate negotiations with the Government on matters that are crucial to the ILC's having the resources to go on building a better future for Indigenous Australians—namely, an option to minimise interest payments on refinancing the Ayers Rock Resort debt and coming up with legislative proposals that will enable the capital base of the Land Account to grow.
- If we do not make a decision to remove Dr Casey's foreword, the ILC will be faced with an unprecedented situation—to not have an annual report tabled for the 2014–15 year.
- I ask that you agree with me on this matter, so we can put the past behind us and look to the ILC's future—and, beyond that, look to the future of the Indigenous Australians we serve.

DOCUMENT 14



Petty, Barry

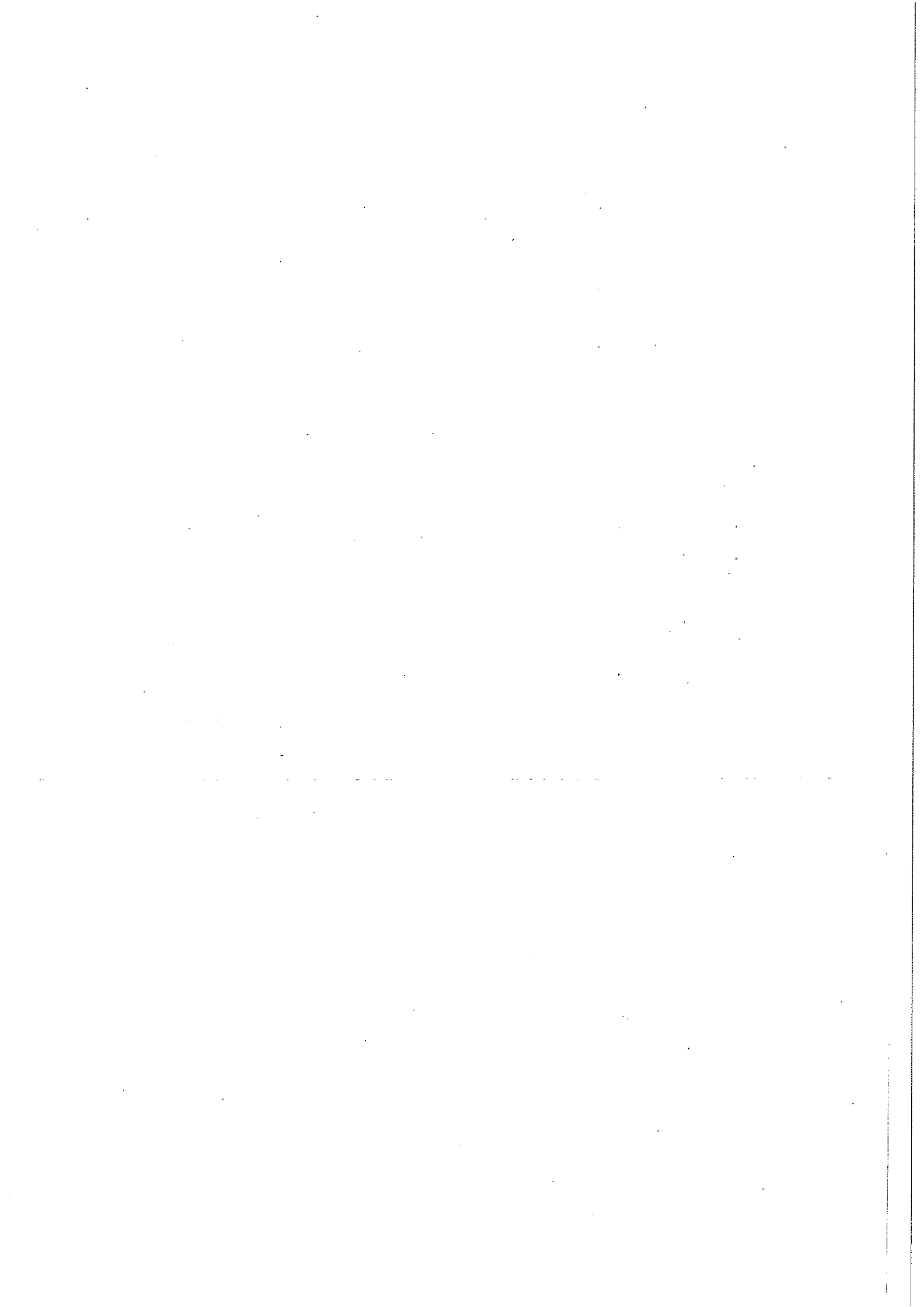
From: Kemble, Alice
Sent: Tuesday, 2 February 2016 2:57 PM
To: Kemble, Alice
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting.doc
Attachments: CHAIRPERSON to Minister18 Jan Board meeting.doc

From: Kemble, Alice
Sent: Tuesday, 19 January 2016 12:42 PM
To: Lowe, Sarah
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting.doc

Here are some words that Denise put together if you would like.

From: McFadyen, Denise
Sent: Monday, 18 January 2016 4:47 PM
To: Kemble, Alice
Subject: CHAIRPERSON to Minister18 Jan Board meeting.doc

Draft for your review, D



people land
opportunity



Australian Government
Indigenous Land Corporation

January 2016

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

Dear Minister

I am writing to inform you that the ILC Board met on 18 January by teleconference to discuss a number of matters.

The primary focus of the meeting was on arrangements for refinancing the Ayers Rock Resort debt. As you know, the ILC has been exploring commercial refinancing options since last year. It has also recently been in discussion with the Departments of Prime Minister and Cabinet (PM&C) and Finance on development of an alternative refinancing option, with Government support, that would minimise the ILC's interest-payment obligations.

While this work is continuing, the ILC has proceeded, as previously advised, to negotiate and finalise finance documents with external financiers. The Board considered delaying finalising these documents; however, there is an expiry date on the ANZ offer and executing the key finance documents does not force the ILC or its subsidiary Voyages Indigenous Tourism Australia to proceed with the refinance should an alternative Government solution be forthcoming before 19 April 2016. The ILC has informed the prospective lenders that an alternative source of financing is being sought. If we do not proceed to refinance with external financiers, we will be able to exit the arrangement with minimal cost.

The Board also considered matters in relation to public positions taken by the previous Board.

The ILC Board took a decision to reverse the previous Board's position on the need for an independent public inquiry into the ILC's purchase of Ayers Rock Resort. The resort is an outstanding addition to the Indigenous estate, and we are committed to working to maximise revenue and Indigenous benefits from the resort.

The Board also made a decision to cease any advocacy in relation to the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014. The Senate Community Affairs Legislation Committee inquired into the Bill in 2014–15 and the committee's majority report (encompassing both Government and Opposition Senators) did

not support legislation of the Bill. Our view is that it is unlikely to be adopted by Parliament. Instead, Directors decided to focus our efforts on developing proposals for legislative change that would enable the capital balance of the Aboriginal and Torres Strait Islander Land Account to grow so that more revenue is available for core ILC functions. There have already been discussions with Government on this matter and we look forward to continuing these.

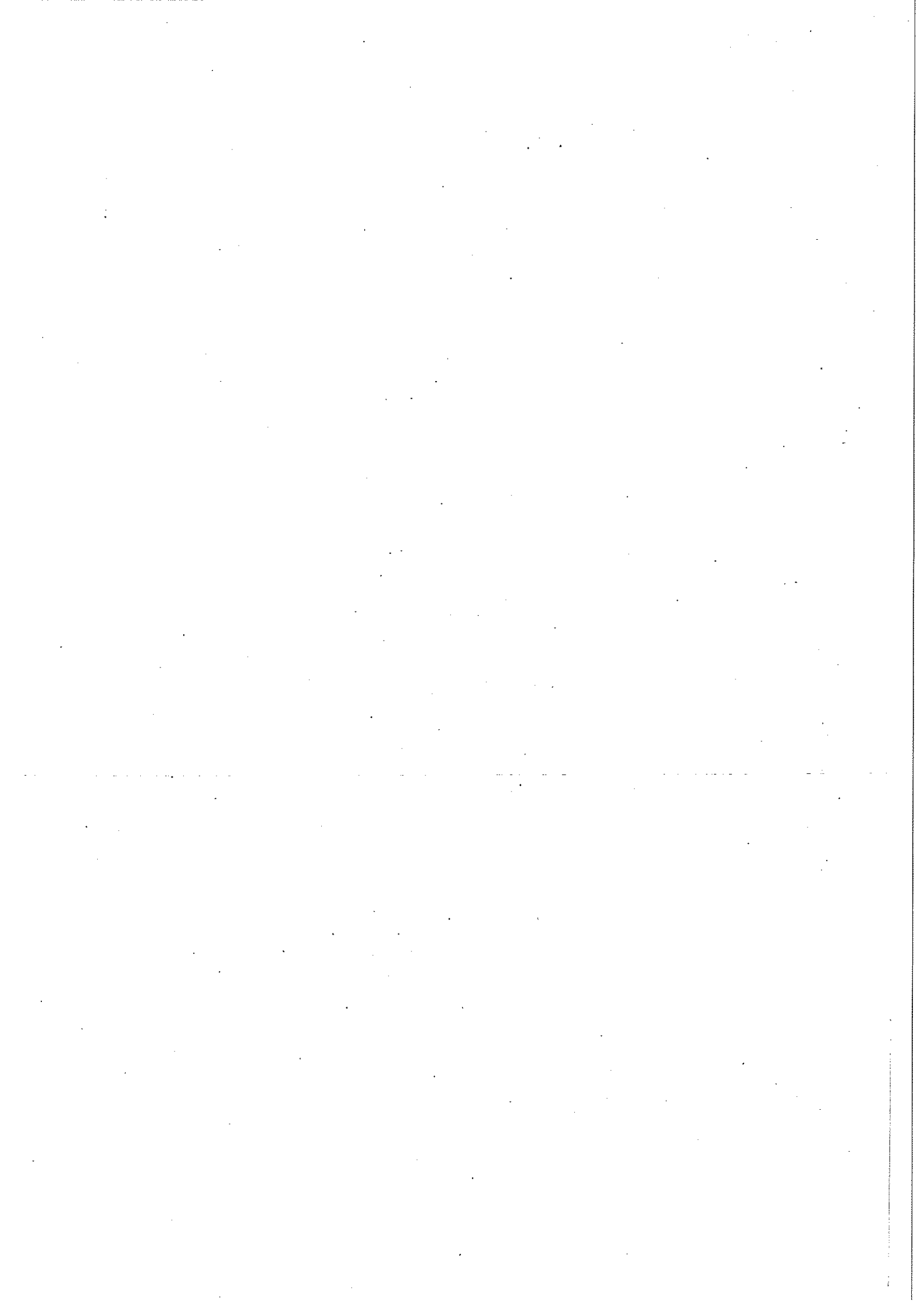
The Board also reconsidered the ILC Annual Report 2014–15. Though this matter was not resolved before the meeting closed, Directors were generally unwilling to change the report transmitted under the former Board. The Acting ILC CEO, Mr Leo Bator, and I will continue our separate discussions with your office in an effort to bring this matter to a mutually satisfactory conclusion.

Yours sincerely

Eddie Fry
Chairperson

DRAFT

DOCUMENT 15



Petty, Barry

From: Gumley, Kate
Sent: Thursday, 21 January 2016 8:43 AM
To: Andrews, Sue
Cc: Lindsay, Jodie; Lowe, Sarah; McFadyen, Denise
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc
Attachments: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Sue please use this version
Jodie see slight change from would be prudent to is prudent

Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

From: Kemble, Alice
Sent: Thursday, 21 January 2016 8:42 AM
To: Andrews, Sue
Cc: Gumley, Kate; Lowe, Sarah; McFadyen, Denise
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Hi Sue

Are you able to please do a final QA on the attached draft letter?

Thanks and happy to discuss.

Alice

From: Fiedler, Beth
Sent: Wednesday, 20 January 2016 7:08 PM
To: Kemble, Alice
Subject: RE: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Hi Alice – thanks for preparing this. It generally looks fine although not being at the meeting I can't comment on whether the board decision was to reverse the previous boards decision to pursue an inquiry. Might be wise to ask Sue to check to the draft minutes as well as doing a QA check.

Thanks
Beth

From: Kemble, Alice
Sent: Wednesday, 20 January 2016 3:44 PM
To: Fiedler, Beth
Cc: Lindsay, Jodie; Gumley, Kate; Nguyen, Tri; Lowe, Sarah
Subject: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Hi Beth

Please see attached draft letter for your consideration, following the recent Board meeting.

Kate and Jodie have both provided input and the last paragraph is still subject to some final polishing depending on where things may land.

Happy to make any changes you may need over the phone if that is easier.

Thanks

Alice



DRAFT

January 2016

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

Dear Minister

I am writing to inform you that the ILC Board met on 18 January 2016 by teleconference to discuss a number of matters.

The primary focus of the meeting was refinancing the Ayers Rock Resort debt. As you know, the ILC has been exploring commercial refinancing options since December 2014. It has also recently been in discussion with the Departments of Prime Minister and Cabinet (PM&C), Finance and Treasury on development of an alternative refinancing option that, with Government support, would minimise the ILC's interest-payment obligations.

As previously advised, the ILC has been progressing refinancing arrangements with the ILC's existing financiers, ANZ and GPT. At its October 2015 meeting the Board formally accepted refinancing offers from both parties, with finalisation of the arrangements subject to the preparation and execution of legal documentation by 19 January 2016 (being expiration of ANZ's offer). This course of action was endorsed at the first meeting of the new Board in November 2015. This work has now been completed and the Board authorised the execution of the required legal documentation at its 18 January meeting.

The Board considered the risks of delaying finalising of these documents, however as there is an expiry date on the ANZ offer, given the approaching maturity of the GPT facility (May 2016), and an alternative option with Government support is still under development, it is the Board's firm view that it would be prudent to proceed to finalise and execute legal documentation with ANZ and GPT for the commercial refinancing of the ARR debt to avoid any risk of default.

It is noted that executing the documents does not oblige the ILC or its subsidiary, Voyages Indigenous Tourism Australia, to proceed with these refinancing arrangements should an alternative Government solution be achieved before 19 April 2016 and - the ILC has been careful to ensure that we will be able to exit the arrangement at minimal cost if we do proceed with this refinancing option.

At the meeting, the Board also considered matters in relation to public positions taken by the previous Board.

The ILC Board took a decision to reverse the previous Board's position on the need for an independent public inquiry into the ILC's purchase of Ayers Rock Resort. The resort is an outstanding addition to the Indigenous estate, and we are committed to working to maximise revenue and Indigenous benefits from the resort.

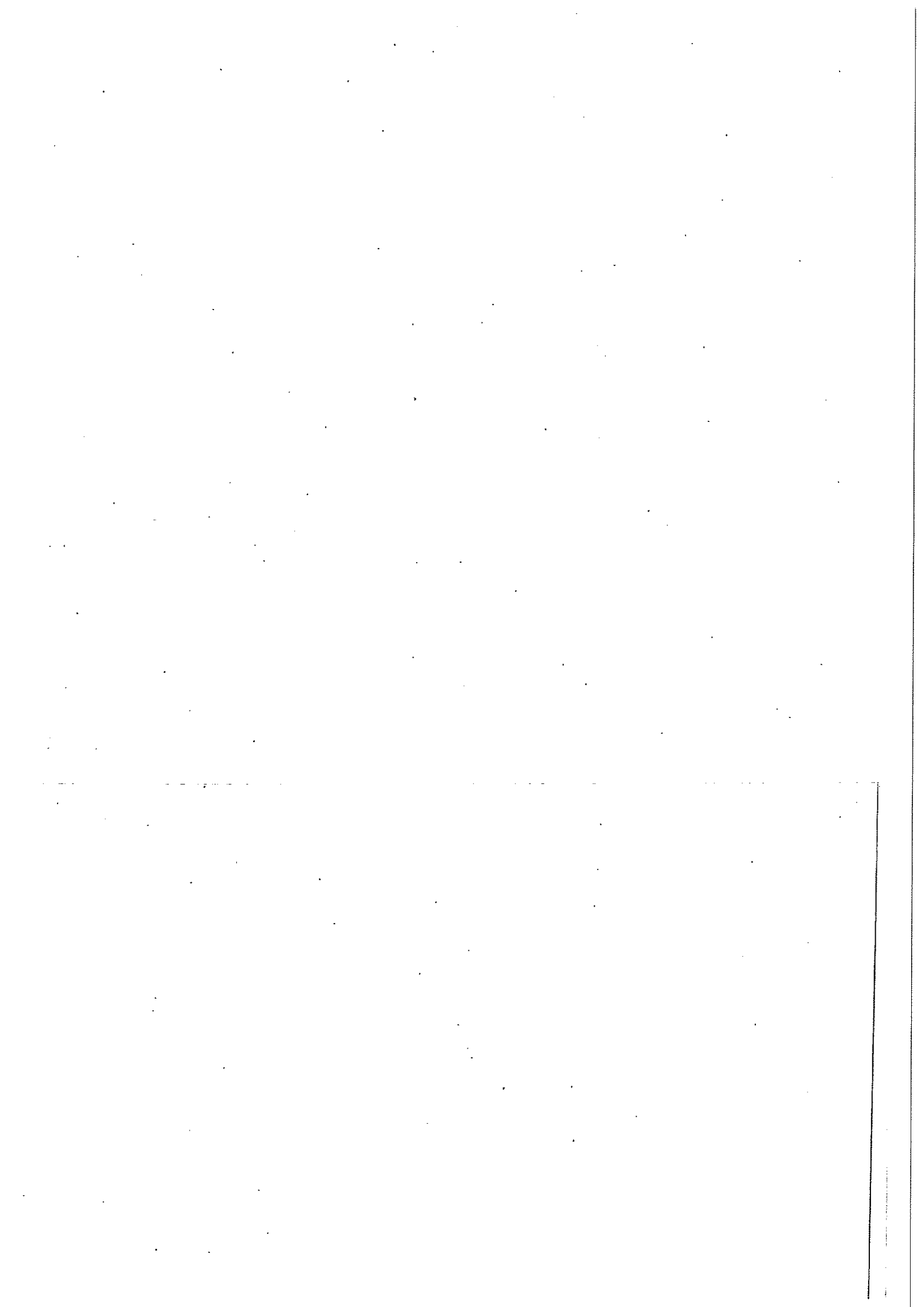
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The Board also reconsidered the ILC Annual Report 2014–15. Directors were generally unwilling to change the foreword by the previous Chairperson, Dr Casey, and supported including an additional statement in the Annual Report from me as the current Chairperson. This outlines the current Board's forward looking focus and our intention to work closely with the Government to achieve positive outcomes for Indigenous Australians. I have written separately to provide the full document with the new inclusion.

Yours sincerely

Eddie Fry
Chairperson

DOCUMENT 16 :



Petty, Barry

From: Gumley, Kate
Sent: Thursday, 21 January 2016 10:09 AM
To: Bator, Leo
Cc: Fiedler, Beth; Lindsay, Jodie; Nguyen, Tri; Andrews, Sue; Lowe, Sarah
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc
Attachments: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Leo

Here is the letter on significant matters arising from the Board meeting for your consideration. It has been jointly prepared with Beth's team
thanks

Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

From: Andrews, Sue
Sent: Thursday, 21 January 2016 9:27 AM
To: Gumley, Kate; Lindsay, Jodie; Lowe, Sarah; McFadyen, Denise; Kemble, Alice
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Kate

A couple of very minor changes

Cheers

Sue

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Sue please use this version
Jodie see slight change from would be prudent to is prudent

Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

From: Kemble, Alice
Sent: Thursday, 21 January 2016 8:42 AM
To: Andrews, Sue

Cc: Gumley, Kate; Lowe, Sarah; McFadyen, Denise
Subject: FW: CHAIRPERSON to Minister18 Jan Board meeting (2) (3).doc

Hi Sue

Are you able to please do a final QA on the attached draft letter?

Thanks and happy to discuss.

Alice

From: Fiedler, Beth
Sent: Wednesday, 20 January 2016 7:08 PM
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Hi Alice – thanks for preparing this. It generally looks fine although not being at the meeting I can't comment on whether the board decision was to reverse the previous boards decision to pursue an inquiry. Might be wise to ask Sue to check to the draft minutes as well as doing a QA check.

Thanks
Beth

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Sent: Wednesday, 20 January 2016 3:44 PM
To: Fiedler, Beth
Cc: Lindsay, Jodie; Gumley, Kate; Nguyen, Tri; Lowe, Sarah
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Hi Beth

Please see attached draft letter for your consideration, following the recent Board meeting.

Kate and Jodie have both provided input and the last paragraph is still subject to some final polishing depending on where things may land.

Happy to make any changes you may need over the phone if that is easier.

Thanks

Alice



DRAFT

January 2016

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

Dear Minister

I am writing to inform you that the ILC Board met on 18 January 2016 by teleconference to discuss a number of matters.

The primary focus of the meeting was refinancing the Ayers Rock Resort debt. As you know, the ILC has been exploring commercial refinancing options since December 2014. It has also recently been in discussion with the Departments of Prime Minister and Cabinet (PM&C), Finance and the Treasury on development of an alternative refinancing option that, with Government support, would minimise the ILC's interest-payment obligations.

As previously advised, the ILC has been progressing refinancing arrangements with the ILC's existing financiers, ANZ and GPT. At its October 2015 meeting the Board formally accepted refinancing offers from both parties, with finalisation of the arrangements subject to the preparation and execution of legal documentation by 19 January 2016 (being expiration of ANZ's offer). This course of action was endorsed at the first meeting of the new Board in November 2015. This work has now been completed and the Board authorised the execution of the required legal documentation at its 18 January meeting.

The Board considered the risks of delaying finalising of these documents, but as there is an expiry date on the ANZ offer and given the approaching maturity of the GPT facility (May 2016), and an alternative option with Government support is still under development, it is the Board's firm view that it is prudent to proceed to finalise and execute legal documentation with ANZ and GPT for the commercial refinancing of the ARR debt to avoid any risk of default.

It is noted that executing the documents does not oblige the ILC or its subsidiary, Voyages Indigenous Tourism Australia, to proceed with these refinancing arrangements should an alternative Government solution be achieved before 19 April 2016 and the ILC has been careful to ensure that we will be able to exit the arrangement at minimal cost if we do proceed with this refinancing option.

At the meeting, the Board also considered matters in relation to public positions taken by the previous Board.

The ILC Board took a decision to reverse the previous Board's position on the need for an independent public inquiry into the ILC's purchase of Ayers Rock Resort. The resort is an outstanding addition to the Indigenous estate, and we are committed to working to maximise revenue and Indigenous benefits from the resort.

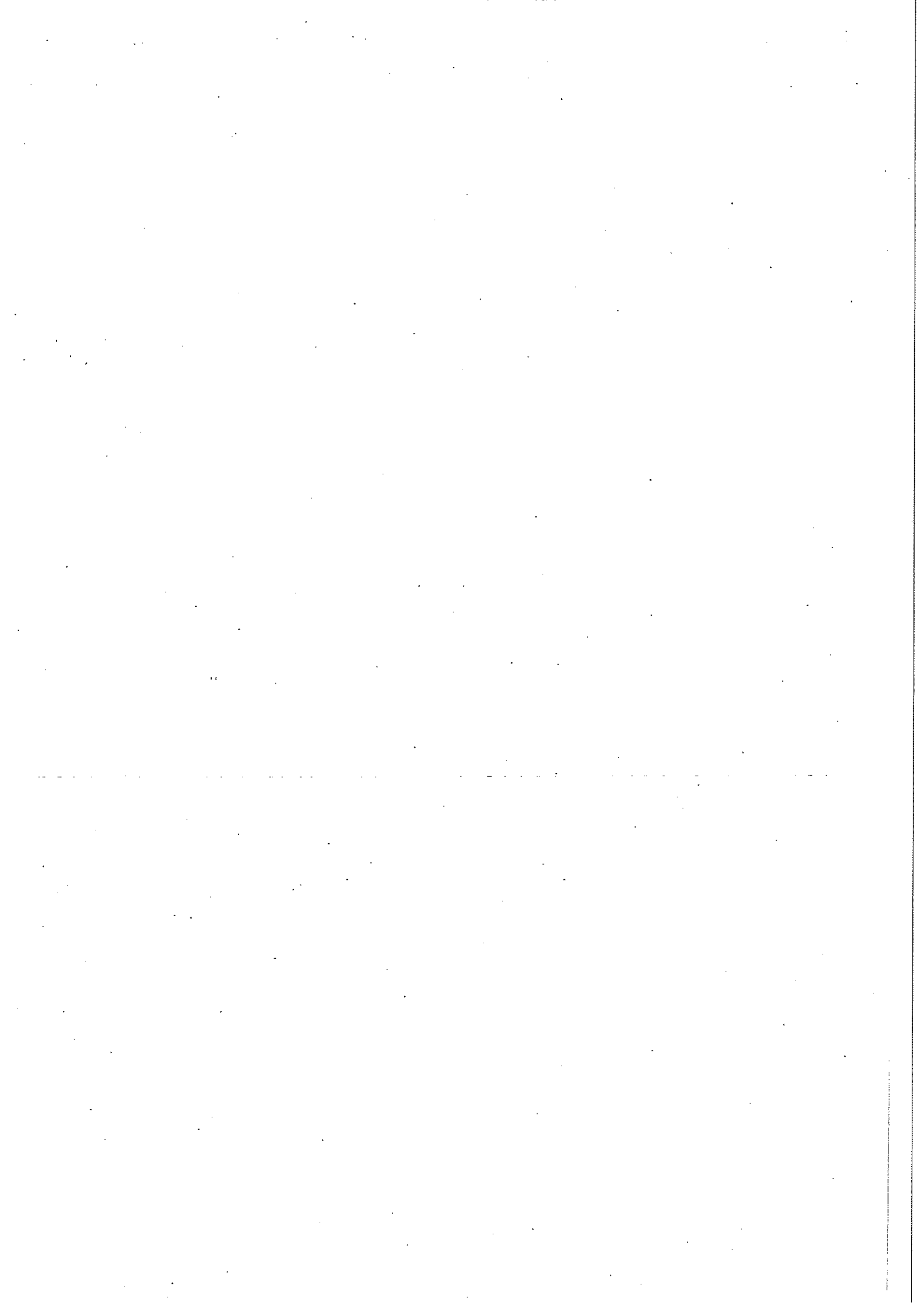
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Chairperson

DOCUMENT 17



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Sent: Thursday, 21 January 2016 10:15 AM
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Cc: Lindsay, Jodie; Lowe, Sarah; McFadyen, Denise; Kemble, Alice; Andrews, Sue; Fiedler, Beth
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Leo

Revised as discussed. Will you send to the Chair for signature?

FYI for others, we have changed the para on LA to be 'working with Government on the development of options for LA...'

Kate Gumley
Executive Director, Strategy
Indigenous Land Corporation

Redacted s 47F

w: www.ilc.gov.au

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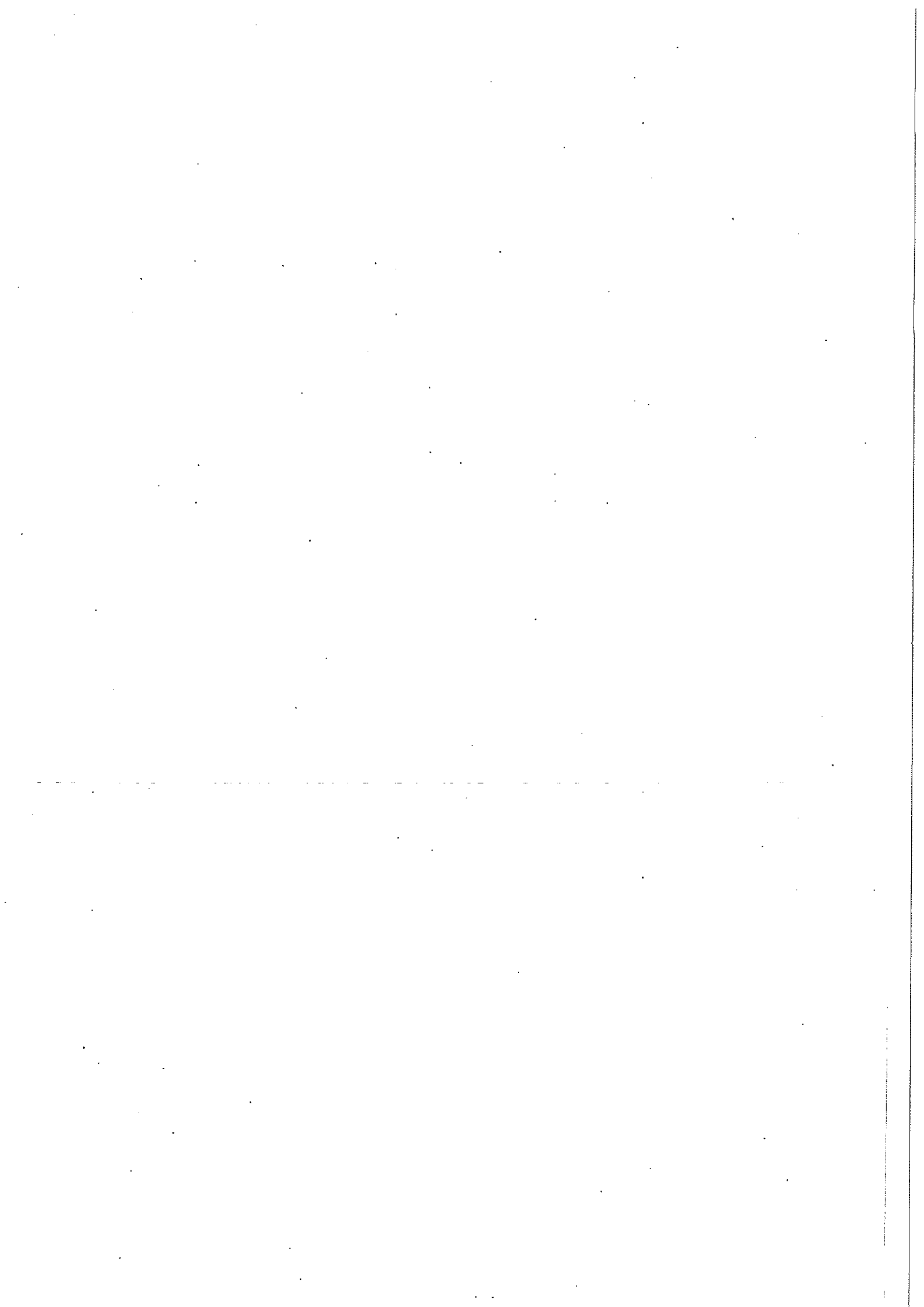
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Yours sincerely

Eddie Fry
Chairperson

DOCUMENT 18



Petty, Barry

From: Bator, Leo
Sent: Thursday, 21 January 2016 12:15 PM
To: Lisa Gay; Tanya Hosch; Bruce Martin; Anthony Ashby; Trish Crossin; Alison Page
Cc: Eddie Fry (ILC); Gumley, Kate
Subject: ILC Annual Report 2014-15
Attachments: ILC annual report letter to Min Scullion providing additional foreword lpb .docx; Fry statement 14-15 ARlpb.docx

Dear Board members

The Chair has asked me to forward the two attachments for your consideration. The attachments relate to your recent teleconference (meeting number 197) where the ILC's Annual Report was discussed. The majority of members supported the inclusion of a second foreword comprising of a letter from the new Chair. The matter has been discussed with the Minister's Office and while this is not their preferred approach, they consider this an adequate solution.

To proceed with this, I attach a letter from the Chair to the Minister advising that the new Board has authorised him to include a statement from the Chair. The statement (see attached) articulates how the new Board will work with the Australian Government to deliver better outcomes for Aboriginal and Torres Strait Islander peoples in accordance with the ILC's legislative purpose.

Subject to your views that this approach is consistent with the those expressed at the meeting the Chair intends on sending the letter and Statement to the Minister by COB tomorrow (22 January 2016). Accordingly, I would appreciate your response by midday tomorrow (22 January 2016).

Kind regards

Leo.

Leo Bator | Acting Chief Executive Officer | Indigenous Land Corporation

(T) 02 6269 2500 | Redacted s | (F) 02 6285 4300 | PO Box 586, Curtin ACT 2605
www.ilc.gov.au | 47F



Australian Government
Indigenous Land Corporation

ILC acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to the Elders both past and present.

22 January 2015

Senator the Hon Nigel Scullion MP
Minister for Indigenous Affairs
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Minister

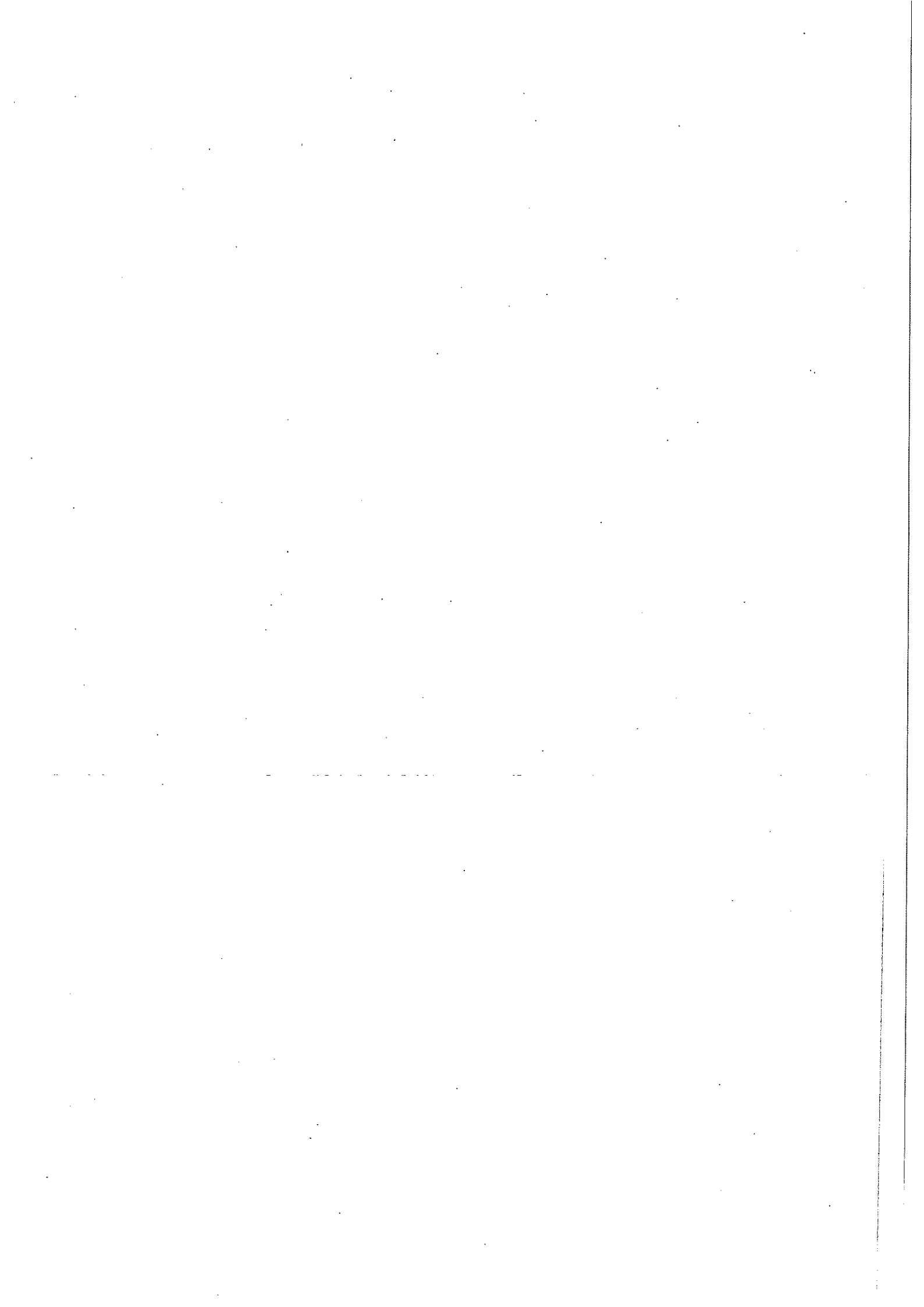
I refer to the letter of transmission dated 21 September 2015 and advise an inclusion to the Indigenous Land Corporation (ILC) 2014-15 Annual Report.

The new Board of the ILC has authorised me to include a statement from me as the new Chair. The statement articulates how the new Board will work with the Australian Government to deliver better outcomes for Aboriginal and Torres Strait Islander peoples in accordance with our legislative purpose.

The annual report, with the inclusion of my statement, is provided herewith.

Yours sincerely

Eddie Fry
Chairperson





Australian Government
Indigenous Land Corporation

Statement by Chairperson, Mr Eddie Fry

The Indigenous Land Corporation (ILC) was set up in 1995 to provide land-related benefits to Indigenous Australians. This report provides ample evidence of the achievements of the ILC's land acquisition and land management programs and of its three subsidiaries, Voyages Indigenous Tourism Australia, National Indigenous Pastoral Enterprises (NIPE) and the National Centre of Indigenous Excellence over the 2014–15 financial year.

The ILC Board appointed in October 2015 will be meeting in February 2016 for an in-depth discussion of our strategic priorities and vision for the future; we will be setting our approach to delivering the ILC's functions in an environment where demands on ILC services are increasing, the Indigenous population is growing and an agricultural boom is on our doorstep.

We have already established the basis of a new, open and productive relationship with the Australian Government and will be providing strong support (within our legislative remit) to Government policy priorities.

We also need to work with Government to forge a common approach to two particular issues of concern to the Board.

The first is refinancing, in the first half of 2016, a substantial part of the debt incurred through the ILC's purchase of Ayers Rock Resort. We are seeking an option that minimises the ILC's interest-payment obligations, so the ILC has more resources for its programs and to support the outstanding Indigenous employment outcomes at the resort. The acquisition of the Ayers Rock Resort added a significant asset to the Indigenous estate and on country that has profound Indigenous connections. The incoming Board has taken a decision not to pursue any further investigation into the original purchase of the resort, and will be guided by the findings of reviews already undertaken.

A second major concern for Directors is that returns from the Aboriginal and Torres Strait Islander Land Account, whose revenues fund the ILC's operations, are generally inadequate to meet the demands being made on the corporation. Indeed, the legislated requirement to provide a minimum level of annual funding to the ILC could see the Land Account's capital balance decrease based on current returns from the allowable investments of the Land Account. Meanwhile, the Indigenous population is growing at an estimated 2.3 per cent per annum, and the Indigenous estate is expanding—it covers around 40 per cent of the Australian land mass according to the December 2015 *Report to COAG on Indigenous Land Administration and Use*. I look forward to discussing with the Minister for Indigenous Affairs and the Minister for Finance a strategic approach to achieving a higher rate of return from the Land Account, benchmarked to returns achieved by the Future Fund.

Increases in revenue to the ILC, both from the Land Account and from our three subsidiaries, are essential given the Board's desire to play a greater role in supporting the Government's Indigenous and broader policy agendas. The ILC already delivers strongly on the Government's

Closing the Gap priority of 'getting adults into work'; it is a major provider of training-to-employment programs, especially in remote Australia, and around one third of total ILC staff are Indigenous people.

The Government is prioritising the development of northern Australia where ILC subsidiary NIPE operates an extensive cattle business across 13 properties. The *White Paper on Developing Northern Australia*, released in June 2015, highlights the opportunities available to such agribusinesses, given northern Australia's proximity to growing Asian markets. Through its commitment to expand NIPE, the ILC is seeking to build the Indigenous presence in the northern cattle industry giving Indigenous interests greater commercial strength and influence.

The White Paper recognises that achieving better economic outcomes on Indigenous land is essential to northern development, in light of the extent of Indigenous land ownership across a complex array of titles. The ILC Board will go on mobilising the corporation's considerable expertise in fostering economic development on Indigenous-held land, recognising that economic benefits are most effectively realised when the other benefits specified in our legislation—environmental, social and cultural—are also realised. As the ILC has demonstrated, Indigenous owners in remote Australia are well placed to earn income from unconventional and innovative sources, including ecosystem services, carbon farming and potentially in the future water management.

I am very excited by the prospects I see for the ILC, working in tandem with the other Australian Government agency that I chair, Indigenous Business Australia (IBA). I am committed to building and leveraging the two agencies' combined asset base for the benefit of Indigenous Australians and of Australia as a whole.

As Chair of the ILC I will work as I have with IBA—to increase the ILC's impact, influence, effectiveness and reach. I am keenly aware of the challenges of *Closing the Gap* and of the scale of the resources needed to make progress for Indigenous Australians. I believe the ILC and IBA need to embrace a business model based on growth, commercial sustainability and collaboration across the Australian community (including mobilising greater private-sector interest and investment).

The new ILC will have a future focus; it will deliver more, engage more fully and be an exemplar of best practice and process across its various activities. ~~We will learn from the past and move on. The ILC was established to benefit Indigenous Australians; it should not be a platform for political grandstanding.~~ We will work constructively with Government to ensure the ILC delivers the best possible outcomes as Indigenous people across Australia depend on what we do, and how well we do it.

Eddie Fry
Chairperson

January 2016