

of those being without leave of absence granted.

The Department alluded to our Annual Report not being correct as the Chair had advised that leave of absence was granted.....

The Minister gave an explanation of cultural and business reasons and remoteness.

It was now taken on notice.

Barry can you please forward me the correspondence between the Minister and Chairman on this matter.

The opposition has raised their concerns with the Minister's compliance with s192H of the act rather than their concern about Bruce's attendance.

We can expect a QoN so we should start crafting something.

Timeline of events in terms of corro with Min will assist.

Naturally Bary we'll need you to QA any QoN response we draft up.

Tricia

Tricia Button | Deputy CEO | Indigenous Land Corporation

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P: 07 3854 4685 | M: Exempt under s47F
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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.

From: Petty, Barry
Sent: Friday, 26 October 2018 11:47 AM
To: Andrews, Sue <Sue.Andrews@ilc.gov.au>
Subject: FW: Legal's senate estimates briefs - Oct 2018

Hi Sue,

Thanks for previously sending me the attendance matrix attached.

Would you send me the minutes from each meeting that Director Martin did not attend in the 2017/18 financial year? I need to see how the absences were recorded.

Thanks,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
 Adelaide Office | www.ilc.gov.au
 P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



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From: Andrews, Sue
Sent: Friday, 19 October 2018 9:51 AM
To: Petty, Barry <barry.petty@ilc.gov.au>
Subject: FW: Legal's senate estimates briefs - Oct 2018

Sorry—no idea what key I hit then!! See below ...

From: Andrews, Sue
Sent: Friday, 19 October 2018 10:19 AM
To: Petty, Barry <barry.petty@ilc.gov.au>
Subject: RE: Legal's senate estimates briefs - Oct 2018

Hi Barry

Attached is a matrix detailing attendance of Directors at all meetings since the appointment of the Fry Board in 2015. Bruce attended five of the 12 meetings held in 2017-18 (six of which were held by teleconference).

Directors Elu and Odegaard were appointed on 15 June 2017 for a period of three years (expiry 14 June 2020).

Cheers

Sue

From: Petty, Barry
Sent: Thursday, 18 October 2018 5:14 PM
To: Andrews, Sue <Sue.Andrews@ilc.gov.au>
Subject: FW: Legal's senate estimates briefs - Oct 2018

Hi Sue,

See Tom's email below. Do you have details of Bruce Martin's attendance at meetings for the 2017-18 financial year?

Also, do you know when and for how long Directors Elu and Odegaard were appointed?

Thanks in advance,
Barry

From: Stead, Tom
Sent: Thursday, 18 October 2018 4:36 PM
To: Petty, Barry <barry.petty@ilc.gov.au>
Subject: RE: Legal's senate estimates briefs - Oct 2018

Hi Barry,

Thanks for preparing these briefs. Re the Board appointments brief, could you (your team) please add in the terms of all Directors and their attendance at meetings this FY?

I understand the attendance of Director Martin has also been questioned so can you please add in a line or two of commentary on this?

Thanks,
Tom

From: Petty, Barry
Sent: Thursday, 18 October 2018 3:26 PM
To: Button, Tricia <Tricia.Button@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>
Cc: Stead, Tom <tom.stead@ilc.gov.au>; Hayden, Rebecca <Rebecca.Hayden@ilc.gov.au>
Subject: Legal's senate estimates briefs - Oct 2018

Hello All,

Please find attached legal's Senate estimates briefs.

Let me know if you need briefs on other topics that I might know about or if you need any amendment or additions to the attached briefs.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
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Australian Government
Indigenous Land Corporation



The ILC GROUP

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From: Andrews, Sue
Sent: Friday, 26 October 2018 11:59 AM
To: Petty, Barry <barry.petty@ilc.gov.au>
Subject: RE: Legal's senate estimates briefs - Oct 2018

Minutes attached—note that I don't have a signed copy of the minutes of Meeting#222.

From: Petty, Barry
Sent: Friday, 26 October 2018 12:17 PM
To: Andrews, Sue <Sue.Andrews@ilc.gov.au>
Subject: FW: Legal's senate estimates briefs - Oct 2018

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Cc: Stead, Tom <tom.stead@ilc.gov.au>; Hayden, Rebecca <Rebecca.Hayden@ilc.gov.au>
Subject: Legal's senate estimates briefs - Oct 2018

Hello All,

Please find attached legal's Senate estimates briefs.

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Barry Petty | Acting General Counsel | Indigenous Land Corporation

Adelaide Office | www.ilc.gov.au

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From: [Loss, Sheelagh](#)
To: [Petty, Barry](#)
Cc: [Eddie Fry \(ILC\)](#)
Subject: Timeline and correspondence between ILC Chair and MIA regarding Director Martin
Date: Friday, 26 October 2018 3:14:44 PM
Attachments: [Chair to Bruce Martin re ILC Board .pdf](#)
[Chair to MIA re Director Bruce Martin.pdf](#)
[Chair to MIA re Dir Martin ongoing.pdf](#)
[MIA to Chair re Dir B Martin .pdf](#)
[Chair to Director Martin re leave.pdf](#)
[Chair to MIA re Mr Martin continuity as Director.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi Barry

Please find attached the relevant correspondence between the ILC Chair, Eddie Fry and Minister Scullion regarding Director Bruce Martin.

The timeline is as follows:

- 23 Apr - **ILC Chair to Dir Martin** to advise Minister must terminate Director Martin's appointment and inviting voluntary resignation.
- 04 May - **ILC Chair to MIA** - request MIA terminate Dir Martin's appointment as an ILC Director pursuant to s 192H of the Act.
- 03 July - **ILC Chair to MIA** - request the Minister rescind request of 4 May as he sought to retain Director Martin – following discussion of 14 June 18.
- 29 Aug - **MIA to ILC Chair** - dated 20 Aug. MIA requested confirmation that Dir Martin has been granted leave of absence.
- 31 Aug - **ILC Chair to Director Martin** granting leave from Board meetings due to extenuating personal circumstances
- 31 Aug – **ILC Chair to MIA** advising that leave of absence granted to Dir Martin in writing - due to extenuating personal circumstances

Please let me know if I can help with any further information

Kind regards

Sheelagh Loss | Executive Assistant to the ILC and IBA Chair, Eddie Fry | Indigenous Land Corporation
 Adelaide Office | www.ilc.gov.au
 P: 08 8100 7147 Exempt under s47F E: Sheelagh.Loss@ilc.gov.au | Freecall: 1800 818 490
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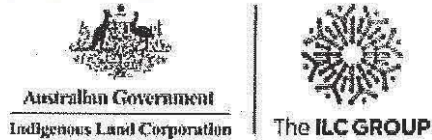


ILC acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to the Elders both past and present.

From: [Maher, John](#)
To: [Soniya Marzeena Mohamed](#)
Cc: [Petty, Barry](#); [Button, Tricia](#)
Subject: urgent hook up re Bruce Martin
Date: Friday, 26 October 2018 4:15:26 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
Importance: High

Soniya,
Please organise above asap if possible.
I have just been rung by PM&C.
JM

John Maher | Group CEO | Indigenous Land Corporation | www.ilc.gov.au
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Personal Privacy



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From: Petty, Barry
Sent: Friday, 26 October 2018 4:39 PM
To: Maher, John; Button, Tricia
Subject: FW: Timeline and correspondence between ILC Chair and MIA regarding Director Martin
Attachments: Chair to Bruce Martin re ILC Board .pdf; Chair to MIA re Director Bruce Martin.pdf; Chair to MIA re Dir Martin ongoing.pdf; MIA to Chair re Dir B Martin .pdf; Chair to Director Martin re leave.pdf; Chair to MIA re Mr Martin continuity as Director.pdf; Item 12c-Leave of Absence Brief.docx

Good afternoon Tricia and John,

The attachments are pertinent to our discussion on this matter.

Also relevant is the wording of s 192C of the Act, which is:

ABORIGINAL AND TORRES STRAIT ISLANDER ACT 2005 - SECT 192C
Leave of absence--part-time Indigenous Land Corporation Directors

When this section applies

(1) This section applies to an Indigenous Land Corporation Director who holds office on a part-time basis.
 Grant of leave

(2) The Indigenous Land Corporation Board may, by writing, grant leave of absence to an Indigenous Land Corporation Director from a meeting of the Indigenous Land Corporation Board.

Delegation

(3) The Indigenous Land Corporation Board may, by writing, delegate to the Indigenous Land Corporation Chairperson the power under subsection (2) to grant leave of absence to the other Indigenous Land Corporation Directors.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation

Adelaide Office | www.ilc.gov.au

P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



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From: Loss, Sheelagh

Sent: Friday, 26 October 2018 3:15 PM

To: Petty, Barry <barry.petty@ilc.gov.au>

Cc: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>

Subject: Timeline and correspondence between ILC Chair and MIA regarding Director Martin

Hi Barry

Please find attached the relevant correspondence between the ILC Chair, Eddie Fry and Minister Scullion regarding Director Bruce Martin.

The timeline is as follows:

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Please let me know if I can help with any further information

Kind regards

Sheelagh Loss | Executive Assistant to the ILC and IBA Chair, Eddie Fry | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
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From: Maher, John
Sent: Friday, 26 October 2018 5:07 PM
To: Button, Tricia; Petty, Barry
Subject: FW: Letter from ILC Chair 31 Aug 2018 [SEC=UNCLASSIFIED]
Attachments: Chair to MIA re Director Bruce Martin.pdf

Hi all,
 FYI....thanks again for your time this arvo.
 Have a good one.
 JM

From: Maher, John
Sent: Friday, 26 October 2018 5:34 PM
To: Jacomb, Brendan <Brendan.Jacomb@pmc.gov.au>
Cc: Maher, John <John.Maher@ilc.gov.au>
Subject: RE: Letter from ILC Chair 31 Aug 2018 [SEC=UNCLASSIFIED]

Thanks Brendan,
 First time we have seen this letter.
 Attached is the last letter we knew of the matter before your email this afternoon.
 Given the Annual Report is of 30 June, it is correct, however it does seem from the letter you attached in your email that leave can be granted retrospectively and unilaterally.
 Kind regards,
 John

John Maher | Group CEO | Indigenous Land Corporation | www.ilc.gov.au
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From: Jacomb, Brendan <Brendan.Jacomb@pmc.gov.au>
Sent: Friday, 26 October 2018 4:54 PM
To: Maher, John <John.Maher@ilc.gov.au>
Subject: Letter from ILC Chair 31 Aug 2018 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi John, as just discussed.

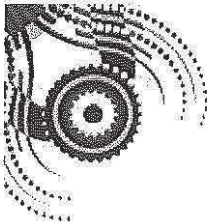
Regards

Brendan Jacomb | Assistant Secretary
Legal Services Branch | Indigenous Affairs Group
Department of the Prime Minister and Cabinet
p. 02 6152 3555 | x7555

m. Exempt under s47 F Personal Privacy

e. brendan.jacomb@pmc.gov.au

www.dpmc.gov.au | www.indigenous.gov.au



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From: Maher, John
Sent: Monday, 29 October 2018 8:22 AM
To: Petty, Barry (barry.petty@ilc.gov.au) <barry.petty@ilc.gov.au>
Cc: Maher, John <John.Maher@ilc.gov.au>
Subject: FW: Letter from ILC Chair 31 Aug 2018 [SEC=UNCLASSIFIED]

Hi Barry,

Speaking to Brendan Jacomb late on Friday he asks in what context the Chair has written to the Minister citing letters have been written to Director Martin "on behalf on the ILC Board" (2nd para).

From our discussion I thought there were no formal resolutions.

If not, Brendan asks what context then can letters be written on behalf of the Board.

Can I get your advice on this so I am prepared for the next discussion with Brendan?

Happy to discuss.

Kind regards,

John

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Sent: Friday, 26 October 2018 4:54 PM
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UNCLASSIFIED

Hi John, as just discussed.

Regards

Brendan Jacomb | Assistant Secretary

Legal Services Branch | Indigenous Affairs Group

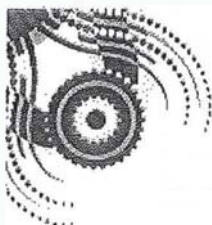
Department of the Prime Minister and Cabinet

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m. Exempt under s47F Personal Privacy

e. brendan.jacomb@pmc.gov.au

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From: Maher, John
Sent: Monday, 29 October 2018 10:42 AM
To: Petty, Barry; Button, Tricia
Cc: Soniya Marzeena Mohamed
Subject: FW: Letter from ILC Chair 31 Aug 2018 [SEC=UNCLASSIFIED]
Attachments: Letter_from_Indigenous_Land_Corporation_-_Directorship_of_Bruce_Martin.pdf

Hi Tricia and Barry,
 Just off the phone from Brendan and we probably need another hook up to resolve where to given the discussion.
 Can I ask we have this this afternoon.?
 I can fit any time but am out of action from 11.50am -1.00pm Sydney time.
 Regards,
 John

From: Maher, John
Sent: Monday, 29 October 2018 8:22 AM
To: Petty, Barry <barry.petty@ilc.gov.au>
Cc: Maher, John <John.Maher@ilc.gov.au>
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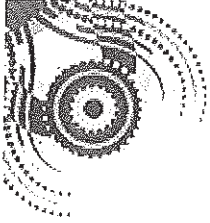
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From: Button, Tricia
Sent: Monday, 29 October 2018 10:52 AM
To: Maher, John
Cc: Petty, Barry
Subject: IN CONFIDENCE: Information for QoN Re Director Martin's attendance

Gents,

Based on timeline of events below, there are some critical questions which might arise. I offer these purely from a risk management perspective (and having potential responses ready).

Critical questions:

1. Why ILC Board waited to write in April after 4 consecutive meetings missed without leave of absence granted?
2. Why Minister did not under s192H terminate Directorship between 4th May and 3rd July?
3. Why Director Martin attended Board meeting on 20th June (after asked to resign in April) but not yet having been granted leave of absence (retrospectively granted in August).
4. Why Chair did not advise Director Martin that leave of absence had been granted until August 31st and after three critical events:
 - a. Director Martin attended two board meetings (June and August);
 - b. Chair had written to the MIA asking to rescind the termination (in July); and
 - c. Minister had asked for confirmation that leave of absence had been granted (in August).

Meeting Number	Date	Location	Attended	Leave of absence granted	Not Attended	Notes/ Actions
214	28.07.17	Sydney				
215	23.08.17	Perth				
216	13.09.17	Teleconference				
217	27.09.17	Teleconference				
218	18.10.17	Canberra				
219	16.12.17	Canberra				
220	01.02.18	Teleconference				
221	21.02.18	Adelaide				
222	09.03.18	Teleconference				
223	18.04.18	Canberra				
	23.04.18	Chair writes to Director Martin advising that Minister must terminate and inviting him to voluntarily resign.				
	04.05.18	Chair writes to MIA requesting he terminate Director Martin's appointment (as per s192H).				
224	11.05.18	Teleconference				
225	20.06.18	Sydney				
	03.07.18	Chair writes to MIA requesting the Minister rescind request of 4th May confirming that Dir Martin has been granted leave of absence.				
227	22.08.18	Perth				
	29.08.18	MIA writes to Chair requesting confirmation that Director Martin has been granted leave of absence (retrospectively).				
	31.08.18	Chair writes to Director Martin granting leave of absence.				
	31.08.18	Chair writes to MIA advising that leave of absence has been granted to Director Martin.				
228	12.09.18	Teleconference				
229	24.10.18	Sydney				

From: [Maher, John](#)
To: [Button, Tricia](#)
Cc: [Petty, Barry](#)
Subject: RE: IN CONFIDENCE: Information for QoN Re Director Martin's attendance
Date: Monday, 29 October 2018 10:54:25 AM

Thanks Tricia,

This is extremely useful and we should have this opened when we discuss what we need to discuss at 2.00pm (Sydney time).

JM

From: Button, Tricia
Sent: Monday, 29 October 2018 11:22 AM
To: Maher, John <John.Maher@ilc.gov.au>
Cc: Petty, Barry <barry.petty@ilc.gov.au>
Subject: IN CONFIDENCE: Information for QoN Re Director Martin's attendance

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221	21.02.18	Adelaide				
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224	11.05.18	Teleconference			
225	20.06.18	Sydney			
	03.07.18	Chair writes to MIA requesting the Minister rescind request of 4th May confirming that Dir Martin has been granted leave of absence.			
227	22.08.18	Perth			
	29.08.18	MIA writes to Chair requesting confirmation that Director Martin has been granted leave of absence (retrospectively).			
	31.08.18	Chair writes to Director Martin granting leave of absence.			
	31.08.18	Chair writes to MIA advising that leave of absence has been granted to Director Martin.			
228	12.09.18	Teleconference			
229	24.10.18	Sydney			

From: Button, Tricia
Sent: Monday, 29 October 2018 4:37 PM
To: Maher, John <John.Maher@ilc.gov.au>
Subject: FW: The ILC in The Mandarin

From: Keough, Peter
Sent: Monday, 29 October 2018 2:55 PM
To: Button, Tricia <Tricia.Button@ilc.gov.au>
Cc: Hayden, Rebecca <Rebecca.Hayden@ilc.gov.au>
Subject: The ILC in The Mandarin

Hi Tricia,

For information.

The ILC was discussed at last Friday's Estimates hearing as reported in The Mandarin. See the part called Remoteness vs governance responsibilities

<https://www.themandarin.com.au/100553-no-eta-on-crucial-evaluation-report-indigenous-affairs-comes-under-scrutiny-in-estimates/>

...

Remoteness vs governance responsibilities

Scullion was also questioned by Labor senator Kristina Keneally over why a member of the Indigenous Land Council board had kept his seat, after missing a series of meetings without leave. The legislation simply states that if a director misses three or more consecutively without leave, the minister must remove them.

Keneally said she did not want to pry into director Bruce Martin's personal life and make it a public issue in the hearing, but she noted that from the annual report it would appear Martin had missed eight meetings with only one leave of absence granted, including five consecutively.

According to Scullion, ILC director Bruce Martin had "some cultural responsibilities, and also some business responsibilities, in a very remote part of the western side of the Cape [York Peninsula]" and not only had trouble attending, but also found it hard to arrange leave beforehand. Teleconferencing appears to be the way ahead.

"So, particular attendance at board meetings has been challenging in these particular circumstances," Scullion said.

"It is not something that has not been dealt with, and we are trying to provide more flexibility for all board members to ensure ... you can still meet your cultural and business obligations, so ensuring we have the level of amenity to ring in, so we've made a number of those changes."

ILC chair Eddie Fry had accepted Martin's explanations and apparently granted an unusual leave of absence after the fact, and told the minister that "adjustments" had been made to ensure attendance in line with the legislation in future.

PM&C assistant secretary Brendan Jacomb said he understood that Fry had granted Martin leave for the meetings, but agreed to provide more clarity on notice after Keneally pointed out his statement contradicted the annual report.

Scullion explained that no changes to the act would be necessary, in his view, and said the annual report would be amended if inaccurate. The act is quite clear that the minister must remove any director who misses three meetings in a row without leave, and Scullion and Fry appear to have found leeway that is not backed up by the legislation.

The minister said he thought leave was approved after the fact, "because [Martin] wasn't able to communicate that he wasn't able to be there at the meeting, but when the extenuating circumstances were provided to the chair, [Fry] understood that leave should have been granted, should he have known beforehand."

"My concern is not so much with Mr Martin's actions, it is with the actions of the minister and the accordance to the act ... and as you have flagged if there are particular challenges with people being able to attend meetings, or being supported to do so, [it would be appreciated] if you could also provide advice as to what you are doing to address that," Keneally said.

Peter Keough | Public Affairs Officer | Indigenous Land Corporation

Adelaide Office | www.ilc.gov.au

P: 08 8100 7106 M: Exempt under s47 Personal Privacy E: peter.keough@ilc.gov.au | Freecall: 1800 818 490



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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.

From: Maher, John
Sent: Monday, 29 October 2018 5:15 PM
To: Petty, Barry
Cc: Button, Tricia
Subject: RE: Board Information Paper - Director Leave Retrospective Approval.docx

Thanks Barry.

I am in 2 minds of date for retro approval...if say this fin year, almost begs the question and then, 'why did u try and hide'.....mentioning the date though brings its own set of potential issues
Probably would run the risk of not mentioning and hope another issue arises by next estimates....

From: Petty, Barry
Sent: Monday, 29 October 2018 5:43 PM
To: Maher, John <John.Maher@ilc.gov.au>
Cc: Button, Tricia <Tricia.Button@ilc.gov.au>
Subject: RE: Board Information Paper - Director Leave Retrospective Approval.docx

Hi John,

The April letter from the Chair to Martin simply says that he has missed three consecutive meetings.

The May letter to the Minister says that Martin missed three consecutive meetings and lists them as being the 1 Feb, 21 Feb and 18 April meetings.

Martin actually missed five consecutive meetings, some of which were out of session. By excusing him for the three meetings on 1 Feb, 21 Feb and 18 April, the meetings he has missed without leave are staggered in a way that he has only missed two, not three, consecutive meetings so there is no obligation to terminate his appointment.

Tricia, would you suggest the wording that you would prefer for the annual report?

For the record, I don't see any impropriety in not mentioning the date of the retrospective approval but, if asked of FOled, we will have to admit that it was October 2018 and field any criticism.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



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From: Maher, John
Sent: Monday, 29 October 2018 5:03 PM
To: Petty, Barry <barry.petty@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>
Subject: RE: Board Information Paper - Director Leave Retrospective Approval.docx

Thanks Barry,
I think the actual wording that will go in the footnote should be explicit in this paper.
Please check Eddie's letter of April requesting Minister terminate Bruce....does it mention 3, meetings or 4?
I know Eddie has spoken to Tricia, but I have now tried 3 times and no luck.
This is not usual but until I speak to him I am reticent to push the button on a meeting...
Happy to discuss.
Kind regards,
John

From: Petty, Barry
Sent: Monday, 29 October 2018 5:02 PM
To: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>
Subject: Board Information Paper - Director Leave Retrospective Approval.docx

Good afternoon Tricia and John,

A draft board paper is attached for your review, comment and/or amendment.

Sue is ready to send out an agenda and board paper at short notice once we have settled on a time for the meeting and the content of the paper and decision sheet.

I'll include the date and number for the meeting when I have those details.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



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From: Button, Tricia
Sent: Monday, 29 October 2018 5:17 PM
To: Petty, Barry; Maher, John
Subject: Version 2. Board Information Paper - Director Leave Retrospective Approval.docx
Attachments: Board Information Paper - Director Leave Retrospective Approval.docx

Hi my 2 cents worth. Have included footnote wording and have only done the 3 consecutive meetings. I think we tackle the issue of the footnote in the QoN in terms of we stand by the accuracy of it but for clarity agree a footnote about activity this financial year would have been wise.....



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BOARD BRIEFING PAPER

BOARD MEETING Out of Session [DATE and NUMBER]

Retrospective approval of Director Martin's leave of absence

Purpose

To obtain Board resolution to approve Director Martin's absences from Board Meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018.

Recommendation

That the ILC Board resolves to:

1. Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and,
2. Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.

Background

Pursuant to s 192H of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) ('the Act') the Minister must terminate the appointment of any part-time ILC Director that is absent from three consecutive meeting of the ILC Board without leave granted pursuant to s 192C of the Act.

Section 192C provides:

1. The ILC Board may, in writing, grant a leave of absence to a part-time ILC Director; or,
2. The ILC Board may, in writing, delegate to the ILC Chairperson the power to grant a leave of absence to a part-time ILC Director.

At ILC Board meeting 164 on 18 December 2013, the ILC Board delegated to the ILC Chairperson the authority to grant leave of absence to part-time ILC Directors (refer Attachment A). The relevant Board paper included that the Chairperson can grant leave of absences if a part-time director requests leave in writing before the meeting. The minutes from that meeting provided that 'the Board approved the process for ILC Board Directors to seek advance leave of absence from attending ILC Board meetings, as outlined in the brief'.

It is apparent from the Board paper and minutes that the ILC Board has only authorised the Chair to grant leave of absence to part-time Directors if a Director both requests and is granted leave in writing before the meeting.

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Director Martin is a part-time Director of the ILC, who was absent from five consecutive Board meetings numbered 220, 221, 222, 223 and 224 held respectively on 1 February, 21 February, 9 March, 18 April and 11 May 2018.

The minutes for each of these meeting records that Director Martin was absent without leave.

On 23 April 2018 the Chairperson wrote to Director Martin to inform him that the Minister must terminate his appointment based on his un-approved absences from more than three consecutive meetings, and respectfully ask for his resignation (refer Attachment B).

On 4 May 2018 the Chairperson wrote to the Minister to inform him that Director Martin had been absent for three consecutive meetings and the Minister should terminate Director Martin's appointment pursuant to s 192H of the Act (refer Attachment C).

On 3 July 2018 the Chairperson wrote to the Minister referred to his earlier letter and asked to rescind his request to terminate Director Martin's appointment (refer Attachment D).

On 20 August 2018 the Minister wrote to the Chairperson and asked whether Director Martin's absences were approved pursuant to s 192C(2) of the Act, which provides for the ILC Board, not the Chairperson, to approve leave of absence (refer Attachment E).

On 31 August 2018 the Chairperson wrote to Director Martin to advise that, in relation to the meetings dated 1 February, 21 February and 18 April, 'I [the Chairperson] now grant you leave for these missed meetings' (refer Attachment G).

On 31 August 2018 the Chairperson also wrote to the Minister to '...confirm to you, that I have written to Mr Martin, on behalf of the ILC Board, to grant him leave of absence from [Board meetings dated 1 February, 21 February and 18 April 2018]' (refer Attachment G).

The ILC executives were unaware that the Chairperson had written to the Minister and Director Martin to retrospectively approve his absences from the meetings dated 1 February, 21 February and 18 April ('the Meetings').

In the absence of this information, the ILC executives approved the ILC Annual Report for the 2017/18 financial year in a form that includes that Director Martin was absent without leave for the Meetings.

At a hearing of Senate Standing Committees on 26 October 2018, staff from the Department of Prime Minister and Cabinet ('DPMC') were asked why the Minister had not terminated Director Martin's appointment considering the ILC's Annual Report showed that he was absent without leave for three or more consecutive meetings. DPMC staff response was that the ILC had retrospectively granted Director Martin leave for those absences, raising further questions for the Committee about the accuracy of the ILC's Annual Report, if in fact leave of absence had been granted. While DPMC staff did not state specifically that retrospective leave of absence had been granted, they were drawing on their knowledge of correspondence from the ILC Chair (Attachment D, E and G), DPMC staff took a question on notice on why the ILC Annual Report did not reflect this retrospective approval while the Minister gave an undertaking to have the ILC's Annual Report amended if it was in fact incorrect.

Commented [BT1]: Suggest we remove he simply said 'as I understand Mr Martin had approved leave and the Chair advised that'

Issues

Retrospective Leave of Absence

While the Chairperson has sought to retrospectively approve Director Martin's absences from the Meetings, his authority to do this can only be derived from an ILC Board decision. The relevant decision only gives the Chairperson authority to approve leave of absences if a request and approval is in writing and provided before the meeting. While the Board discussed this matter in-camera (meeting 221 in February 2018), there are no minutes or decision sheets which would support that the Board authorised/ expected the Chair to grant leave of absence respectively.

Formatted: Underline

It follows that:

1. The Chairperson was not properly authorised to retrospectively approve Director Martin's leave from the Meetings or send the letters to Director Martin and the Minister on 31 August 2018;

2. Director Martin's absence from the Meetings remains unapproved under the provisions of s 192C of the Act; and,
3. Arguably, the Minister must terminate Director Martin's appointment under s 192H of the Act.

There are reasonable legal arguments that until the Minister actually terminates Director Martin's appointment he remains a Director of the ILC despite his absences, and it is open to the ILC Board to retrospectively approve his absences pursuant to s 192C of the Act.

Accuracy of the ILC's 2017/18 Annual Report

It is reasonable to argue that the ILC's Annual Report is in fact correct on the basis that it reports Director Martin's meeting attendances as at 30 June 2018 (the reporting period). At this time Director Martin's absence from the meetings was without leave of absence, on the grounds granting of leave is subject to retrospective approval in the 2018/19 reporting period. For transparency it was appropriate to record meeting attendances as they were during the reporting period.

The ILC could report the granting of leave of absence in this current financial year, but for clarity and to avoid further questions and criticism it is recommended that the ILC insert a footnote to the current Annual Report (electronically provided on the ILC's website) as follows:

The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act.

Recommendation

To resolve this issue the ILC Board is asked to:

1. Retrospectively approve Director Martin's absence from ILC Board meetings dated 1 February, 21 February and 18 April 2018; and,
2. Note-Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221, 222, 223 and 224) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.

Attachments

1. Correspondence between the Chairperson, the Minister and Director Martin as described in this brief; and,
2. The ILC Board Paper giving limited authority for the Chair to approve Director's leave of absence dated 18 December 2013.

Prepared by:

Barry Petty
Acting General Counsel
29 October 2018

Supported by:

John Maher
Group CEO
29 October 2018

BOARD DECISION

Decision No [NUMBER]

BOARD MEETING No:
MEETING DATE:

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND CORPORATION RESOLVE TO:

- 1. Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and,*
- 2. Notes that a footnote will be included in the ILC's Annual Report that retrospective leave was granted to Director Martin for his absences from those meetings.*

SIGNED, Mr Eddie Fry, Chair: Date:

From: Button, Tricia
Sent: Tuesday, 30 October 2018 10:20 AM
To: Petty, Barry; Maher, John
Subject: FV Board Information Paper - Director Leave Retrospective Approval.docx
Attachments: Board Information Paper - Director Leave Retrospective Approval.docx

Hi

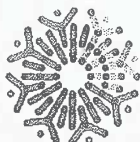
In our rush yesterday we missed a few typos etc and amending the Decision Sheet.

See track changes in attached. Let's see what Eddie comes back with.

Tricia



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BOARD BRIEFING PAPER

BOARD MEETING Out of Session [DATE and NUMBER]

Retrospective approval of Director Martin's leave of absence

Purpose

To obtain Board resolution to approve Director Martin's absences from Board Meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018.

Recommendation

That the ILC Board resolves to:

1. *Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and*
2. *Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.*

Background

Pursuant to s 192H of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) ('the Act') the Minister must terminate the appointment of any part-time ILC Director that is absent from three consecutive meeting of the ILC Board without leave granted pursuant to s 192C of the Act.

Section 192C provides:

1. The ILC Board may, in writing, grant a leave of absence to a part-time ILC Director; or
2. The ILC Board may, in writing, delegate to the ILC Chairperson the power to grant a leave of absence to a part-time ILC Director.

At ILC Board meeting 164 on 18 December 2013, the ILC Board delegated to the ILC Chairperson the authority to grant leave of absence to part-time ILC Directors (refer **Attachment A**). The relevant Board paper included that the Chairperson can grant leave of absences if a part-time director requests leave in writing before the meeting. The minutes from that meeting provided that 'the Board approved the process for ILC Board Directors to seek advance leave of absence from attending ILC Board meetings, as outlined in the brief'.

It is apparent from the Board paper and minutes that the ILC Board has only authorised the Chair to grant leave of absence to part-time Directors if a Director both: (a) requests; and (b) is granted leave in writing before the meeting.

Director Martin is a part-time Director of the ILC, who was absent from five consecutive Board meetings numbered 220, 221, 222, 223 and 224 held respectively on 1 February, 21 February, 9 March, 18 April and 11 May 2018. The three consecutive meetings of 220, 221 and 222 are the only meetings relevant to this matter.

The minutes for each of these meeting records that Director Martin was absent without leave.

On 23 April 2018 the Chairperson wrote to Director Martin to inform him that the Minister must terminate his appointment based on his un-approved absences from more than three consecutive meetings, and respectfully ask for his resignation (refer **Attachment B**).

On 4 May 2018 the Chairperson wrote to the Minister to inform him that Director Martin had been absent for three consecutive meetings and the Minister should terminate Director Martin's appointment pursuant to s 192H of the Act (refer **Attachment C**).

On 3 July 2018 the Chairperson wrote to the Minister referred to his earlier letter and asked to rescind his request to terminate Director Martin's appointment (refer **Attachment D**).

On 20 August 2018 the Minister wrote to the Chairperson and asked whether Director Martin's absences were approved pursuant to s 192C(2) of the Act, which provides for the ILC Board, not the Chairperson, to approve leave of absence (refer **Attachment E**).

On 31 August 2018 the Chairperson wrote to Director Martin to ~~advise~~ advise that, in relation to the meetings dated 1 February, 21 February and 18 April, 'I [the Chairperson] now grant you leave for these missed meetings' (refer **Attachment F**).

On 31 August 2018 the Chairperson also wrote to the Minister to '...confirm to you, that I have written to Mr Martin, on behalf of the ILC Board, to grant ~~him~~ him leave of absence from [Board meetings dated 1 February, 21 February and 18 April 2018]' (refer **Attachment G**).

The ILC executives were unaware that the Chairperson had written to the Minister and Director Martin to retrospectively approve his absences from the meetings dated 1 February, 21 February and 18 April ('the Meetings').

In the absence of this information, the ILC executives approved the ILC Annual Report for the 2017/18 financial year in a form that includes that Director Martin was absent without leave for the Meetings.

At a hearing of Senate Standing Committees on 26 October 2018, the Minister for Indigenous Affairs ~~was staff from the Department of Prime Minister and Cabinet ('DPMC') were asked why the Minister~~ he had not terminated Director Martin's appointment considering the ILC's Annual Report showed that he was absent without leave for three or more consecutive meetings. DPMC staff ~~response advised the Committee that was that~~ the ILC had granted Director Martin leave for those absences, raising further questions for the Committee about the accuracy of the ILC's Annual Report, if in fact leave of absence had been granted. While DPMC staff did not state specifically that retrospective leave of absence had been granted, they were drawing on their knowledge of correspondence from the ILC Chair (Attachment D, E and G). DPMC staff took a question on notice, while the Minister gave an undertaking to have the ILC's Annual Report amended if it was in fact incorrect.

Issues

Retrospective Leave of Absence

While the Chairperson has sought to retrospectively approve Director Martin's absences from the Meetings, his authority to do this can only be derived from an ILC Board decision. The relevant decision only gives the Chairperson authority to approve leave of absences if a request and approval is in writing and provided before the meeting. While the Board discussed this matter in-camera (meeting 221 in February 2018), there are no minutes or decision sheets which would support that the Board authorised/ expected the Chair to grant leave of absence respectively.

It follows that:

1. The Chairperson was not properly authorised to retrospectively approve Director Martin's leave from the Meetings or send the letters to Director Martin and the Minister on 31 August 2018;
2. Director Martin's absence from the Meetings remains unapproved under the provisions of s 192C of the Act; and,
3. Arguably, the Minister must terminate Director Martin's appointment under s 192H of the Act.

There are reasonable legal arguments that until the Minister actually terminates Director Martin's appointment he remains a Director of the ILC despite his absences, and that it is open to the ILC Board to retrospectively approve his absences pursuant to s 192C of the Act.

Accuracy of the ILC's 2017/18 Annual Report

It is reasonable to argue that the ILC's Annual Report is in fact correct on the basis that it reports Director Martin's meeting attendances as at 30 June 2018 (the reporting period). At this time Director Martin's absence from the meetings was without leave of absence, on the grounds granting of leave is subject to retrospective approval in the 2018/19 reporting period. For transparency it was appropriate to record meeting attendances as they were during the reporting period.

The ILC could report the granting of leave of absence in this current financial year (and therefore report amended actions in the 2018/19 Annual Report), but for clarity and to avoid further questions and criticism it is recommended that the ILC insert a footnote to the current Annual Report (electronically provided on the ILC's website) as follows:

The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act.

Recommendation

To resolve this issue the ILC Board is asked to:

1. Retrospectively approve Director Martin's absence from ILC Board meetings dated 1 February, 21 February and 18 April 2018; and,
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (meetings 220, 221, 222, 223 and 224) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act*' be inserted in the 2017/18 Annual Report.

Attachments

1. Correspondence between the Chairperson, the Minister and Director Martin as described in this brief; and,
2. The ILC Board Paper giving limited authority for the Chair to approve Director's leave of absence dated 18 December 2013.

Prepared by:

Barry Petty
Acting General Counsel

29 October 2018

Supported by:

John Maher
Group CEO

29 October 2018

BOARD DECISION

Decision No [NUMBER]

BOARD MEETING No:
MEETING DATE:

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND CORPORATION RESOLVE TO:

- 1. *Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and,***
- 2. *Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221, 222, 223 and 224) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.***
- ~~2. *Notes that a footnote will be included in the ILC's Annual Report that retrospective leave was granted to Director Martin for his absences from those meetings.*~~**

SIGNED, Mr Eddie Fry, Chair: Date:

From: Andrews, Sue
Sent: Tuesday, 30 October 2018 12:14 PM
To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>
Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>
Subject: FW: ILC Board Teleconference - URGENT
Importance: High

Dear Directors

Due to a lack of quorum, the teleconference will not go ahead today.

I'll advise as soon as an alternative time/date has been proposed.

Regards

Sue

From: Andrews, Sue
Sent: Tuesday, 30 October 2018 9:59 AM
To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Hookey, Tanya <Tanya.Hookey@ilc.gov.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>
Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>
Subject: ILC Board Teleconference - URGENT
Importance: High

Dear Directors

The Chair has called an urgent Board teleconference to discuss the retrospective approval of Directors' leave of absence. An agenda is attached.

It would be appreciated if you could advise as a matter of urgency your availability to participate in a teleconference at **2.00 pm (Eastern) TODAY, 30 October 2018.**

Regards

Sue Andrews | Board Secretariat | Indigenous Land Corporation
Canberra Office | www.ilc.gov.au

P: 02 6269 2511 M: Exempt under s47F | E: Sue.Andrews@ilc.gov.au | Freecall: 1800
818 490 Personal Privacy



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*** *IMPORTANT - PLEASE READ* ***

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From: Bruce Martin <bruce@rdcorp.com.au>
Sent: Tuesday, 30 October 2018 10:23 PM
To: Andrews, Sue
Cc: Eddie Fry (ILC); Joseph Elu; Anthony Ashby; Trish Crossin; Tanya Hosch (AFL); Donna Odegaard; Maher, John; Button, Tricia; Petty, Barry; Soniya Marzeena Mohamed; Loss, Sheelagh
Subject: Re: FW: ILC Board Teleconference - URGENT - new time

Hi Sue,

I'm available at that time.

Regards,

Bruce

On Tue, 30 Oct. 2018, 1:49 pm Andrews, Sue, <Sue.Andrews@ilc.gov.au> wrote:

Dear Directors

It's now proposed to hold the teleconference at 10.00 am (Eastern daylight saving time) on Thursday, 1 November 2018.

Please advise asap of your availability to attend at that time.

Thanks

Sue

From: Andrews, Sue
Sent: Tuesday, 30 October 2018 12:14 PM
To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Tanya Hosch (AFL) <tanya.hosch@afll.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>
Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>
Subject: FW: ILC Board Teleconference - URGENT
Importance: High

Dear Directors

Due to a lack of quorum, the teleconference will not go ahead today.

I'll advise as soon as an alternative time/date has been proposed.

Regards

Sue

From: Andrews, Sue

Sent: Tuesday, 30 October 2018 9:59 AM

To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au<mailto:Eddie.Fry@ilc.gov.au>>; Joseph Elu <seisia.member@tsra.gov.au<mailto:seisia.member@tsra.gov.au>>; Anthony Ashby <anthony@ashbyandco.com.au<mailto:anthony@ashbyandco.com.au>>; Trish Crossin <trish@crossinnovate.com.au<mailto:trish@crossinnovate.com.au>>; Hookey, Tanya <Tanya.Hookey@ilc.gov.au<mailto:Tanya.Hookey@ilc.gov.au>>; Bruce Martin <bruce@rdcorp.com.au<mailto:bruce@rdcorp.com.au>>; Donna Odegaard <ceo@aboriginalbroadcasting.org<mailto:ceo@aboriginalbroadcasting.org>>
Cc: Maher, John <John.Maher@ilc.gov.au<mailto:John.Maher@ilc.gov.au>>; Button, Tricia <Tricia.Button@ilc.gov.au<mailto:Tricia.Button@ilc.gov.au>>; Petty, Barry <barry.petty@ilc.gov.au<mailto:barry.petty@ilc.gov.au>>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au<mailto:Soniya.MarzeenaMohamed@ilc.gov.au>>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au<mailto:Soniya.MarzeenaMohamed@ilc.gov.au>>
Subject: ILC Board Teleconference - URGENT
Importance: High

Dear Directors

The Chair has called an urgent Board teleconference to discuss the retrospective approval of Directors' leave of absence. An agenda is attached.

It would be appreciated if you could advise as a matter of urgency your availability to participate in a teleconference at 2.00 pm (Eastern) TODAY, 30 October 2018.

Regards

Sue Andrews | Board Secretariat | Indigenous Land Corporation

Canberra Office | www.ilc.gov.au

P: 02 6269 2511 M: Exempt under s47f Personal Privacy E: Sue.Andrews@ilc.gov.au<mailto:Sue.Andrews@ilc.gov.au> |

Freecall: 1800 818 490

[ILC Standard Signatures Template (Andrews, Sue)-Image01]<<http://www.ilc.gov.au/>> [Facebook]

<<http://www.facebook.com/IndigenousLandCorporation>> [Twitter]

<<http://www.twitter.com/IndigLandCorp>> [LinkedIn] <[https://www.linkedin.com/company/indigenous-](https://www.linkedin.com/company/indigenous-land-corporation/)

[land-corporation/](https://www.linkedin.com/company/indigenous-land-corporation/)> [ILC Standard Signatures Template (Andrews, Sue)-Image05]

<<https://www.instagram.com/indigenoulandcorporation/>>

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.

*** IMPORTANT - PLEASE READ ***

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From: Petty, Barry
Sent: Wednesday, 31 October 2018 9:56 AM
To: Button, Tricia
Subject: FW: Board Information Paper - Director Leave Retrospective Approval.docx
Attachments: Board Information Paper - Director Leave Retrospective Approval.docx

Hi Tricia,

Latest version attached.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



PEOPLE. LAND. OPPORTUNITY.



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From: Petty, Barry
Sent: Tuesday, 30 October 2018 1:11 PM
To: Maher, John <John.Maher@ilc.gov.au>
Subject: Board Information Paper - Director Leave Retrospective Approval.docx

Good afternoon John,

Latest draft attached.

I note that Tricia previously included that the Annual Report note should include that retrospective approval would be given for all five missed meetings. The letters from the Chair to Martin and the Minister only covers approval for three of the five missed meetings, staggered in a way that ensures there are not three consecutive meetings missed so there is no obligation to terminate the appointment.

I have changed the wording of the note for the annual report to show that retrospective approval is only given for three meetings, which accords with the Chair's letters and the resolution for retrospective approval that we are seeking in this paper.

Please let me know if you need it amended further.

Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation
Adelaide Office | www.ilc.gov.au
P: 08 8100 7162 M: | E: barry.petty@ilc.gov.au | Freecall: 1800 818 490



Australian Government
Indigenous Land Corporation



The ILC GROUP

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Indigenous Land Corporation



The ILC GROUP

BOARD BRIEFING PAPER

BOARD MEETING Out of Session [DATE and NUMBER]

Retrospective approval of Director Martin's leave of absence

Purpose

To obtain Board resolution to approve Director Martin's absences from Board Meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018.

Recommendation

That the ILC Board resolves to:

1. *Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and*
2. *Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.*

Background

Pursuant to s 192H of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* ('the Act') the Minister must terminate the appointment of any part-time ILC Director that is absent from three consecutive meetings of the ILC Board without leave granted pursuant to s 192C of the Act.

Director Martin is a part-time Director of the ILC, who was absent from five consecutive Board meetings numbered 220, 221, 222, 223 and 224 held respectively on 1 February, 21 February, 9 March, 18 April and 11 May 2018. The three consecutive meetings of 220, 221 and 223 are the only meetings relevant to this matter ('the Meetings').

Section 192C provides:

1. The ILC Board may, in writing, grant a leave of absence to a part-time ILC Director; or
2. The ILC Board may, in writing, delegate to the ILC Chairperson the power to grant a leave of absence to a part-time ILC Director.

At ILC Board meeting 164 on 18 December 2013, the ILC Board delegated to the ILC Chairperson the authority to grant leave of absence to part-time ILC Directors if leave is sought and approved before the meeting.

The Board discussed Director Martin's absences in-camera (meeting 221 in February 2018). Regrettably, there are no minutes or decision sheets which would support that the Board authorised/expected the Chair to grant leave of absence retrospectively.

~~(refer Attachment A). The relevant Board paper included that the Chairperson can grant leave of absences if a part-time director requests leave in writing before the meeting. The minutes from that~~

meeting provided that 'the Board approved the process for ILC Board Directors to seek advance leave of absence from attending ILC Board meetings, as outlined in the brief'.

It is apparent from the Board paper and minutes that the ILC Board has only authorised the Chair to grant leave of absence to part-time Directors if a Director both: (a) requests, and (b) is granted leave in writing before the meeting.

Director Martin is a part-time Director of the ILC, who was absent from five consecutive Board meetings numbered 220, 221, 222, 223 and 224 held respectively on 1 February, 21 February, 9 March, 18 April and 11 May 2018. The three consecutive meetings of 220, 221 and 222 are the only meetings relevant to this matter.

The minutes for each of these meeting records that Director Martin was absent without leave.

On 23 April 2018 the Chairperson wrote to Director Martin to inform him that the Minister must terminate his appointment based on his unapproved absences from three consecutive meetings, and respectfully ask for his resignation (refer Attachment B).

On 4 May 2018 the Chairperson wrote to the Minister to inform him that Director Martin had been absent for three consecutive meetings and the Minister should terminate Director Martin's appointment pursuant to s 192H of the Act (refer Attachment C).

On 3 July 2018 the Chairperson wrote to the Minister referred to his earlier letter and asked to rescind his request to terminate Director Martin's appointment (refer Attachment D).

On 20 August 2018 the Minister wrote to the Chairperson and asked whether Director Martin's absences were approved pursuant to s 192C(2) of the Act, which provides for the ILC Board to approve leave of absence (refer Attachment E).

On 31 August 2018 the Chairperson wrote to Director Martin to advise that, in relation to the meetings dated 1 February, 21 February and 18 April, 'I [the Chairperson] now grant you leave for these missed meetings' (refer Attachment F).

On 31 August 2018 the Chairperson also wrote to the Minister to '...confirm to you, that I have written to Mr Martin, on behalf of the ILC Board, to grant him leave of absence from [Board meetings dated 1 February, 21 February and 18 April 2018]' (refer Attachment G).

The ILC's Annual Report for the 2017/18 financial year does not included that Director Martin's absences were approved retrospectively, which is strictly accurate because the approval was granted in the 2018/19 financial year.

At a hearing of Senate Standing Committees on 26 October 2018, the Minister for Indigenous Affairs was asked why he had not terminated Director Martin's appointment considering the ILC's Annual Report showed that he was absent without leave for three or more consecutive meetings. DPMC staff advised the Committee that the ILC had granted Director Martin leave for those absences, raising further questions for the Committee about the accuracy of the ILC's Annual Report, if in fact leave of absence had been granted. While DPMC staff did not state specifically that retrospective leave of absence had been granted, they were drawing on their knowledge of correspondence from the ILC Chair. DPMC staff took a question on notice, while the Minister gave an undertaking to have the ILC's Annual Report amended if it was in fact incorrect.

The ILC executives were unaware that the Chairperson had written to the Minister and Director Martin to retrospectively approve his absences from the meetings dated 1 February, 21 February and 18 April ('the Meetings').

In the absence of this information, the ILC executives approved the ILC Annual Report for the 2017/18 financial year in a form that includes that Director Martin was absent without leave for the Meetings.

At a hearing of Senate Standing Committees on 26 October 2018, the Minister for Indigenous Affairs was why he had not terminated Director Martin's appointment considering the ILC's Annual Report showed that he was absent without leave for three or more consecutive meetings. DPMC staff advised the Committee that the ILC had granted Director Martin leave for those absences, raising further questions for the Committee about the accuracy of the ILC's Annual Report, if in fact leave of absence had been granted. While DPMC staff did not state specifically that retrospective leave of absence had been granted, they were drawing on their knowledge of correspondence from the ILC Chair (Attachment D, E and G). DPMC staff took a question on notice, while the Minister gave an undertaking to have the ILC's Annual Report amended if it was in fact incorrect.

Issues

Retrospective Leave of Absence

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The letter from the Chair to the Board dated 31 August 2018 provides that the Chair has granted Director Martin's a leave of absence on behalf of the Board. Regrettably the in-camera discussion from Board meeting 221 was not minuted and there is no record of the Board authorising the Chair to retrospectively approve Director's Martin's leave of absences on behalf of the Board.

Considering the scrutiny that this has already attracted from the Senate Standing Committee, it is prudent for the ILC to take a very conservative approach to the issue and obtain a clearly recorded Board decision to retrospectively approve Director Martin's absences from the Meetings.

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Retrospective Leave of Absence

While the Chairperson has sought to retrospectively approve Director Martin's absences from the Meetings, his authority to do this can only be derived from an ILC Board decision. The relevant decision only gives the Chairperson authority to approve leave of absences if a request and approval is in writing and provided before the meeting. While the Board discussed this matter in-camera (meeting 221 in February 2018), there are no minutes or decision sheets which would support that the Board authorised/expected the Chair to grant leave of absence respectively.

It follows that:

1. The Chairperson was not properly authorised to retrospectively approve Director Martin's leave from the Meetings or send the letters to Director Martin and the Minister on 31 August 2018;
2. Director Martin's absence from the Meetings remains unapproved under the provisions of s 192C of the Act; and,
3. Arguably, the Minister must terminate Director Martin's appointment under s 192H of the Act.

There are reasonable legal arguments that until the Minister actually terminates Director Martin's appointment he remains a Director of the ILC despite his absences, and that it is open to the ILC Board to retrospectively approve his absences pursuant to s 192C of the Act.

Accuracy of the ILC's 2017/18 Annual Report

It is reasonable to argue that the ILC's Annual Report is in fact correct on the basis that it reports Director Martin's meeting attendances as at 30 June 2018 (the reporting period). At this time Director Martin's absence from the meetings was without leave of absence, on the grounds granting of leave is subject to retrospective approval in the 2018/19 reporting period. For transparency it was appropriate to record meeting attendances as they were during the reporting period.

The ILC could report the granting of leave of absence in this current financial year (and therefore report amended actions in the 2018/19 Annual Report), but for clarity and to avoid further questions

and criticism it is recommended that the ILC insert a footnote to the current Annual Report (electronically provided on the ILC's website) as follows:

The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 222) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act.

Recommendation

To resolve this issue the ILC Board is asked to:

1. Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 dated 1 February, 21 February and 18 April 2018; and,
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (meetings 220, 221 ~~and 222~~, 223 ~~and 224~~) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act*' be inserted in the 2017/18 Annual Report.

Attachments

- ~~1. Correspondence between the Chairperson, the Minister and Director Martin as described in this brief; and,~~
- ~~2. The ILC Board Paper giving limited authority for the Chair to approve Director's leave of absence dated 18 December 2013.~~

Prepared by:

Barry Petty
Acting General Counsel
29 October 2018

Supported by:

John Maher
Group CEO
29 October 2018

BOARD DECISION

Decision No [NUMBER]

BOARD MEETING No:
MEETING DATE:

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND CORPORATION RESOLVE TO:

1. *Retrospectively approve Director Martin's absence from ILC Board meetings 220, 221 and 223 held respectively on 1 February, 21 February and 18 April of 2018; and,*
2. Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 223) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.
2. ~~Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (meetings 220, 221, 222, 223 and 224) in the 201/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.~~

SIGNED, Mr Eddie Fry, Chair: Date:

From: Andrews, Sue
Sent: Wednesday, 31 October 2018 11:52 AM
To: Petty, Barry
Subject: FW: ILC Board Teleconference - URGENT - Confirmation
Attachments: Item 2-Director Leave Retrospective Approval.pdf; Agenda - 1 Nov 2018.pdf; Item 2-Retrospective LoA Decision.docx

Importance: High

Hi Barry

You'll need to join the teleconference as host, which has a different passcode:

Dial: 1800 672 949

Passcode: 7257 5185 0392 followed by #

I've also attached a separate decision sheet (that doesn't have a page number on it) for printing and signature when you can, please.

Thanks

Sue

From: Andrews, Sue
Sent: Wednesday, 31 October 2018 12:18 PM
To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Trish Crossin <trish@crossinnovate.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>; Anthony Ashby <anthony@ashbyandco.com.au>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>
Cc: Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>
Subject: FW: ILC Board Teleconference - URGENT - Confirmation
Importance: High

Dear Directors

The briefing paper supporting Item 2 (Retrospective Approval of Leave of Absence) has now been published to BoardPad and is attached to this email, together with the agenda for the meeting.

Dial in details are set out below.

Regards

Sue

From: Andrews, Sue
Sent: Wednesday, 31 October 2018 9:48 AM
To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Trish Crossin <trish@crossinnovate.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>; Anthony Ashby <anthony@ashbyandco.com.au>; Tanya Hosch (AFL)

<tanya.hosch@afl.com.au>

Cc: Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>

Subject: FW: ILC Board Teleconference - URGENT - new time

Importance: High

Dear Directors

I can now confirm that a quorum has been established for the teleconference **at 10.00 am (Eastern daylight saving time) tomorrow, Thursday, 1 November 2018.**

A briefing paper will be published to BoardPad and circulated by email as soon as it's available.

Dial in details for the teleconference are as follows:

Dial: 1800 672 949

Passcode: 7257 5185 2623 followed by #

Regards

Sue

From: Andrews, Sue

Sent: Tuesday, 30 October 2018 2:50 PM

To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>

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Subject: FW: ILC Board Teleconference - URGENT - new time

Importance: High

Dear Directors

It's now proposed to hold the teleconference at **on Thursday, 1 November 2018.**

Please advise asap of your availability to attend at that time.

Thanks

Sue

From: Andrews, Sue

Sent: Tuesday, 30 October 2018 12:14 PM

To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>

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Subject: FW: ILC Board Teleconference - URGENT

Importance: High

Dear Directors

Due to a lack of quorum, the teleconference will not go ahead today.

I'll advise as soon as an alternative time/date has been proposed.

Regards

Sue

From: Andrews, Sue

Sent: Tuesday, 30 October 2018 9:59 AM

To: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Anthony Ashby <anthony@ashbyandco.com.au>; Trish Crossin <trish@crossinnovate.com.au>; Hookey, Tanya <Tanya.Hookey@ilc.gov.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>

Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Petty, Barry <barry.petty@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>

Subject: ILC Board Teleconference - URGENT

Importance: High

Dear Directors

The Chair has called an urgent Board teleconference to discuss the retrospective approval of Directors' leave of absence. An agenda is attached.

It would be appreciated if you could advise as a matter of urgency your availability to participate in a teleconference at **2.00 pm (Eastern) TODAY, 30 October 2018.**

Regards

Sue Andrews | Board Secretariat | Indigenous Land Corporation

Canberra Office | www.ilc.gov.au

P: 02 6269 2511 M: Exempt under s47E | E: Sue.Andrews@ilc.gov.au | Freecall: 1800 818 490

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