



Australian Government
Indigenous Land Corporation



The ILC GROUP

BOARD BRIEFING PAPER

BOARD MEETING No 230—1 November 2018

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 2018.

Recommendation

That the ILC Board resolves to:

1. *Retrospectively approve Director Martin's absence from ILC Board Meeting Nos 220, 221 and 223 held respectively on 1 February, 21 February and 18 April 2018*
2. *Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (Meeting Nos 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act' be inserted in the 2017-18 Annual Report.*

Background

Pursuant to s192H 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 s192C 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 meetings 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 No 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 that would support that the Board authorised/expected the Chair to grant leave of absence retrospectively.

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, '*[the Chairperson] now grant you leave for these missed meetings*'.

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]*'.

The ILC's Annual Report for the 2017-18 financial year does not include 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 Committee 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. PMC 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 PMC 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. PMC 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

The letter from the Chair to the Minister dated 31 August 2018 provides that the Chair has granted Director Martin's 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.

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 (Meeting Nos 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C 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 Meeting Nos 220, 221 and 223 dated 1 February, 21 February and 18 April 2018
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (Meetings 220, 221 and 223) in the 2018/19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act*' be inserted in the 2017-18 Annual Report.

Prepared by:

Barry Petty
Acting General Counsel

31 October 2018

Supported by:

John Maher
ILC Group CEO

31 October 2018



Australian Government
Indigenous Land Corporation

Commercial in Confidence
BOARD DECISION

Decision No

BOARD MEETING No: 230
MEETING DATE: 1 November 2018

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

1. Retrospectively approve Director Martin's absence from ILC Board Meeting Nos 220, 221 and 223 held respectively on 1 February, 21 February and 18 April 2018.
2. Endorse that a footnote *'The ILC Board approved leave of absence for Director Martin (Meetings 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act'* be inserted in the 2017-18 Annual Report.

SIGNED, Edward Fry, Chairperson

Date: 01.11.18

From: [Petty, Barry](#)
To: [Trish Crossin](#)
Cc: [Maher, John](#)
Subject: Director's Leave of Absence - out of session ILC Board meeting 1 November 2018
Date: Wednesday, 31 October 2018 5:42:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Good afternoon Trish,

John told me that you may have some concerns about the legal implications of the Board making a resolution as per the recommendations in the Board paper regarding retrospective approval of Director Martin's absences. I agreed with John that I write to you on this matter but of course I can give more tailored and useful advice if I have a better understanding of your concerns and I would be glad to discuss this with you.

**Exempt under s42
 Legal Professional
 Privilege**

I would be glad to provide further advice by email or discuss. I can be contacted on my direct office number, (08) 8100 8162 or my personal mobile, 0413 691 801.

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.



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: Anthony Ashby
To: Petty, Barry
Cc: Eddie Fry (ILC); Joseph Elu; Trish Crossin; Tanya Hosch (AFL); Donna Odegaard; Maher, John; Button, Tricia
Subject: My Recollection & Position
Date: Wednesday, 31 October 2018 8:11:32 PM

Hi Barry,

Given I cannot attend tomorrow's teleconference due to NCIE Governance & Finance Committee meetings that have been scheduled for some time, I thought it appropriate to provide my recollection of events with respect to this issue for my fellow board members deliberations and for the ILC record, so as to remove all doubt of my position.

Recollection of Events

Letter dated 23/4/18 from Chair to Director Martin – I confirm my recollection is that the board authorised the Chair to issue this letter, and whilst I don't recall the board reviewing the actual letter written, the sentiment it contains were in accordance with our discussion. I have seen this letter for the first time today.

Letter date 4/5/18 from Chair to Minister - I confirm my recollection is that the board authorised the Chair to issue this letter, and whilst I don't recall the board reviewing the actual letter written, the sentiment it contains were in accordance with our discussion, as there appeared to be no other option under the legislation but for the Minister to terminate. I have seen this letter for the first time today.

Board Meeting 20/6/18 – Director Martin attends the board meeting in person at the Voyages Sydney office. This was an unexpected surprise for myself, as I was of the understanding that Director Martin would have either resigned, or would be terminated or was in the process of being terminated by the Minister.

Letter dated 3/7/18 from Chair to Minister – I have no recollection of a board discussion authorising this letter's sentiment and content. I have seen this letter for the first time today. I note the letter is written by the Chair, on behalf of the Chair without reference to the Board requesting the letter of 4/5/18 to be rescinded.

Letter dated 20/8/18 from Minister to Chair – I have no recollection of receiving this letter until today when it was provided to me and the rest of the board, nor do I recall the board having a discussion with respect to it.

Letter dated 31/8/18 from Chair to Director Martin – I have no recollection of a board discussion authorising this letter's sentiment and content. I have seen this letter for the first time today. I note the letter is written by the Chair, on behalf of the Chair without reference to the Board.

Letter dated 31/8/18 from Chair to Minister - I have no recollection of a board discussion authorising this letter's sentiment and content. I have seen this letter for the first time today.

My Position

1. I don't recall a board discussion authorising the three letters dated 3/7/18 and 31/8/18 respectively.

2. I don't recall the board being briefed in any specifics of Director Martin's personal circumstances, however we were all sympathetic to whatever challenges he was facing and were of the understanding the Chair was trying to support Director Martin as best he could.
3. Given Director Martin's board attendance since 20/6/18, the valuable contributions he makes at board meetings, the fact he is overcoming some hurdles in life and should be provided support to assist him, and if retrospectivity is legally permissible, effective from today's date I would be comfortable authorising the Chair to issue retrospective leave of absence to Director Martin.

Resolutions

Resolution #1 – For reasons referred to in items 2 and 3 of My Position above, as of today 31/10/18 I support this resolution, if legally permissible to do so.

Resolution #2 – I support this resolution for the 2017/18 Annual Report be modified on the basis the retrospective leave of absence was granted tomorrow 1/1/18, if legally permissible to do so.

From: Anthony Ashby
To: [Petty, Barry](mailto:barry.petty@ilc.gov.au)
Subject: RE: ILC Board Teleconference - URGENT - Confirmation
Date: Wednesday, 31 October 2018 6:28:01 PM
Attachments: [image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)

Thanks Barry – very much appreciated.

From: Petty, Barry <barry.petty@ilc.gov.au>
Sent: Wednesday, 31 October 2018 5:05 PM
To: Anthony Ashby <anthony@ashbyandco.com.au>
Cc: Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Trish Crossin <trish@crossinnovate.com.au>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>; Donna Odégaard <ceo@aboriginalbroadcasting.org>; Bruce Martin <bruce@rdcorp.com.au>; Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Andrews, Sue <Sue.Andrews@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>
Subject: RE: ILC Board Teleconference - URGENT - Confirmation

Good afternoon Anthony,

I'll answer your questions in the order asked:

1. As far as I am aware the Minister did not respond to the 4 May 2018 letter from the Chair and the only letter from the Minister to the Chair on this matter is the letter dated 29 August 2018.

Exempt under s42 Legal Professional Privilege

I would be glad to answer further questions by email or discuss and I can be contacted on my direct office number, (08) 8100 7162, or my personal mobile, 0413 691 801.

Regards,

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



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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: Anthony Ashby <anthony@ashbyandco.com.au>

Sent: Wednesday, 31 October 2018 3:55 PM

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

Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Andrews, Sue <Sue.Andrews@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>

Subject: RE: ILC Board Teleconference - URGENT - Confirmation

Thank you Barry for getting those out so quickly!

May I ask two clarifying points:

1. Did the Minister not respond to the Chair's letter dated 4/5/18, whereby it was specifically notified that termination must occur, and as such the first subsequent correspondence from Minister back on this issue was 29/8/18?
2. Is there a timeframe precedent/expectation in which the Minister is ordinarily required to exercise s192H(4) upon being notified by the Chair's letter of 4/5/18?

Thank you

Anthony.

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

Sent: Wednesday, 31 October 2018 4:08 PM

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

Cc: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Andrews, Sue <Sue.Andrews@ilc.gov.au>; Soniya Marzeena Mohamed <Soniya.MarzeenaMohamed@ilc.gov.au>

Subject: RE: ILC Board Teleconference - URGENT - Confirmation

Good afternoon Directors,

In response to Director Ashby's request in the email below, please find the following correspondence attached:

1. 23/4/18 – Chair to Director Martin
2. 4/5/18 – Chair to Minister
3. 3/7/18 – Chair to Minister
4. 29/8/18 – Minister to Chair
5. 31/8/18 – Chair to Director Martin
6. 31/8/18 – Chair to Minister

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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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: Wednesday, 31 October 2018 3:24 PM

To: Anthony Ashby <anthony@ashbyandco.com.au>; Andrews, Sue <Sue.Andrews@ilc.gov.au>; 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>; Tanya Hosch (AFL) <tanya.hosch@afl.com.au>; Petty, Barry <barry.petty@ilc.gov.au>

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

Subject: RE: ILC Board Teleconference - URGENT - Confirmation

Hi Anthony.

I apologise if they weren't, but as I understand it, these papers will be attachments to the board paper. I have been in cbd at meetings all day but will rectify ASAP.

Kind regards,

John

On 31 October 2018 at 3:45:50 pm AEDT, Anthony Ashby <anthony@ashbyandco.com.au> wrote:

Hi John and Tricia,

Would you please arrange for the relevant ILC person to locate the following letters in relation to this matter, and send them through to all board members?

23/4/18 – Chair to Director Martin

4/5/18 – Chair to Minister

3/7/18 – Chair to Minister

29/8/18 – Minister to Chair

31/8/18 – Chair to Director Martin

31/8/18 – Chair to Minister

If this list is incomplete please add the additional ones, as I am essentially seeking correspondence to enable full and transparent understanding for all board members.

As you are probably aware, I am unable to attend tomorrow morning due to NCIE committee meetings from 9am to 1pm. However, if I receive documentation this evening I will endeavour to provide my position via email in time for the meeting tomorrow morning.

Thank you

Anthony.

From: Andrews, Sue <Sue.Andrews@ilc.gov.au>
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>
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 - 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>
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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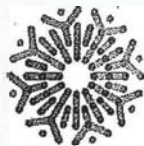
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Australian Government
Indigenous Land Corporation



The **ILC GROUP**

Board-in-Confidence

ILC BOARD MEETING No 230

10.00 am (AEDT)
Thursday, 1 November 2018

Teleconference
Dial: 1800 672 949
Guest passcode: 7257 5185 2623 followed by #

AGENDA

Discussion Leader

- | | |
|--|-------|
| 1. Apologies/Declarations | Chair |
| 1.1 Apologies/Approved Leave of Absence | |
| 1.2 Declarations of Interest | |
| * 2. Retrospective Approval of Leave of Absence | Chair |
| 3. Other Business | Chair |

*Decision required

From: Andrews, Sue
Sent: Thursday, 1 November 2018 9:00 AM
To: Petty, Barry; Button, Tricia; Loss, Sheelagh
Subject: FW: changes ILC Board Meeting No 230

We should still have a quorum at 11 am, providing all other Directors attending the teleconference are still available (ie, Fry, Elu, Martin and Odegaard).

From: Trish <trish@crossinnovate.com.au>
Sent: Thursday, 1 November 2018 9:21 AM
To: Button, Tricia <Tricia.Button@ilc.gov.au>
Cc: Andrews, Sue <Sue.Andrews@ilc.gov.au>; Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>; Petty, Barry <barry.petty@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>
Subject: Re: changes ILC Board Meeting No 230

Thanks but I have another meeting at 11 am this morning till 2

Kind Regards
Trish Crossin

Exempt under s47F Personal Privacy

On 1 Nov 2018, at 8:21 am, Button, Tricia <Tricia.Button@ilc.gov.au> wrote:

Morning Directors,
Eddie's flight has been re-routed causing approximately 1 hr delay.
Sue and/or Sheelagh will be in touch this morning to confirm arrangements.
Thought early heads up would save this morning rush.
Regards
Tricia

On 31 October 2018 at 1:20:50 pm AEST, Andrews, Sue <Sue.Andrews@ilc.gov.au> wrote:

Dial: 1800 672 949

Passcode: 7257 5185 2623 followed by #

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are provided on the basis the user assumes all responsibility for loss, damage or consequence resulting directly or indirectly from their use, whether caused by the negligence of the sender or not

From: Button, Tricia
Sent: Thursday, 1 November 2018 9:35 AM
To: Andrews, Sue; Petty, Barry
Subject: RE: changes ILC Board Meeting No 230

Maybe email all directors but note that Anthony, Tanya were apologies for this morning.
Tricia

From: Andrews, Sue
Sent: Thursday, 1 November 2018 9:04 AM
To: Petty, Barry <barry.petty@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>
Subject: RE: changes ILC Board Meeting No 230
Importance: High

Tricia and Barry

Sheelagh has called to advise that Eddie told her he would be in the Canberra office in 30 minutes and to reschedule the teleconference for 10.30 am.

Do you want me to email Directors re their availability for the new time? ALL Directors, or only those who were originally available at 10.00 am?

From: Petty, Barry
Sent: Thursday, 1 November 2018 9:37 AM
To: Andrews, Sue <Sue.Andrews@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>
Subject: RE: changes ILC Board Meeting No 230

Hello All,

I will call in at the scheduled time and if anyone else calls in I will explain that the Chair's flight has been delayed and ask to delay the meeting and that a new time will be circulated by email in the usual way.

If there is a quorum who all want the meeting to occur then it must occur. It will be the prerogative of the Directors that phone in and make a quorum.

There are provisions in the Act for who should Chair the meeting and I can explain those provisions if necessary.

The Board can make any resolution it wants at such a meeting but it will be open to the other Directors to suggest another meeting to reconsider the matter at a later time.

Glad to answer questions or discuss.

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



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: Andrews, Sue

Sent: Thursday, 1 November 2018 9:00 AM

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

Subject: FW: changes ILC Board Meeting No 230

We should still have a quorum at 11 am, providing all other Directors attending the teleconference are still available (ie, Fry, Elu, Martin and Odegaard).

From: Trish <trish@crossinnovate.com.au>

Sent: Thursday, 1 November 2018 9:21 AM

To: Button, Tricia <Tricia.Button@ilc.gov.au>

Cc: Andrews, Sue <Sue.Andrews@ilc.gov.au>; Eddie Fry (ILC) <Eddie.Fry@ilc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Bruce Martin <bruce@rdcorp.com.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>; Petty, Barry <barry.petty@ilc.gov.au>; Loss, Sheelagh <Sheelagh.Loss@ilc.gov.au>; Maher, John <John.Maher@ilc.gov.au>

Subject: Re: changes ILC Board Meeting No 230

Thanks but I have another meeting at 11am this morning till 2

Kind Regards

Trish Crossin

Exempt under s47F

Personal Privacy

On 1 Nov 2018, at 8:21 am, Button, Tricia <Tricia.Button@ilc.gov.au> wrote:

Morning Directors,

Eddie's flight has been re-routed causing approximately 1 hr delay.

Sue and/or Sheelagh will be in touch this morning to confirm arrangements.

Thought early heads up would save this morning rush.

Regards

Tricia

On 31 October 2018 at 1:20:50 pm AEST, Andrews, Sue <Sue.Andrews@ilc.gov.au> wrote:

Dial: 1800 672 949

Passcode: 7257 5185 2623 followed by #

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

This email and any files transmitted with it are confidential and may contain information protected by law from disclosure. If you have received this message in error, please notify the sender immediately and delete this email from your system. No warranty is given that this email or files, if attached to this email, are free from computer viruses or other defects. They are provided on the basis the user assumes all responsibility for loss, damage or consequence resulting directly or indirectly from their use, whether caused by the negligence of the sender or not

From: Andrews, Sue
Sent: Thursday, 1 November 2018 9:39 AM
To: Eddie Fry (ILC); Joseph Elu; Trish Crossin; Bruce Martin; Donna Odegaard; Anthony Ashby; Tanya Hosch (AFL)
Cc: Maher, John; Button, Tricia; Petty, Barry
Subject: FW: ILC Board Teleconference - URGENT - Change of Time
Attachments: Item 2-Director Leave Retrospective Approval.pdf; Agenda - 1 Nov 2018.pdf
Importance: High

Dear Directors

Please note that due to the Chair's flight delays this morning, the commencement of the teleconference has been delayed until 10.30 am Eastern.

Please let me know urgently if you are available to participate at this time. Dial in details are unchanged.

Dial: 1800 672 949

Passcode: 7257 5185 2623 followed by #

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>

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 - 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>

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

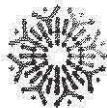
Canberra Office | www.ilc.gov.au

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

Personal Privacy



Australian Government
Indigenous Land Corporation



The ILC GROUP

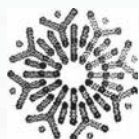
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ILC acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to the Elders both past and present.



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The ILC GROUP

Board-in-Confidence

ILC BOARD MEETING No 230

10.00 am (AEDT)
Thursday, 1 November 2018

Teleconference

Dial: 1800 672 949

Guest passcode: 7257 5185 2623 followed by #

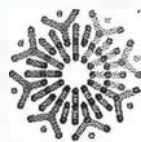
AGENDA

		<i>Discussion Leader</i>
1. Apologies/Declarations		Chair
1.1	Apologies/Approved Leave of Absence	
1.2	Declarations of Interest	
* 2. Retrospective Approval of Leave of Absence		Chair
3. Other Business		Chair

*Decision required



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BOARD BRIEFING PAPER
BOARD MEETING No 230—1 November 2018

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 2018.

Recommendation

That the ILC Board resolves to:

1. *Retrospectively approve Director Martin's absence from ILC Board Meeting Nos 220, 221 and 223 held respectively on 1 February, 21 February and 18 April 2018*
2. *Endorse that a footnote 'The ILC Board approved leave of absence for Director Martin (Meeting Nos 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act' be inserted in the 2017-18 Annual Report.*

Background

Pursuant to s192H 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 s192C 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 meetings 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 No 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 that would support that the Board authorised/expected the Chair to grant leave of absence retrospectively.

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, '*[the Chairperson] now grant you leave for these missed meetings*'.

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]*'.

The ILC's Annual Report for the 2017-18 financial year does not include 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 Committee 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. PMC 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 PMC 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. PMC 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

The letter from the Chair to the Minister dated 31 August 2018 provides that the Chair has granted Director Martin's 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.

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 (Meeting Nos 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C 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 Meeting Nos 220, 221 and 223 dated 1 February, 21 February and 18 April 2018
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (Meetings 220, 221 and 223) in the 2018/19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act*' be inserted in the 2017-18 Annual Report.

Prepared by:

Barry Petty
Acting General Counsel
31 October 2018

Supported by:

John Maher
ILC Group CEO
31 October 2018



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Indigenous Land Corporation

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BOARD DECISION

Decision No

BOARD MEETING No: 230
MEETING DATE: 1 November 2018

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

1. Retrospectively approve Director Martin's absence from ILC Board Meeting Nos 220, 221 and 223 held respectively on 1 February, 21 February and 18 April 2018.
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (Meetings 220, 221 and 223) in the 2018-19 financial year. Retrospective leave of absence was granted pursuant to s192C of the ATSI Act*' be inserted in the 2017-18 Annual Report.

SIGNED, Edward Fry, Chairperson

Date: 01.11.18

From: Button, Tricia
Sent: Thursday, 1 November 2018 5:03 PM
To: Maher, John; Petty, Barry
Subject: ILC Board Minutes - meeting 230 on 1 Nov 2018.docx
Attachments: ILC Board Minutes - meeting 230 on 1 Nov 2018.docx

Hi
My minor suggestions.
Tricia

From: Petty, Barry
Sent: Thursday, 1 November 2018 4:27 PM
To: Maher, John <John.Maher@ilc.gov.au>; Button, Tricia <Tricia.Button@ilc.gov.au>
Subject: ILC Board Minutes - meeting 230 on 1 Nov 2018.docx

Good afternoon John and Tricia,

Attached are draft minutes from this morning's out of session Board meeting.

John, while you weren't in attendance I have circulated them to you as per the Board charter.

Once we have settled on a draft I will circulate the minutes to the Directors in the ordinary way.

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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Board in confidence

DRAFT

ILC BOARD MEETING No 230

Teleconference

Thursday, 1 November 2018

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Mr Joseph Elu AO	Deputy Chair
Ms Patricia Crossin	Director
Dr Donna Odegaard AM	Director
Mr Bruce Martin	Director

Apologies:

Mr Anthony Ashby and Ms Tanya Hosch

Not attending:

Nil

The following attended all or part of the meeting:

Ms Tricia Button	ILC Group Deputy CEO
Mr Barry Petty	Acting ILC Group General Counsel (minute taker)

A copy of the agenda is attached.

The Chair welcomed participants and opened the meeting at 10:35am AEST.

1. STANDING AGENDA ITEMS**1.1 Apologies/Approved Leave of Absence**

Directors Ashby and Hosch were granted leave of absence.

1.2 Declarations of Conflict of Interest

Director Martin declared a conflict on the basis that the matters before the Board related to the retrospective approval of his absences from previous meetings. He had no other conflicts of interest to declare.

No other conflicts of interest were declared.

Director Martin left the meeting at 10:40am AEST.

2. RETROSPECTIVE APPROVAL OF LEAVE OF ABSENCE

The Board discussed that an ILC Board resolution from 2013 gave the Chair authority to approve leave of absence before a meeting but there was no approval to grant leave after a meeting had been missed.

The Directors understood there were exceptional circumstances that resulted in Director Martin missing the relevant meetings but noted that these circumstances had not been discussed at Board meetings. The matter of providing leave was discussed in camera at a Board meeting in February 2018, the Directors could not recall the Board ever authorising the Chair to approve Director Martin's leave retrospectively.

The lesson learnt from this are that the 2013 resolution needs to be changed to give greater flexibility to the Chair to deal with exceptional circumstances such as this.

It was discussed that even though the minutes to Board meeting 221 on 21 February 2018 specifically state that Director Martin had not been granted a leave of absence it is open to the ILC Board to now retrospectively grant Director Martin leave for that and other meetings. This does not require any amendment to previous minutes.

It was discussed that the issue before the Board arises largely from questions asked by a Federal Senator in recent Senate Estimates. The Board has never heard of a Senator using the absences of a member of any Board to criticise a Minister especially if the Board member concerned does not have a political profile. The Board noted that this was unfortunate.

It was also discussed that the wording of s 192H of the ATSI Act should be amended to give the Minister greater flexibility if meetings are missed for exceptional circumstances. It was noted that the current wording of s 192H provides that the Minister must terminate a Director's appointment if three consecutive meetings are missed without leave approved but the legislation should have enough flexibility so that the Minister is not obliged to terminate a Director's appointment in exceptional circumstances. This matter should be raised in the appropriate forum after the next Federal general election.

It was noted that Director Ashby could not attend the meeting so could not participate in the ILC Board's decision making on the matter but he had provided his views in writing and supported both of the resolutions that are described below.

Actions:

- 1. A new Board resolution (replacing the December 2013 Directive) giving the Chair greater flexibility to approve leave in advance of meetings and give retrospective leave in exceptional circumstances should be considered by the Board in the December meeting.**
- 2. After the next Federal general election the ILC should raise amendments to s 192H of the ATSI Act for the purpose of giving the Minister flexibility to decide not to terminate the appointment of an ILC Director if they have missed three consecutive meetings without leave in exceptional circumstances.**

The ILC Board has resolved 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.
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 223) in the 2018/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act*' be inserted in the 2017/18 Annual Report.

3. OTHER BUSINESS

Exempt under S22 Irrelevant Material

There being no further business, the Chair closed the meeting at 11:00am AEST.

Mr Edward Fry
Chair

Board in confidence

DRAFT

ILC BOARD MEETING No 230

Teleconference

Thursday, 2 November 2018

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Mr Joseph Elu AO	Deputy Chair
Ms Patricia Crossin	Director
Dr Donna Odegaard AM	Director
Mr Bruce Martin	Director

Apologies:

Mr Anthony Ashby and Ms Tanya Hosch

Not attending:

Nil

The following attended all or part of the meeting:

Ms Tricia Button	ILC Group Deputy CEO
Mr Barry Petty	Acting ILC Group General Counsel (minute taker)

A copy of the agenda is attached.

The Chair welcomed participants and opened the meeting at 10:35am AEST.

1. STANDING AGENDA ITEMS**1.1 Apologies/ Approved Leave of Absence**

Directors Ashby and Hosch were granted leave of absence.

1.2 Declarations of Conflict of Interest

Director Martin declared a conflict on the basis that the matters before the Board related to the retrospective approval of his absences from previous meetings. He had no other conflicts of interest to declare.

No other conflicts of interest were declared.

Director Martin left the meeting at 10:40am AEST.

2. RETROSPECTIVE APPROVAL OF LEAVE OF ABSENCE

The Board discussed that an ILC Board resolution from 2013 gave the Chair authority to approve leave of absence before a meeting but there was no approval to grant leave after a meeting had been missed.

The Directors understood there were exceptional circumstances that resulted in Director Martin missing the relevant meetings but noted that these circumstances had not been discussed at Board meetings. The matter of providing leave was discussed in camera at a Board meeting in February 2018, the Directors could not recall the Board ever authorising the Chair to approve Director Martin's leave retrospectively.

The lesson learnt from this are that the 2013 resolution needs to be changed to give greater flexibility to the Chair to deal with exceptional circumstances such as this.

It was discussed that even though the minutes to Board meeting 221 on 21 February 2018 specifically state that Director Martin had not been granted a leave of absence it is open to the ILC Board to now retrospectively grant Director Martin leave for that and other meetings. This does not require any amendment to previous minutes.

It was also discussed that the wording of s 192H of the ATSI Act should be amended to give the Minister greater flexibility if meetings are missed for exceptional circumstances. It was noted that the current wording of s 192H provides that the Minister must terminate a Director's appointment if three consecutive meetings are missed without leave approved but the legislation should have enough flexibility so that the Minister is not obliged to terminate a Director's appointment in exceptional circumstances. This matter should be raised in the appropriate forum after the next Federal general election.

It was noted that Director Ashby could not attend the meeting so could not participate in the ILC Board's decision making on the matter but he had provided his views in writing and supported both of the resolutions that are described below.

Actions:

- 1. A new Board resolution (replacing the December 2013 Directive) giving the Chair greater flexibility to approve leave in advance of meetings and give retrospective leave in exceptional circumstances should be considered by the Board in the December meeting.**
- 2. After the next Federal general election the ILC should raise amendments to s 192H of the ATSI Act for the purpose of giving the Minister flexibility to decide not to terminate the appointment of an ILC Director if they have missed three consecutive meetings without leave in exceptional circumstances.**

The ILC Board has resolved 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.**
- 2. Endorse that a footnote *'The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 223) in the 2018/19 financial year. Retrospective leave of***

absence was granted pursuant to s 192C of the ATSI Act' be inserted in the 2017/18 Annual Report.

3. OTHER BUSINESS

Exempt under s22 Irrelevant Material

There being no further business, the Chair closed the meeting at 11:00am AEST.

Mr Edward Fry
Chair

Board in confidence

DRAFT**ILC BOARD MEETING No 230**

Teleconference

Thursday, 2 November 2018

MINUTES**ATTENDANCE:**

Mr Edward Fry	Chair
Mr Joseph Elu AO	Deputy Chair
Ms Patricia Crossin	Director
Dr Donna Odegaard AM	Director
Mr Bruce Martin	Director

Apologies:

Mr Anthony Ashby and Ms Tanya Hosch

Not attending:

Nil

The following attended all or part of the meeting:

Ms Tricia Button	ILC Group Deputy CEO
Mr Barry Petty	Acting ILC Group General Counsel (minute taker)

A copy of the agenda is attached.

The Chair welcomed participants and opened the meeting at 10:35am AEST.

1. STANDING AGENDA ITEMS**1.1 Apologies/Approved Leave of Absence**

Directors Ashby and Hosch were granted leave of absence.

1.2 Declarations of Conflict of Interest

Director Martin declared a conflict on the basis that the matters before the Board related to the retrospective approval of his absences from previous meetings. He had no other conflicts of interest to declare.

No other conflicts of interest were declared.

Director Martin left the meeting at 10:40am AEST.

2. RETROSPECTIVE APPROVAL OF LEAVE OF ABSENCE

The Board discussed that an ILC Board resolution from 2013 gave the Chair authority to approve leave of absence before a meeting but there was no approval to grant leave after a meeting had been missed.

The Directors understood there were exceptional circumstances that resulted in Director Martin missing the relevant meetings but noted that these circumstances had not been discussed at Board meetings. The matter of providing leave was discussed in camera at a Board meeting in February 2018, the Directors could not recall the Board ever authorising the Chair to approve Director Martin's leave retrospectively.

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It was discussed that even though the minutes to Board meeting 221 on 21 February 2018 specifically state that Director Martin had not been granted a leave of absence it is open to the ILC Board to now retrospectively grant Director Martin leave for that and other meetings. This does not require any amendment to previous minutes.

It was discussed that the issue before the Board arises largely from questions asked by a Federal Senator in recent Senate Estimates. The Board has never heard of a Senator using the absences of a member of any Board to criticise a Minister especially if the Board member concerned does not have a political profile. The Board noted that this was a ~~low blow~~ unfortunate.

It was also discussed that the wording of s 192H of the ATSI Act should be amended to give the Minister greater flexibility if meetings are missed for exceptional circumstances. It was noted that the current wording of s 192H provides that the Minister must terminate a Director's appointment if three consecutive meetings are missed without leave approved but the legislation should have enough flexibility so that the Minister is not obliged to terminate a Director's appointment in exceptional circumstances. This matter should be raised in the appropriate forum after the next Federal general election.

It was noted that Director Ashby could not attend the meeting so could not participate in the ILC Board's decision making on the matter but he had provided his views in writing and supported both of the resolutions that are described below.

Actions:

1. A new Board resolution (replacing the December 2013 Directive) giving the Chair greater flexibility to approve leave in advance of meetings and give retrospective leave in exceptional circumstances should be considered by the Board in the December meeting.
2. After the next Federal general election the ILC should raise amendments to s 192H of the ATSI Act for the purpose of giving the Minister flexibility to decide not to terminate the appointment of an ILC Director if they have missed three consecutive meetings without leave in exceptional circumstances.

The ILC Board has resolved 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.
2. Endorse that a footnote '*The ILC Board approved leave of absence for Director Martin (meetings 220, 221 and 223) in the 2018/19 financial year. Retrospective leave of absence was granted pursuant to s 192C of the ATSI Act*' be inserted in the 2017/18 Annual Report.
3. OTHER BUSINESS

Exempt under s 2 2 irrelevant Material

There being no further business, the Chair closed the meeting at 11:00am AEST.

Mr Edward Fry
Chair

From: Petty, Barry
Sent: Friday, 2 November 2018 10:49 AM
To: Eddie Fry (ILC); Joseph Elu; Trish Crossin; Donna Odegaard; Tanya Hosch (AFL); Anthony Ashby; Bruce Martin
Cc: Maher, John; Button, Tricia; Andrews, Sue
Subject: ILC Board Minutes - meeting 230 on 1 Nov 2018
Attachments: ILC Board Minutes - meeting 230 on 1 Nov 2018.docx

Good morning Directors,

Please find attached draft minutes from the 1 November out of session Board meeting.

I would be glad to receive comments, answer questions and make amendments as necessary.

Once we have settled on a final version I will arrange for the minutes to be saved and filed in the usual way.

Regards,

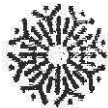
Barry Petty | Acting General Counsel | Indigenous Land Corporation

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

PEOPLE. LAND. OPPORTUNITY.



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.

Board in confidence

DRAFT

ILC BOARD MEETING No 230

Teleconference

Thursday, 1 November 2018

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Mr Joseph Elu AO	Deputy Chair
Ms Patricia Crossin	Director
Dr Donna Odegaard AM	Director
Mr Bruce Martin	Director

Apologies:

Mr Anthony Ashby and Ms Tanya Hosch

Not attending:

Nil

The following attended all or part of the meeting:

Ms Tricia Button	ILC Group Deputy CEO
Mr Barry Petty	Acting ILC Group General Counsel (minute taker)

A copy of the agenda is attached.

The Chair welcomed participants and opened the meeting at 10:35am AEST.

1. STANDING AGENDA ITEMS

1.1 Apologies/Approved Leave of Absence

Directors Ashby and Hosch were granted leave of absence.

1.2 Declarations of Conflict of Interest

Director Martin declared a conflict on the basis that the matters before the Board related to the retrospective approval of his absences from previous meetings. He had no other conflicts of interest to declare.

No other conflicts of interest were declared.

Director Martin left the meeting at 10:40am AEST.

2. RETROSPECTIVE APPROVAL OF LEAVE OF ABSENCE

The Board discussed that an ILC Board resolution from 2013 gave the Chair authority to approve leave of absence before a meeting but there was no approval to grant leave after a meeting had been missed.

The Directors understood there were exceptional circumstances that resulted in Director Martin missing the relevant meetings but noted that these circumstances had not been discussed at Board meetings. The matter of providing leave was discussed in camera at a Board meeting in February 2018, the Directors could not recall the Board ever authorising the Chair to approve Director Martin's leave retrospectively.

The lesson learnt from this are that the 2013 resolution needs to be changed to give greater flexibility to the Chair to deal with exceptional circumstances such as this.

It was discussed that even though the minutes to Board meeting 221 on 21 February 2018 specifically state that Director Martin had not been granted a leave of absence it is open to the ILC Board to now retrospectively grant Director Martin leave for that and other meetings. This does not require any amendment to previous minutes.

It was discussed that the issue before the Board arises largely from questions asked by a Federal Senator in recent Senate Estimates. The Board has never heard of a Senator using the absences of a member of any Board to criticise a Minister especially if the Board member concerned does not have a political profile. The Board noted that this was unfortunate.

It was also discussed that the wording of s 192H of the ATSI Act should be amended to give the Minister greater flexibility if meetings are missed for exceptional circumstances. It was noted that the current wording of s 192H provides that the Minister must terminate a Director's appointment if three consecutive meetings are missed without leave approved but the legislation should have enough flexibility so that the Minister is not obliged to terminate a Director's appointment in exceptional circumstances. This matter should be raised in the appropriate forum after the next Federal general election.

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3. OTHER BUSINESS

Exempt under s22 Irrelevant Material

There being no further business, the Chair closed the meeting at 11:00am AEST.

Mr Edward Fry
Chair

From: CrossInnovate Consulting
To: [Petty, Barry](#); [Eddie Fry \(ILC\)](#); [Joseph Elu](#); [Donna Odegaard](#); [Tanya Hosch \(AFL\)](#); [Anthony Ashby](#); [Bruce Martin](#)
Cc: [Maher, John](#); [Button, Tricia](#); [Andrews, Sue](#)
Subject: RE: ILC Board Minutes - meeting 230 on 1 Nov 2018
Date: Friday, 2 November 2018 9:38:58 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thanks Barry

I would like to suggest that in agenda item 2.....

That we delete the 5th Paragraph.....the reference to Senate estimates

This was raised as part of a comment and reflects a certain view which I don't think provides any benefit to the outcome sought in the minutes so should be deleted.

Otherwise the other areas are fine

Trish Crossin

M: Exempt under s47F Personal Privacy

E: trish@crossinnovate.com.au

From: Petty, Barry [<mailto:barry.petty@ilc.gov.au>]
Sent: Friday, November 2, 2018 11:19 AM
To: [Eddie Fry \(ILC\)](mailto:Eddie.Fry@ilc.gov.au) <Eddie.Fry@ilc.gov.au>; [Joseph Elu](mailto:seisia.member@tsra.gov.au) <seisia.member@tsra.gov.au>; [Trish Crossin](mailto:trish@crossinnovate.com.au) <trish@crossinnovate.com.au>; [Donna Odegaard](mailto:ceo@aboriginalbroadcasting.org) <ceo@aboriginalbroadcasting.org>; [Tanya Hosch \(AFL\)](mailto:tanya.hosch@afl.com.au) <tanya.hosch@afl.com.au>; [Anthony Ashby](mailto:anthony@ashbyandco.com.au) <anthony@ashbyandco.com.au>; [Bruce Martin](mailto:bruce@rdcorp.com.au) <bruce@rdcorp.com.au>
Cc: [Maher, John](mailto:John.Maher@ilc.gov.au) <John.Maher@ilc.gov.au>; [Button, Tricia](mailto:Tricia.Button@ilc.gov.au) <Tricia.Button@ilc.gov.au>; [Andrews, Sue](mailto:Sue.Andrews@ilc.gov.au) <Sue.Andrews@ilc.gov.au>
Subject: ILC Board Minutes - meeting 230 on 1 Nov 2018

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Regards,

Barry Petty | Acting General Counsel | Indigenous Land Corporation

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