



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Mr Eddie Fry
 Chair
 Indigenous Business Australia
 Indigenous Land and Sea Corporation

Dear Mr Fry

I'd like to congratulate you on the efforts of the Board and staff of Indigenous Business Australia (IBA) and the Indigenous Land and Sea Corporation (ILSC) in providing strong leadership and supporting Indigenous businesses and jobs during the COVID-19 pandemic.

I acknowledge your concerns regarding *JobKeeper* eligibility for some of the business and corporations operating within the IBA and ILSC portfolios, particularly Voyages Ayers Rock Resort, Tjapukai and other tourism and business enterprises.

I understand your concerns relate to *JobKeeper* rules that exclude wholly owned subsidiaries of Commonwealth 'agencies', and that as such, Voyages and other entities may be impacted.

I would like to provide assurance to yourself and the IBA and ILSC Boards and staff that I am working on options to support these businesses and their employees to the same extent as other businesses and corporations that are equally impacted.

The Government understands the urgency surrounding this matter for the corporations.

Please be assured we are working towards a resolution as swiftly as we can, and we hope to provide a way forward as soon as possible.

In the meantime, it would be appreciated if you could please keep as many staff engaged in these entities as possible.

As you would be aware it is our hope and our plan that tourism and other businesses bounce back from the COVID-19 pandemic as soon as possible.

It is important that staff stay engaged, skilled-up and ready to emerge strongly for the future.

Should you require any further information, please contact Mr Michael Fordham, Chief of Staff (Michael.Fordham@ia.pm.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ken Wyatt', with a long horizontal flourish extending to the right.

The Hon KEN WYATT AM, MP
Minister for Indigenous Australians

20 / 4 / 2020



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

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15 May 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: Indigenous Land and Sea Corporation (ILSC) - Board Meeting Updates of 2, 9 and 23 April 2020

On behalf of the Indigenous Land and Sea Corporation (ILSC) Board and in accordance with section 19 of the *Public Governance, Performance and Accountability Act 2014*, I am writing to inform you of significant decisions taken at the three Board meetings held in April 2020.

02 April out of session Board meeting # 251

COVID-19 - ILSC Board Update

The ILSC Group's Business Continuity Management Team are meeting daily during this crisis period with emphasis on these important factors:

1. The delivery of "business as usual" to our Indigenous stakeholders and our workforce.
2. Development of a core set of eight principles across the ILSC Group and subsidiaries.
3. Working in conjunction with subsidiaries and NIAA to ascertain the eligibility of the JobKeeper allowance; and
4. The Public Service Commissioner's request of Agency's to give 15% of its key staff to be placed into a response agency for a six-month period.

COVID-19 – NCIE Workforce Planning

The Board previously made a decision to support the NCIE in maintaining its workforce, including the provision of funds to pay employees. However, that resolution expired on 31 March. The Board resolved to continue to support NCIE maintain these employees until such time as alternate funding was received under the JobKeeper allowance.

ILSC Landholding to Grant – Continuous Improvement Program

Following the December Board meeting update on work being undertaken to support the ILSC's focus on resolving challenging investments and refreshing the land holding to grant program, the Board received an update as to progress. The Board resolved to engage an external party to prepare a review in order to refresh the landholding to grant program. The aim of the review is to improve the ILSC's capacity to divest properties more quickly, effectively and differently and to provide internal and external stakeholders with a clearer line of sight on the ILSC's improved divestment framework.

Voyages – Ayers Rock Resort (ARR)

The Board were advised of the lockdown of the Ayers Rock Resort (ARR) in line with the *Biosecurity Act 2015*, and the impact it has placed on the remote surrounding communities, in addition to ARR employees looking to leave the Resort by a prescribed time. The Board noted with some concern there were no apparent containment strategies for the remote communities.

9 April out of session Board Meeting # 252

COVID-19 - ILSC Board Update

Owing to the current crisis, the ILSC Business Continuity Planning Management Group (which encompasses all areas of the business) had been continuing to meet daily. The Board was advised that with 'business as usual' plans in place for at least the next six months, productivity is continuing to work well across the Group with employees now in their new 'working from home' environment. The Board was informed that regular communications are posted to employees in addition to external stakeholders and clients and that Cyber Security awareness is being acutely monitored and will continue to be scrutinized over this extended period. A number of casual subsidiary company staff have been stood down and, provisions are in place in identifying what the Federal Government is able to offer in terms of allowances ie JobKeeper program etc.

ILSC Assets and Urgent Health and Safety Assistance

With respect to the COVID-19 situation, an area of consideration is the utilisation of ILSC assets to house high risk members of Indigenous communities who may need to self-isolate from potential exposure to the virus the Board received a report that two groups have approached the ILSC seeking advice on the use of ILSC assets (SA Dept of Health, for the use of ARR; and an Indigenous group, seeking to utilise Merriman Shearing School, Brewarrina, NSW). While the situation continues to remain fluid, the ILSC is reviewing potential avenues of assistance, however, any form of assistance would present significant staff, property, legal and health risks.

ILSC Strategic Reform Unit (SRU) – HR Considerations

The Board were provided with an overview regarding the implications of the current Enterprise Agreement in relation to any major change undertaken by the ILSC. In consultation with internal and external advisers, there are a number of legal issues that require negotiating. The Board endorsed an immediate communication updating the business on the status of the SRU.

Cyber Security – Information Communications Systems - ICS

The Board received a presentation on the processes, procedures and programs which the ICS Division have implemented during the period 1 February – 31 March in order to combat cyber security while employees across the Group work remotely.

Analysis of Group Cash Flows and Discretionary Expenditure

The GCFO highlighted the Group's projected cash flows focussing on both non-discretionary and discretionary expenditure to consider the best use of ILSC's financial resources to 30 September 2020. With the Group focused on its eight Business Continuity Principles, the Finance division are maintaining watch on what both the Federal/State and Territory Governments support packages to determine how they may apply to the ILSC Group, as well as to our clients.

The GCFO also discussed the ANZ Facility's repayment, and in the event of Ayers Rock Resort not operating within the execution of the Facility, the ramifications of what that would mean. Business Interruption Insurance claims have been submitted for ARR, Mossman Gorge and Home Valley Stations.

23 April out of session Board meeting # 253

Aboriginal & Torres Strait Islander Land and Sea (ATSILS) Future Fund Performance

The ILSC Investment Committee presented their report on the Land Account outlining how the Future Fund Board has taken advantage of gaining further exposure through a diversified portfolio, the Medical Research Future Fund (MRFF) by entering into a new co-mingling arrangement. In December 2019 and since its inception, the Fund has generated a 2.4% return exceeding its annual requirement of 1.9%.

COVID-19 - ILSC Board Update

The Board received a further report on the impact of COVID-19 to the ILSC Group. Since the last report there had been no COVID-19 cases across the Group with staff continuing to work well under the current conditions. The Business Continuity Planning Management Group have moved to meeting three times a week. In order to keep employees fully informed, regular internal communications are distributed maintaining 'business as usual'. Cyber Security is being monitored closely, noting there have been several cases of potential interference.

Group Management Financial Performance Report March 2020

The GCFO presented the Group financials as at 31 March 2020 emphasising with critical months ahead there will be greater caution. Discretionary spending will require greater focus and it will be imperative in identifying how and where monies will be spent.

ANZ Facility

The ANZ Credit Department has given approval to perform a credit review of ARR in the event that ARR has not reopened / is not operating within 12 months of the execution of the Facility. This would provide ANZ with an opportunity to discuss and agree with Voyages a strategy to rectify the circumstances that gave rise to the Review Event. If no agreement is reached, ANZ would have the right to seek repayment of the balance of the Facility, \$102.5 million plus accrued interest. The GCFO advised this review opportunity is seen as the better outcome.

Salary deferral

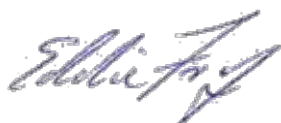
Having received the open letter to the APS from Secretary Gaetjens and Commissioner Woolcott regarding the deferral of general wage increases across the Commonwealth Public Service for a six-month period, ILSC management considered the implications for staff at the ILSC. It was noted that, contrary to other agencies, the ILSC had in place a binding Enterprise Agreement and sought advice as to the implications of that to the deferral proposal. Notwithstanding being told the ILSC's current Agreement is not affected by the Government's decision, Management sought to canvass ILSC staff to see if there was some appetite to defer salary increases. Following external legal industrial relations advice and an informal vote by employees to gain an indicative viewpoint, 74% of eligible employees were not supportive of deferring any salary increases.

Voyages – JobKeeper

The Board was presented with an update on the current status of the JobKeeper programme and the eligibility for Voyages employees. It was noted, Voyages is not in a financial position to provide an alternative to the JobKeeper scheme on an ongoing basis. Voyages requested the ILSC to underwrite a "one-off" payment of up to \$1.463 million while they continue to apply to the Federal Government for the JobKeeper scheme or other alternative funding arrangements. The Board endorsed the recommendations to cover the payment while continuing its JobKeeper process and working in conjunction with NIAA and other government Departments on alternate funding.

Please do not hesitate to contact me should you, or your Department, have any questions in relation to the contents of this letter.

Yours faithfully



Eddie Fry
ILSC Chair



Australian Government
Indigenous Land and Sea Corporation



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Ch 4

22 May 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Board membership and the ILSC Groupwide Core Governance and Operating Principles

I write following up on my letter of yesterday.

As a more detailed example of some of the issues of the conflict that the appointment of ILSC Directors to subsidiary Boards, I attach a copy of a letter I have (unfortunately) had to send to Director Martin in his role as Chair of two of the subsidiary entities; Primary Partners Pty Ltd and Yamanah Investments Pty Ltd.

The Directors on these two subsidiaries are as follows:

Primary Partners: Bruce Martin and Trish Crossin

Yamanah Investments: Bruce Martin, Donna Odegaard and Roy Ah See.

I respectfully ask that you take these matters into account when considering my earlier request for you to exercise your power under s192H(1) of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) and remove a number of the current ILSC Directors.

Please do not hesitate to contact me if you would like to discuss this further.

Yours faithfully

Eddie Fry
ILSC Chair

Attached: Copy of ILSC Chair letter to Director Bruce Martin



Australian Government
Indigenous Land and Sea Corporation



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21 May 2020

Mr Bruce Martin
Email bruce@rdcorp.com.au

Dear Bruce

Re: Indigenous Land and Sea Corporation (ILSC) - Yamanah Investments Pty Ltd (Yamanah) and Primary Partners Pty Ltd (Primary Partners)

It is with great regret that I feel it necessary to write to you concerning the activities you have undertaken as the Chair of both Yamanah and Primary Partners and what to me are a series of clear extensions of the authority provided by the ILSC.

As with all subsidiaries, while they are clearly independent entities, invariably, they need to comply with the overarching parent needs and definitely do not direct the parent as to what the subsidiary is or is not to do.

Fundamentally, when the parent is the support for the subsidiary, the subsidiary clearly needs to ensure it follows the parent's wishes as far as possible.

Unfortunately, having now had the chance to sit and observe several meetings and review the minutes of others, it is clear this does not appear to be what is occurring at either Yamanah or Primary Partners.

I have seen numerous examples of the Directors of each company (led by yourself as Chair), acting contrary to and in an apparent attempt to be independent of the ILSC and the reform plan that the ILSC Directors are collectively working on.

It disappoints me to see subsidiary Directors seeking to vary documents relating to the subsidiary that they, as ILSC Directors approved, attempting to engage external parties to undertake work that ILSC staff can more than ably do and resolving to be the ultimate determiner of terms of funding to come from the ILSC. Further, the active engagement of external financial and other support when there is a need to ensure information is provided in a correct and timely way to comply with PGPA financial obligations shows a disregard for the obligations the ILSC has.

However, for me the much bigger issue is the significant financial impost you, as Chair of these entities, has without proper authority, committed those entities and possibly ultimately the ILSC to. It is clear to me that without any delegated approval or proper process you have sought to engage external advisors at an annual cost of in excess of \$400,000. In my opinion, not only is this a breach of your duty as a Director of the subsidiaries as well as the ILSC, it shows a clear disregard of the use of funds intended to enhance the Indigenous Estate.

I write to inform you that I will be taking these matters up at the next ILSC Board meeting.

Yours faithfully

Eddie Fry
ILSC Chair



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Indigenous Land and Sea Corporation



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Ch 2

20 May 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Board membership and the ILSC Groupwide Core Governance and Operating Principles

Thank you for your time to discuss this matter earlier today.

As mentioned during our call, as Chair of the ILSC, I have an obligation to raise matters of significance that arise within the ILSC and this is of significance and goes to the fundamental rationale of the Corporation.

From earlier discussions, you are aware that the ILSC Board has for some time been driving a strategic reform agenda. This strategic drive has already resulted in an expansion of the ILSC derivable core mandate via legislative change as well as internal performance uplift, with a more focused effort on client deliverables. As a part of the ongoing reform, in 2019 the ILSC Board approved the establishment of a Strategic Reform Unit (SRU) to both consider further structural and efficiency reforms and to guide the ILSC as it continues to move to a more client centered and deliverable model.

As a part of that work, the SRU together with ILSC Executives have been working on future governance and operational models. That work led to the presentation at the Board meeting of 7 May 2020, of eight ILSC Groupwide Core Governance and Operating Principles; principles designed to guide strategic direction as part of the ILSC restructure. I have included the paper for your information. As you can see, fundamental to the new model will be a greater delineation of the ILSC's governance and operating settings and their robustness:

- **Governance models** which protect and assure the ILSC's statutory mandate, along with its compliance, reporting and its relationships with Government.
- **Operating models** which comply with the ILSC's governing legislations while achieving a commercial culture, efficiencies and higher returns for Indigenous peoples and the Indigenous Estate.

Informing these reforms have been three Board led reviews including a Baseline Review of ILC Governance and Structures (2017), Australian Institute of Company Directors (AICD) Board Review (2017), Blackhall and Pearl Board Review (2019). Each of these reviews focussed on the ILSC governance, at a Board, group and structural level, and as such remain highly relevant to the Board's ability to drive the next wave of strategic reform.

These eight ILSC Core Governance and Operating Principles were presented to the 7 May Board meeting:

1. **Protection of the Board's Statutory role**
2. **ILSC Board members are not to hold a Directorship role on the Board of an ILSC Subsidiary**
3. **Subsidiaries do not undertake ILSC core mandate of acquiring, holding and divesting assets.**

4. **Assets are acquired to be divested immediately**
5. **Assets are acquired which can reasonably be expected to deliver a return on mandate as soon as possible**
6. **Clear delineation between managing and operating assets**
7. **Return on Mandate Vs Return on Investment**
8. **Working all ILSC assets harder**

Principle 2 addresses review findings and best practice that ILSC Directors holding remunerated positions on subsidiaries poses potential, real or perceived conflict of interest. The ILSC Board has in the past made these appointments to ensure alignment with the ILSC during the period of reconstruction and reconfiguration, however, as mentioned, this is not regarded as best practice or recommended in the Board reviews.

Currently, five ILSC Directors (Crossin, Martin, Tucker, Odegaard and Ah See) sit on various subsidiary Boards.

During the discussion of the Principles, I raised on several occasions, the matter of a real, perceived and potential conflict of interest, specifically relating to Principle 2. Director Tucker clearly understanding this, fully supported the Principles and will step down from his Subsidiary Board position. The other four Directors did not acknowledge the conflict of interest and rejected the eight Principles as presented. Additionally, these four Directors did not support the general concept of adopting the eight Principles on the basis that with individual consultation or a Board workshop they could be further developed. It was apparent that their objection stemmed from Principle 2.

I note, by way of contrast, the IBA Board does not appoint any IBA Director to their 16 subsidiaries. This, along with the recommendations of the Board reviews and examples within the commercial world are testament to the importance of independence on subsidiary boards. This is both to address the issue of conflicts and to enable the appointment of specialists to ensure the best outcomes, in this case, for Indigenous Australians.

I strongly believe that the failure of four ILSC Directors to recognise and acknowledge a conflict of interest breaches the most basic director protocols.

According to the ILSC Board Code of Conduct, prescribed by the ATSI Act and the PGPA Act, Directors must exercise their powers and duties with care and diligence, act honestly, in good faith, and for a proper purpose in the best interests of the ILSC. I am of the clear view these were not met by those four Directors. I will be proposing that the appointment of these Directors on our subsidiary boards cease, to remove any potential risk that may cause financial and reputational damage.

However, as discussed, I feel that their continuation on the parent ILSC Board is untenable. It is my view that Directors who fail to understand the need to separate parent and subsidiary directorships do not understand the risk that this arrangement poses. Wider ramifications of the potential financial and reputational impact could be damaging in both real and perceived assessments in our close working relationship with IBA and our associated government agencies. It will also bring the decision-making ability of the ILSC into question, it being unclear whether these Directors are speaking for the subsidiary or the ILSC itself.

As we focus on statutory assurances and commercial standards, it is paramount to maintain the highest governance standards to secure our market reputation as we build our financial capability and further develop our business model, which requires external partnerships. Reputational risk is our highest strategic business risk and inextricably linked to the ethics, integrity and commercial capability of the Board. As we seek partnerships in the market for raising capital, it is imperative that we display the highest standards and have commercially recognised skillsets on our Board.

ILSC Board skillsets going forward

The ILSC model that will reconfigure existing structures and bring the subsidiaries into a commercial focus requires commercially experienced and innovative independent Subsidiary Boards with commercially experienced and innovative Directors. The future performance of the ILSC Board in large part depends on the

quality and performance of its Directors; both ILSC and subsidiary. Following the reviews and considering the calibre of skills required for the approved strategic reform, there are constraints that exist currently in overseeing the commercial strategy to conduct the rigorous, impartial analysis that is needed going forward. I note that contained in section 191X of the ATSI Act, the Minister must ensure that at least two ordinary Board members have experience in business or financial management.

I thank you for your letter of 13 May outlining your decision to maintain Directors Crossin, Martin, Odegaard and Elu during the COVID-19 pandemic period, acknowledging my prior request for their continuation to maintain Board stability. I note that was before the actions of some of them at the 7 May meeting. However, as the ILSC transformation proceeds with momentum during this COVID-19 period, I am of the view that an immediate change in Directors to onboard commercial and financial expertise would enhance the progress and outcome of the strategic reform and very importantly, prevent the instability that has unfortunately become evident over the last few weeks.

I would like to request a staged approach at this opportune time of term expiration.

Stage 1.

- Release Directors Crossin and Martin as soon as possible.
- Appoint two new Directors with commercial and financial capability.
- The ILSC Board can temporarily operate business as usual with fewer than seven Directors as evidenced by s191V(3) of the ATSI Act.

Stage 2.

- Keep and extend Director Elu for another term for his commercial capability and key structural thinking.
- Release Director Odegaard when her term expires 14 June 2020.
- Appoint a new Director.

Stage 3.

- Release Director Ah See as soon as possible.
- Appoint a new Director.

One particular requirement at Board level is the development of capital raising agendas to enhance the strategic success of partnerships, to facilitate the continued growth and future securitisation of the Indigenous Estate. Directors that can understand the mechanics of the next level of transformation and ask questions with a see-through understanding, have a focus on public sector mergers and acquisitions, equity capital markets and business management insight and experience would be invaluable to the ILSC.

I would like to forward some recommendations for ILSC Board positions to you within the next week.

It was a very difficult conversation this morning and I sincerely thank you for your time and understanding in listening to my concerns and as discussed, I am happy to speak with you again regarding this matter.

Yours faithfully



Eddie Fry
ILSC Chair

Attachment A: The eight Principles as presented to the ILSC Board at the 7 May Board meeting.

Attachment A

ILSC Groupwide – Core Governance and Operating Principles

1. Protection of the Board's Statutory role

The ILSC's statutory core functions and decisions will remain within the Board's immediate control. This will ensure that it retains complete authority, influence and accountability for the ILSC's statutory role; and its statutory relationships and reputation are protected.

The ILSC Board will create greater delineation between its *governing* and *delivering* roles, pursuing a group wide approach that balances its government statutory integrity innovation and commercial cultures.

It will retain the following within its immediate oversight and control (through its GCEO):

- Assurance, compliance and accountability of the ILSC's statutory mandate.
- Facilitating of the ILSC's delivery of its statutory functions including how its mandate is delivered, monitored and reported on.
- Global budgets including deployment of ILSC capital (own and generated) across asset classes and structures.

The Board will pursue structures, strategies and capabilities to deliver its mandate in the most efficient and commercial manner and with the highest returns.

2. ILSC Board members are not to hold a Directorship role on the Board of an ILSC Subsidiary

The ILSC Board must retain complete autonomy and authority of the ILSC Group including its subsidiaries.

To achieve this, any real or perceived conflicts should be removed, including the burden on ILSC Directors to represent the ILSC on subsidiaries, and protect the interest of the parent entity as a priority.

Directorship on ILSC Subsidiaries exist at the pleasure of the ILSC Board and as such the ILSC Board must have the confidence and freedom to make decisions about Directorships without real or perceived conflict.

While the inclusion of ILSC Directors on subsidiary boards might be seen as a necessary to represent the ILSC's interests, this is better achieved by increasing the authority, direction and leadership of Subsidiaries from the ILSC Board.

ILSC Directors with sector specific portfolio oversight can attend subsidiary Board meetings with observer status to represent ILSC's interests.

Small subsidiary boards, made up of industry experts lends itself to more of an 'advisory' role to the ILSC Board ensuring decisions and authority rest with the ILSC Board.

3. Subsidiaries do not undertake ILSC core mandate of acquiring, holding and divesting assets.

ILSC Subsidiaries do not own land and water interests or any associated assets. Nor do ILSC Subsidiaries have a role in the divestment of assets. While this may have occurred in the past, this is something that must never be allowed to happen again.

The ILSC is to be responsible for the delivery of its legislated mandate including acquiring and divesting land and water-based assets. It must do so in line with its statutory obligations but also in line with the ILSC Board's strategy (whom full responsibility of policy, strategy and performance rests with).

As such the ILSC must be able to undertake these functions without a real or perceived conflict of interest. That being subsidiaries with a vested interest (management) are not best placed to carryout activities such as divesting a property which it manages.

Separation of these functions is critical to: (a) protecting the interests and reputation of the ILSC; and (b) freeing the ILSC to make unbiased decisions about its assets and the delivery of its core mandate.

4. Assets are acquired to be divested immediately

One of the fundamental reasons the ILSC exists is to return land and water-related assets to the Indigenous Estate. Fundamental to this is the granting of assets for the ownership, control, enjoyment and benefit of Indigenous people (through a corporation).

The granting can be done through acquisitions on behalf of Indigenous corporations, or by funding those corporations to allow them to purchase assets.

Where the ILSC itself buys assets, holding onto them for a prolonged period results in the ILSC's funds being used for landholding and related costs (currently \$7mil per annum). The shorter the period an asset is held by the ILSC, the less costs will be incurred which can be diverted to acquisition and management investments.

Our priority should be to acquire assets which can be divested at time of acquisition.

5. Assets are acquired which can reasonably be expected to deliver a return on mandate as soon as possible

We must acquire assets that provide an economic, cultural, social or environmental benefit. Our priority must be acquiring and divesting as soon as possible, and as such the ability to divest quickly relies on the readiness of the property (condition, fit for use, ability to generate income or other benefit) and the readiness of the group (governance and financial security).

As such the divestment criteria (protocol) must be part of the due diligence of acquiring assets. No asset should be acquired by the ILSC without a divestment plan. Subsequently, properties that can be divested quickly and generate economic and other benefits is where the ILSC's acquisition efforts must go.

Our priority should be to acquire assets which are at or near an income generating state – they are investment ready. At minimum ILSC should be prepared to pay a rent equivalent.

6. Clear delineation between managing and operating assets

Subsidiaries 'manage' land assets for the Indigenous Estate and benefit through contracts with proven operators

While subsidiaries should not undertake or impede the ILSC's core mandate, they should be well placed to manage ILSC land and water assets, for the Indigenous Estate, as well as assist in the management of Indigenous held land and water based rights.

As a subsidiary they are uniquely placed to make informed and independent decisions about the best management of ILSC owned assets to maximise return on investment and return on mandate – thus positioning them for future divestment which sets the future Indigenous owner up with a productive and profitable asset.

Proven operators are not wholly owned subsidiaries of the ILSC

Committed to maximise the productivity and profitability of ILSC assets is at the core of the ILSC's role in growing the size, productivity and value (including profitability) of the Indigenous Estate.

Independent and proven operators are best placed to bring the industry's expertise and successful operational models to Indigenous owned and managed assets.

If we are to strive for the highest and best use, productivity and profitability of Indigenous held lands, then we must accept only the best operators. The operators that non-Indigenous landholdings benefit.

The ILSC does not have the resources or expertise necessary to establish the scale required to aspire to being expert and proven operators in a myriad of industries (agriculture, tourism, water, urban development etc). To attempt to do so would result in a significant drain on its resources, and their diversion from its core mandate.

The ILSC should not establish or own proven operating entities, but rather draw on those already in place or within the market sector, with proven economic success and attract those to operating Indigenous lands.

7. Return on Mandate Vs Return on Investment

While the ILSC legislative mandate refers to the social, cultural, economic and environmental benefit of Indigenous people, the ILSC strives to achieve greater economic or financial returns from its investments in land and water.

It can honour its mandate while also actively pursuing mandate activities which yield a greater economic return, and builds the value (being the productivity and profitability) of the Indigenous Estate.

Achieving a return on investment from mandate activities such as land acquisition and land management activities is necessary to: (i) setting up future Indigenous owners with an asset which will yield economic returns; and (ii) enabling the ILSC to receive a return on some of its investment, so as to re-invest in other mandate activities.

Through increased returns on investment the ILSC is growing its investment capability, and thus its ability to invest in return on mandate activities – meeting the greater social, cultural, environmental and economic needs of its clients.

Continuing its growth mindset, **Returns on Mandate must be at a compounding rate, continuing the ILSC's growth mindset.** The ILSC's investment must be setting up Indigenous assets to continually generate social, cultural, environmental and economic benefits, not simply sustain them.

8. Working all ILSC assets harder

The ILSC is a key driver in supporting Indigenous people to achieve more social, cultural, economic and environmental success from its Indigenous Estate.

The ILSC's strategic vision remains on working the Aboriginal and Torres Strait Islander Land and Sea Future Fund harder for Indigenous people, and ensuring its capital is deployed in a manner that sees Indigenous assets are working harder and for greater returns.

Similarly, the ILSC seeks to work its own resources harder for greater returns for both to its Indigenous clients and the Indigenous Estate. This includes getting the best out of its people, systems, processes, technologies, culture and relationships.

The ILSC's resources must be: (i) serving a growing Indigenous client group; (ii) generating partnerships, investment and increased capital; and (iii) achieving a greater RoI and RoM from ILSC capital.



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

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15 May 2020

The Honourable Ken Wyatt AM MP
Minister for Indigenous Australians
Parliament House Canberra ACT 2600

Email: minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Group CEO

Thank you for your letter dated 5 May 2020, in which you advised that the reappointment of Mr Leo Bator as acting ILSC Group CEO (GCEO) to 22 September 2020 has been agreed.

I would like to confirm that the ILSC has commenced the procedure to engage a suitable Executive for appointment to the GCEO position as you have requested. However, considering the current circumstances impacting the Australian economy and workforce, being in a position to provide details of the recommended candidate by 1 July 2020 may be problematic

In the meantime, I would like to draw your attention to a letter that I sent to you on 06 April 2020 regarding the ILSC GCEO and the ILSC Board Directors. In these extraordinarily unique times, to achieve the greatest outcome for Indigenous Australians and in the spirit of ongoing cooperation in this pandemic environment, I would be most grateful and appreciative, if you respect and support the Board's original decision to appoint Mr Bator as GCEO for the full term to November 2021. The Board agreed this timeframe was required after considering the intricacies of the transformation and reached this decision noting the power of appointment contained in s192K of the *Aboriginal and Torres Strait Islander Act 2005 (Cth)* and with an understanding of the remaining powers and provisions of that Act, including s191L.

As I have previously mentioned, the ILSC is pursuing an ambitious but challenging reform agenda; setting out to build a stronger, more relevant, higher performing and long-term economic future to directly benefit Indigenous Australians. Invigorated by the Thodey Review and the 40 recommendations to the APS that provide a comprehensive platform for change and more recent recommendations from the National COVID-19 Coordination Commission (NCCC), urging the ILSC and IBA to consider how we can reconfigure or restructure our operations to face the post COVID-19 period, our complex transition forges ahead.

The activities of our change agenda have not been curtailed during the current disruptions. The Structural and Efficiency Review that is underway, continues to build the ILSC business model and structure. While very grateful of the agreement to extend Mr Bator's appointment, it is imperative that with his in-depth knowledge of the workings of the ILSC, IBA and Government and his strong leadership, Mr Bator is able to continue to drive this transformation agenda to completion; a timeframe greater than the current six months to September.

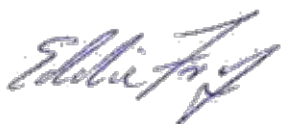
I would like to reiterate that the terms of reference for suitable candidates for the role of ILSC GCEO will be significantly different following completion of the ILSC reform agenda. In those circumstances, the Board considered it to be more appropriate to defer any appointment of a new GCEO until the transformation is nearer completion; mid 2021.

For the sake of continued stability in leadership in the present circumstances, the Board and I would be appreciative if you could confirm the continued appointment of Mr Bator to November 2021, which may be earlier as we continue the search for a suitable replacement. I look forward to your reply as it will impact on the roadmap for selection of the next ILSC GCEO.

Finally, I wish to acknowledge your thanks for the work the ILSC has undertaken with NIAA during the current COVID-19 crisis and wish to extend that thanks in return. It is clear that the pandemic has not limited the scope of work being undertaken by the ILSC and also the great work of all agencies coordinated through NIAA. In fact, the opposite is true. I, the Board and all at the ILSC are grateful for the leadership shown by you, your office and all at NIAA and we look forward to continuing to work with all as the nation heads forward.

I am happy to discuss the GCEO appointment with you, as I can provide further information regarding the Board's in-depth considerations of change implications that led to the longer-term appointment. This meeting can be arranged with my EA Sheelagh Loss via email Sheelagh.loss@ilsc.gov.au or ph 08 8100 7147.

Yours sincerely



Edie Fry
ILSC Chair



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MC20-000838

Mr Eddie Fry
Chairperson
Indigenous Land and Sea Corporation
GPO Box 652
ADELAIDE SA 5001

Dear Mr Fry

Thank you for your correspondence of 19 March 2020 regarding the upcoming appointments of two Directors of the Indigenous Land and Sea Corporation (ILSC) Board.

I appreciate the ILSC Board's recommendation for the reappointment of Mr Joseph Elu as Deputy Chair and Dr Donna Odegaard as a Director when their terms end on 14 June 2020. I also acknowledge your earlier correspondence of 4 February 2020 about the ILSC Board's recommendation for the reappointment of Directors, Mr Bruce Martin and Ms Patricia Crossin whose terms nominally ended on 19 October 2019.

As you will be aware under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), ILSC Director positions continue until a new appointment or reappointment is made by me. I acknowledge the cooperation and contribution of both Mr Martin and Ms Crossin in continuing as Directors of the ILSC Board during this time.

Due to the immediate significant impact surrounding the COVID-19 pandemic I am advising of my decision for all four Directors to continue on the ILSC Board as permitted under section 191Y of the ATSI Act, subject to their ongoing willingness and availability to do so, until official longer term appointments are made. This will provide continuity of the Board during this crucial time.

I would ask that you convey my decision to Mr Elu, Dr Odegaard, Mr Martin and Ms Crossin; and also confirm with the National Indigenous Australians Agency their agreement to continue as ILSC Board members. I will consider the ILSC Board composition and longer term appointments later in the year.

If you have any questions regarding this matter, the contact officer in the National Indigenous Australian Agency is Mr Brendan Jacomb, Chief Lawyer, Legal Services Branch. Mr Jacomb can be contacted by phoning (02) 6152 3555 or by email at brendan.jacomb@niaa.gov.au.

Yours sincerely



The Hon KEN WYATT AM MP
Minister for Indigenous Australians

13 / 5 / 2020



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MS20-000290

Mr Eddie Fry
 Chairperson
 Indigenous Land and Sea Corporation
 GPO Box 652
 ADELAIDE SA 5001

Dear Mr Fry

I wrote to you on 19 March 2020 advising that I would be writing to the Prime Minister, the Hon Scott Morrison MP, about the reappointment by the Indigenous Land and Sea Corporation (ILSC) Board of Mr Leo Bator as the acting ILSC Chief Executive Officer (CEO).

I am pleased to advise the proposed reappointment of Mr Bator as the acting ILSC CEO has been considered by the Australian Government in accordance with the requirements of the Cabinet Handbook and agreed. This agreement is for an acting appointment for a period of no longer than six months from 23 March 2020 to 22 September 2020. Please note that consistent with the requirements of the *Acts Interpretation Act 1901* the Cabinet Secretary has confirmed the legislative limit of 12 months applies and a further extension will not be granted.

I expect, however, that the ILSC Board will finalise the formal selection process for a new ILSC CEO well within the six month time limit. I would ask the ILSC Board to provide me with their recommendation of a new ILSC CEO by 1 July 2020 at the latest for me to seek Government approval in early August 2020.

I would also like to take this opportunity to thank the ILSC for working with the National Indigenous Australians Agency to ensure a coordinated, comprehensive and proactive approach to managing the COVID-19 crisis to reduce the impact on Indigenous Australians across Australia.

If you have any questions regarding this matter, the contact officer in the National Indigenous Australian Agency is Mr Brendan Jacomb, Chief Lawyer, Legal Services Branch. Mr Jacomb can be contacted by phoning (02) 6152 3555 or by email at brendan.jacomb@niaa.gov.au.

Yours sincerely

The Hon KEN WYATT AM MP
 Minister for Indigenous Australians

5 / 5 / 2020

OFFICIAL Sensitive



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck



Reference: MS20-000051

Mr Eddie Fry
Chairperson
Indigenous Land and Sea Corporation
GPO Box 652
ADELAIDE SA 5001

A handwritten signature in blue ink that reads 'Eddie'.

Dear Mr Fry

Thank you for your correspondence of 15 January 2020 regarding the proposed performance payment for the former Indigenous Land and Sea Corporation (ILSC) Group Chief Executive Officer (CEO), Mr John Maher.

I note your advice and acknowledge the Board's unanimous decision of an 'Outstanding' performance rating for Mr Maher for the 2018-19 period and agreement to apply a 15 per cent lump sum performance payment. I have considered the proposed rating and performance payment and I wish to advise you and the ILSC Board that I do not support a performance payment for Mr Maher. I am aware, as you are, of concerns about the governance of the ILSC during the relevant period. I do not support the proposal.

I consider this decision consistent with the Remuneration Tribunal's *Principal Executive Office – Classification Structure and Terms and Conditions – Determination 2019*.

If you have any questions regarding this matter the contact officer in the National Indigenous Australians Agency is Mr Brendan Jacomb, Chief Lawyer, Legal Services Branch. Mr Jacomb can be contacted by phoning (02) 6152 3555 or by email at brendan.jacomb@niaa.gov.au.

Thank you for consulting with me in relation to the performance payment arrangements.

Yours sincerely

A handwritten signature in blue ink that reads 'Ken Wyatt'.

The Hon KEN WYATT AM MP
Minister for Indigenous Australians

5 / 5 / 2020

OFFICIAL Sensitive



18 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: CEO appointment progress and Board availability

Thank you for your correspondence reference MC20-001869 dated 15 June and received today by email. I note that you requested an urgent update on the progress of the formal selection process for the ILSC GCEO position by close of business 17 June 2020. This I provide below.

Following receipt of your correspondence reference MC20-000066 on 02 March 2020, in which you requested the ILSC Board to conduct a formal selection process, this process was commenced. The following chronology includes the steps taken and the Board decisions that approved the process.

4 March: I requested the ILSC General Counsel and Executive Director of People and Culture identify suitable Executive search agencies and commence the process to recruit for the role of GCEO.

12 March: RANC meeting received the paper containing information on tenders and the summary of proposals from four agencies and considered the following:

- Recommended to engage Robert Walters based on their national/global scope, ILSC familiarity and their fees
- Recommended that the RANC Committee determine a Selection Committee to review short-listed applications, interview and assess candidates, and make recommendations to the Board for its final decision.
- Recommended that the Selection Committee comprise the ILSC Chair, Directors Joseph Elu and Donna Odegaard and the appointed recruitment firm. It was further recommended that the ILSC Chair be appointed Chair of the Selection Committee.

The Paper recommended that RANC resolve to approve the following resolutions to be put to the ILSC Board:

1. Note the contents of the paper;
2. Consider the proposals from identified Executive Recruitment firms to recruit for the ILSC Group Executive Officer (CEO) position and endorse Robert Walters as the preferred firm;
3. Determine the location or a range of locations for the CEO role;
4. Determine the Selection Committee; and
5. Endorse the Chair and Management engaging and negotiating terms with the preferred executive search firm

13 March: Board meeting 249 as per Decision No.611, the Board resolved to approve the resolutions (Attachment A), Appointment of AGCEO Mr T Edmond (14-20 March 2020), Appointment of Mr L Bator as AGCEO (21 March-20 Sept 2020), Engagement of External Recruiter for ILSC GCEO

18 March: Management provided a briefing to Robert Walters on the role

25 March: Robert Walters provided Management a proposed recruitment timeline and advertising campaign.

26 March: Minister Wyatt letter received reference MS20-000184 approving AGCEO Mr L Bator for 3 months from 23 March 2020 and seeking Prime Minister approval for a six months term.

27 March: Management endorsed the proposed timeline and advertisements and provided them to the Chair for review and approval

27 March: The Chair acknowledged receipt of the information and advised Management to hold until further advised

06 April: ILSC Chair to Minister Wyatt urging appointment approval for Mr L Bator as GCEO to November 2021

08 May: Minister Wyatt letter received reference MS20-000290 to appoint Mr L Bator AGCEO to 22 September 2020

13 May: Management followed up the Chair on the matter and were subsequently advised to proceed with the recruitment process on 21 May.

22 May: The position was advertised online and in print media, with applications closing 19 June 2020.

3 June: The Chair discussed the role of the ILSC GCEO with Robert Walters, in consideration of the change agenda

12 June: The Chair requested Management facilitate Robert Walters contacting the other members of the Selection Committee.

15 June: The Chair approved the position description for the role and approved for it to be shared with Robert Walters and interested candidates. Management provided Robert Walters the approved position description and the contact details of the Selection Committee; and requested that Robert Walters coordinate a briefing with the committee members.

18 June: Robert Walters agency has advised that applications close tomorrow and to date they have received 99 applications and are expecting more.

The recruitment process is well underway and I aim to provide you with a recommended candidate as soon as possible.

The ILSC Executive team have followed procedures in this recruitment process that have applied to the recruitment of the last GCEO. This process aligns with the IBA CEO recruitment process also currently underway.

I am greatly concerned that the current Board destabilization will result in damaging the reputation of the ILSC Groupwide and could impact the recruitment process and the possibility of maintaining the interest of the highest calibre applicants. This is seriously adversely impacting ILSC Directors Elu and Tucker, Executives and Directors of Voyages and NCIE.

The Board decision of 13 March to engage a recruitment firm for the GCEO position, included appointing a Selection Committee to review shortlisted applicants, interview, assess candidates and make recommendation to the Board for its final decision. The Selection Committee comprises of the ILSC Chair Eddie Fry, Deputy Joseph Elu and Director Donna Odegaard. As the Board endorsed the decision and had full knowledge of the recruitment process I believe that questions now raised by some Directors regarding Board involvement with and settlement of every aspect of the recruitment process displays a lack of understanding of the unanimous decision agreed to by the Board including the role of the Selection Committee.

As I received questions from Director Martin on 22 May 2020 asking who selected the Executive Recruitment firm, which was of course the Board decision of 13 March 2020, I can only assume that Director Martin has forgotten about this decision.

The day following the 7 May 2020 Board meeting, I sent an email to all Directors regarding the Governance Principles discussed at the Board meeting and asking if Directors do not accept a conflict of interest in Principle 2, that they please provide their earliest explanation. (Principle 2 was regarding ILSC Directors not being Subsidiary Directors). In response, Directors Martin and Crossin did not provide this explanation but asked questions regarding GCEO recruitment process and timeline. I advised the full Board via email that I would provide a response to questions regarding the GCEO recruitment at our full day Board meeting. Due to the refusal of these Directors to participate in the meeting of 17 June, they exited before this discussion could take place.

Within your correspondence regarding governance principles and conflicts of interest, you wrote: 'I also note 'the ILSC's decision for this practice to cease in the interests of best practice corporate governance'. I would like to correct for the record that this decision was never able to be resolved due to the refusal of four Directors; Crossin, Martin, Odegaard and Ah See, to acknowledge and agree that there was any real, perceived or potential conflicts of interest with regard to the adoption of ILSC Groupwide Governance Principles that were presented to the Board meeting of 7 May for Board approval. As I have mentioned before, there was an aggressive objection to all principles agreed by these four Directors. Contradicting this objection, I received an email on 10 May 2020 from Director Martin in which he states that 'I personally did not have an issue with any single principle put to us at our last Board meeting, and within the same email, 'I do not accept the assertion that ILSC Directors sitting on Subsidiaries generate a real or perceived conflict of interest'. Needless to say, I welcome your suggestion to have an independent investigation into the fracture of the ILSC Board driven by these four Directors. This commenced when questions were being raised in April 2020 by the then Acting GCEO (Mr L Bator) and myself into the activities (in particular the level of expenditure) being undertaken by ILSC Subsidiaries Primary Partners and Yamanah Investments of which these four Directors sit.

I have sought the ongoing availability of Directors Martin, Crossin and Odegaard to provide assurance that the ILSC Board can continue to properly function until a decision on longer term appointments is made. Directors Odegaard and Crossin have advised they are available.

Please contact me directly if I can provide any further information.

Yours sincerely



Eddie Fry

ILSC Chair

M: 0410 480 730

Attachment A: Board decision 611



Australian Government
Indigenous Land and Sea Corporation



The **ILSC GROUP**

Commercial in Confidence
BOARD DECISION

Decision No 611

BOARD MEETING NO: 249
MEETING DATE: 13 MARCH 2020
FOR: **ENGAGEMENT OF EXTERNAL RECRUITER FOR ILSC GCEO**

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND AND SEA CORPORATION

The ILSC Board resolved to approve the following resolutions:

1. Notes the contents of this paper;
2. Consider the proposals from identified Executive Recruitment firms to recruit for the ILSC Group Chief Executive Officer (CEO) position and endorse Robert Walters as the preferred firm;
3. Determine the location or a range of locations for the CEO role;
4. Determine the Selection Committee; and
5. Endorses the Chair and Management engaging and negotiating terms with the preferred executive search firm

SIGNED: Edward Fry, Chair  Date: 13 March 2020



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

22 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: Perspective on Board issues

Thank you for your correspondence reference MS20-000371 regarding concerns raised about my conduct as the Chair of the Indigenous Land and Sea Corporation (ILSC) Board, at meeting 254 on 7 May 2020. I appreciate that you have sought my perspective on the issues at the meeting which led to allegations of disrespectful conduct and having excluded items from the Board agenda.

In responding without being provided detail, I will outline my perspective and concerns about the actions and behaviors of ILSC Directors Crossin, Martin, Odegaard and Ah See (four Directors) who appear determined to interrupt the progression of the ILSC change agenda. I believe this Augean situation exists due to the decision to remove ILSC Directors from Subsidiary Boards which appears to have incensed four of the five affected Directors as well as the commencement of deeper investigations into the activities of two Subsidiaries. Director Tucker has resigned from the Voyages Board due to his agreement of conflict of interest. I will cover in more detail below, the investigation into Subsidiaries, but for now I wish to reiterate the turnaround performance of the ILSC.

As you are aware the ILSC over the past three fiscal years has outperformed the previous decade and I appreciate your recognition of the outstanding performance reflected in the Annual Report conveyed in our discussion of 20 May. When I commenced in 2015, the ILSC was as close as you could possibly get to being insolvent with a declining Land Fund, subsidies required for Subsidiaries survival to the point where the return on investment could be deemed as negative and the return on mandate was extremely poor. The transformation of the ILSC has not come without extremely hard work and difficult changes. The Voyages Board and management were changed out and market sector capability brought in which produced outstanding results over the past two fiscal periods. The response to the situation created by COVID-19 by Voyages Board and Management is nothing short of outstanding. The strategic Voyages reconfiguration from 1 July 2020 will result in a 40% reduction in its corporate structure to further improve its performance. Very difficult decisions have been made regarding the ILSC's most significant asset with the end goal in mind of increasing Indigenous employment and training in the hospitality sector. These change actions were taken to protect the investment and its flow on to the Indigenous Estate.

The NCIE has excelled in preparation for the post COVID-19 period. I have certainly been impressed by the work of the Board Chair and the management team working closely with the community to address concerns and expectations. New work to be implemented this year reflects their strong capabilities.

The ILSC core has lifted its workload by an approximate 25% to manage the impacts of the bushfires and the pandemic on Indigenous communities. I couldn't be more impressed with the rally to design and implement a rapid response this year. Safety and cost controls are top of mind and activities have continued with a homebased workforce. To accommodate the extra workload, **we have of course had to continually reprioritized our activities.** As the Minister, I convey to you, the ILSC core is sound, its business principles and its directional focus are supported by the internal Strategic Reform Unit (SRU) which is an extraordinarily efficient virtual structure whereby work activities are undertaken

Office of the Chairperson

Mail to: Sheelagh.loss@ilsc.gov.au

Telephone 08 8100 7100 | ABN 59 912 679 254

www.ilsc.gov.au

as a cost center. It is operating to undertake all manner of activities such as the restructure and efficiency review of the organization groupwide in progression.

With respect to our two Subsidiaries Yamanah Investments (Yamanah) and Primary Partners, I am in the process of analyzing the activities of these two entities to bring them to account following the recent discovery of financial mismanagement. Yamanah is a pilot project and unfortunately, Directors of this Subsidiary, without strategic business skills have made imprudent financial outlays that are very questionable and now under investigation.

Primary Partners is also under investigation. I recently wrote to you regarding significant financial impost incurred without proper delegation or authority. This led me to request the Acting CEO of Primary Partners (Mr Bator) appointed in May to identify this value to the Indigenous Estate and include this entity in the structural and efficiency review. I intend to write separately regarding these matters.

The unprofessional conduct of Directors of Yamanah and Primary Partners confirms they are out of their depth and have not maintained any semblance of control consistent with proper corporate governance and accountability. I believe this has positioned them precariously and they are therefore resisting the ILSC parent ownership and responsibilities.

As a background to Board representation on Subsidiaries, five years ago the ILSC Group was fractured and expensive, with no alignment between the Subsidiaries and the core. The ILSC Board had Directors on Subsidiaries to maintain a connection. As the Boards and Management of the Subsidiaries have vastly improved performance, reporting and alignment with the ILSC core and I receive in-depth monthly reports, I believe this representation is no longer required. The ongoing governance and operational reviews within the ILSC emphasized the conflict of interest associated with the ILSC Board making budget and expenditure decisions for Subsidiaries, with Directors who are involved with both ILSC Board decisions and Subsidiary Directorships. Five Subsidiary Directors cannot be excused from group budget decisions. The decision riled four of our five Directors required to forego these positions as they fail to understand the fiscal management required for the post pandemic economic environment and the work underway across the ILSC and IBA to protect our Indigenous future.

During the COVID-19 period I have held weekly combined ILSC Group and IBA Management meetings to share ideas and an aligned approach to issues facing our organizations which has highlighted the fervor and competency across the groups to work together generating a greater pool of ideas and cost savings. This along with the continual careful review of governance, expenditure and the Board agreed need for industry expertise on Subsidiary Boards led to the decision to remove ILSC Directors from our Subsidiaries. The recent Remuneration Tribunal decision to apply no increase to public offices this year and the APS wage freeze further highlighted the benefit for the ILSC of saving \$363 000 annually from unnecessary Subsidiary Director fees.

At Board level, it is my duty as ILSC Chair to ensure the Board is effective in its task of setting and implementing the company's direction and strategy with ultimate responsibility for the performance of the organization. I am to facilitate constructive communications, ensure appropriate information is forthcoming from management to the Board, manage the agenda and conduct of Directors to ensure that all can contribute to discussions.

In light of the banking enquiry and the legal responsibilities of Directors, I am sure you would understand that I am required to hold Directors accountable to actions that breach their duty as a Director both inside and outside the Boardroom. My management of the Board meetings has always been firm to progress the full agenda and allow Board discussion. I expect Directors to have read and understood Board papers and be ready for constructive discussion and an efficient decision process.

I reject the accusation by certain members of the ILSC Board that my conduct at the 7 May 2020 Board meeting 254 was disrespectful to Board members. The meeting went smoothly as usual, until the paper proposing ILSC Groupwide Governance Principles was introduced. These Principles are a natural progression of the structural and efficiency review of the ILSC. As I have previously written to you regarding the refusal of four Directors to acknowledge their conflict of interest in the adoption of these Governance Principles, I would also add that I found the following behaviors unacceptable and disrespectful at this particular Board meeting:

- Even though I raised the issue of conflict of interest a number of times, there was no acknowledgement of possible conflict by four dissenting Directors, rejecting Governance Principle 2 - **ILSC Board members are not to hold a Directorship role on the Board of an ILSC Subsidiary.** (How can they claim to be not in conflict as remunerated Directors on Subsidiaries?)

- Four Directors entered the discussion in an incendiary frame of mind and a seemingly preplanned absolute rejection of all eight Governance Principles due to a distaste for Principle 2, which applies to their Directorship on Subsidiary Boards
- One of these four Directors was particularly non-collegiate and enforced a manner that was consistently disruptive, disrespectful and extraordinarily rude, monopolizing so much time.
- One of these four Directors made the assertion that he could be independent on three Boards, two of which are Subsidiaries reporting to the parent ILSC Board. (How can he make budget decisions as an ILSC Board member about Subsidiaries that he Chairs?)
- Two of the four Directors were repetitive, loud and extraordinarily hostile in trying to justify their position and persuade others to agree with them and continued their tirade until my third and more robust interjection in a firm, but respectful manner, finally succeeded to regain control.
- One of the four Directors pressing unproductive questions that delve into the work of management and shows no respect for their role or work.
- Two of the four Directors questioned the role and authority of the Executives in presenting this paper for the Board, asking why Executives prepared the eight Principles. I found this to be extraordinarily inept as Directors don't prepare papers but were offered input.
- All eight Principles were rejected by these four Directors who refused the offer to discuss and contribute changes to the wording and content of the Principles to enable their adoption.
- Four Directors very strongly objected to have dissenting Directors names reflected in the minutes. At this point one Director accused me of trying to split the Board. This is consistent with normal procedure, applied in the past and I expect all Directors to be independent. Herd mentality is unacceptable in my Board meetings.

As I have said in previous correspondence, it is difficult to find the objection to these Governance Principles to be based on anything other than self-interest. This is despite previous Board discussions related to the restructure of the ILSC and bringing in Industry expertise to Boards.

As you could imagine, I was aghast when faced with an apparent railroading of an agenda item and had to very firmly regain control of the meeting. One of the four Directors asked if the discussion could be toned down. There was no mention of disrespect by any Director during this robust conversation. This meeting concluded without any further issues and I would finalize by saying that the four dissenting Directors who ignited and fueled the discussion have never apologized for their attitude and behavior that is unbecoming of their position. I sent an email (Attachment A) to all Directors the following day to remind Directors of expected behaviors at Board meetings. Particularly that the ILSC is not here for their employment but rather the careful deployment of our scarce resources in both human and financial capital. It is my view that these four Directors have lost sight of this.

On the accusation that I have refused to include items on the Board's agenda in accordance with requests of Board members, including an agenda item to instigate a recruitment process to recruit a CEO. I respond as follows.

Firstly, I have not included discussion about s191G agreements with Primary Partners and Yamanah in ILSC Board agenda's due to serious questions and concerns that I have about fiscal management of these Subsidiaries. As you would be aware, I have written to you about the non-delegated and unauthorized expenditure incurred by Primary Partners. In addition to this fiscal mismanagement Director Martin as Chair of Yamanah has overseen serious expenditure circa \$1.2 million and climbing, upon which learning about I wrote to him (Attachment B) as to the utilization and value of this expenditure to the Indigenous Estate noting that the ILSC Board had established the SRU as the vehicle to carry out this activity which Director Martin was requested to use. There has been no response to that email. Director Martin has effectively duplicated services that the ILSC can provide, entered into unbelievably expensive contracts and overstepped the pilot project scope which was for an environmental scan of the Murray Darling Basin. In contrast, the ILSC in a joint venture invested in a similar scan of the entire Northern Zone of Australia and has had a thorough report delivered at a cost of \$30 000.

Director Martin sent me an impressive looking presentation on the activities of Yamanah following his request for inclusion on the agenda, however without substance and in light of the expenditure and activities of Yamanah, I was loath to include this or discuss at Board level. As mentioned, an investigation is underway.

I raised another matter of concern in correspondence to Director Martin in relation to Yamanah and Primary Partners of which he is Chair and Directors Odegaard, Ah See and Crossin are members and who were copied in when the 10 June correspondence was sent. The matter concerned engagement of Nigel Renton whereby adherence to the strict authority provided by the ILSC appears to have been ignored. There is no response to date. (Attachment C)

Another item that has been discussed at Board level but has been allegedly excluded the Board agenda is the recruitment of a new Group CEO for the ILSC. This process is underway, as you can see in the chronology sent to you on 18 June 2020. The process involved is mirrored with that being undertaken by IBA. We have a consistent framework to employ Group CEO's and the Board was informed. Management provides the position description with my guidance as the reporting authority and which has been standard process. The Board chose the recruitment agency and approved a Board Selection Committee who will review shortlisted applications, interview, assess candidates and make recommendation to the Board for its final decision. I fail to understand how the Board decisions of March can be interpreted as refusal to include an agenda item to instigate a recruitment process to recruit a Chief Executive Officer.

The ILSC is undergoing positive changes to fulfill the Board commitment to modernize the ILSC's performance for growth that will benefit Indigenous and all Australians and for the securitization of the Indigenous Estate. As this work is underway, it would be very disturbing to interrupt the momentum due to the inability of four Directors to suddenly disagree with the progression in apparent self-interest.

Minister, I have always attended matters at Board level in a very inclusive process. To be accused by four members in the manner that they have, is a clear disrespect of me and therefore the position of Chair. I am required to ensure that the probity of the ILSC is paramount. As an example of disrespect, at Board meeting 255 and 256 Director Martin declared he has a change in declarations, however has failed to provide the relevant details/association he has with two corporate entities, claiming he has asked his accountant to forward the details to the Group General Counsel. As a Director of the ILSC I consider this to be a breach of his duties and until we can confirm otherwise the risk of conflict of interest exists. This in effect makes any of his involvement with Board matters dubious and very questionable due to the fact that we have no idea as to any conflict of interest being present on any matters discussed. In the case of Director Martin's declarations, this I view makes him ineligible to attend further Board meetings until this matter has been resolved. I trust that you would be equally concerned with Director Martin's lack of declarations.

As a final comment in response to your correspondence, the accusations by these four Directors from my perspective is because I have pursued proper governance, I have pursued conflicts of interest and I have pursued performance related matters.

I would be more than happy to provide you with further detail about the issues that I have touched on and further relevant matters should you require this.

Yours sincerely



Eddie Fry
ILSC Chair

Attachment A: Email 8 May from Eddie Fry to Directors in response to 7 May 2020

Attachment B: Email 6 May from Eddie Fry to Director Martin and all Directors re Yamanah ILSC presentation

Attachment C: Correspondence 10 June from Eddie Fry to Director Martin regarding Nigel Renton

Attachment A:

Eddie Fry <eddie.fry@bigpond.com>

To Donna Odgaard; Trish Crossin; 'Roy Ah-See'; Bruce Martin

Cc Joseph Elu; 'Daniel Tucker'; Eddie Fry (ILSC)

Reply Reply All Forward ...
 Fri 8/05/2020 1:40 P

BM 254 Item 3 Governance Principle No. 2

Dear Directors.

Following our meeting yesterday I took some time to reflect on matters as they unfolded during the discussions related to the 8 Governance Principles. In light of these discussions I have decided to put my thoughts in writing.

1. As with every board meeting and items presented as Chair, I seek to facilitate discussions by providing each Member an opportunity to provide constructive individual considerations and move to a position whereby the matter is discussed and resolved. Resolved might be in full or in part and matters recorded in the minutes to reflect the outcome of those discussions;
2. It is expected without exception that every member when commenting or discussing matters would do so in a considerate timely manner;
3. It is expected without exception as proper practice of the Board, that Members wouldn't cut across when another member is making their points known;
4. It's my role as chair to intervene to keep discussions on track and moving forward;
5. It is expected without exception that we as a Board adhere to the Code of Conduct for all board meetings; and
6. It is expected that each paper presented with material matters raised would be discussed in full.

Unfortunately, item 3 of the Agenda for BM 254 didn't meet these expectations and my own frustration was borne from this.

Going forward I will insist at the beginning of future meetings that these protocols are adhered to.

Of particular concern to me was the dismissal of my suggestion on 3 or 4 occasions regarding 'Conflict of Interest – Perceived or Real' particularly in context of Principle No: 2.

I would like to remind Directors of the following AICD principles regarding conflict of interest:

"...there are three types of conflict for which directors should be self-assessing:

- Actual Conflict, where a director is likely to gain a personal advantage for themselves or a relative or a friend, because of their position as a director,
- Perceived conflict, where others may reasonably perceive a conflict, and that perception may create a risk for the organisation with regard to reputation or financial assets;
- Potential conflict, where a process has been set in train that, in the future, may create a conflict of interest."

"Managing conflicts of interest are everywhere in the business world. It could be voting as a director for a course of action that will benefit another company in which you have an investment or interest."

In my view these conflicts were ignored rather than considered in relation to the Governance Principle No. 2. (below) even though on 3 or 4 occasions I repeated requests for Board members to self-assess their conflict of interest

Governance Principle No2. "ILSC Board Members are not to hold a directorship role on the board of an ILSC subsidiary."

Furthermore, the lengthy discussions on Principle No. 2 and minimal discussion on Principle 6 led to the unilateral dismissal of the other 7 Governance Principles by 4 Directors of the ILSC.

I do not accept that an ILSC Director can avoid this conflict of interest on Principle 2 by imputing that their decision is as an ILSC Director. **How is this not a conflict?**

As the Chair I am requesting your advice on why you think there is no conflict of interest in respect of Governance Principle No. 2 given 5 directors of the ILSC board are Directors of ILSC Subsidiaries.

Again for good order and record, Director Tucker along with Director Elu and myself endorsed all Governance Principles, including No. 2.

If you do not accept a conflict of interest in Principle 2, please provide your earliest explanation.

Kind regards

Eddie

Attachment B

From: Eddie Fry [mailto:eddie.fry@bigpond.com]

Sent: Wednesday, 6 May 2020 1:06 PM

To: 'Bruce Martin'; 'Eddie Fry (ILSC)'; 'Trish Crossin'; 'Donna Odegaard'; 'Roy Ah-See (royahsee67@gmail.com)'; 'Joseph Elu'; 'Daniel Tucker'

Cc: 'Leo Bator (ILSC)'; 'Jason Collins'

Subject: RE: Yamanah ILSC presentation

Hi Directors. My comments follow.

Bruce, thank you for the Documents. They make for interesting reading.

Regarding the time (Board Meeting) when we can discuss Yamanah I would prefer that we hold off until we can all sit at the same table and discuss this project. If positive COVID-19 decisions by Govts take place in the coming weeks and restrictions are lifted (borders opening) this could happen June/July or possibly earlier. If the opening up of Borders is delayed then we should move to a video link up in the last week of May 2020. We should get a feel for this in the coming week.

As additional input and background information into discussions I have recently obtained some costing's on Yamanah and urge Directors to note and consider the following for when we do meet. These are as follows:

1. Yamanah is a Pilot Project established to deliver a remit (scope of work) within a defined Period;
2. To-date the cost of Yamanah is circa \$950k (+/-);
3. As a Project and as a Subsidiary we are required to evaluate this investment to ensure the ILSC is making the right investment decision. Our evaluation needs to;
 - a. Determine Yamanah's present value for future net cash flow for Corporate and Operational deployment of capital intensive work; and
 - b. Determine if our R.O.I and R.O.M as a result of this evaluation is worth pursuing particularly in light of COVID-19. It is often commented daily by very learned individuals and Institutions that the economy post COVID-19 is not likely to mirror the pre COVID-19 economy. We need to be very careful on how we deploy our Capital.
4. We need to confirm and be satisfied that what Yamanah is doing is missing in the 'Market'; and
5. We need to understand more so than anything else "what is the profitability" of the Yamanah investment within the ILSC Groupwide going forward.

As an additional measure we (the ILSC Board) needs to understand what are the key attributes of this investment in its current settings versus deployment of capital for scopes of work currently undertaken by Yamanah that we can readily source in the open market in order to defend this Investment.

I look forward to discussions.

Kind regards

Eddie



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Attachment C

10 June 2020

Mr Bruce Martin
Chair
Primary Partners Pty Ltd
Email: bruce@rdcorp.com.au

Dear Bruce

Re: Engagement of Mr Nigel Renton for Primary Partners and Yamanah Investments (Yamanah).

Once again, It is with great regret that I feel it necessary to write to you concerning the activities you have undertaken as the Chair of both Yamanah and Primary Partners and what to me are a series of clear extensions of the authority provided by the ILSC.

Primary Partners Directorship of yourself and Ms Crossin are bound by the February 2018 (ILC) Board meeting resolutions, regarding the transition of the AIAC (now Primary Partners) to the ILSC, stating that the AIAC Board membership is limited to two Directors to maintain compliance obligations only.

All ILSC subsidiaries are independent entities, however as they are 100% owned by the ILSC, they need to comply with the overarching parent needs. This is immutable, the subsidiary needs to ensure it follows the parent's wishes.

I understand, there has been an in-principle recommendation from the Primary Partners Board that Mr Nigel Renton be appointed a Director and there has been similar discussion at the Yamanah Board meetings. I would like to formally advise you that RANC will not be making any such appointments. I am concerned that members of the Yamanah and Primary Partners Boards (assuming the other Directors are aware of this proposal) would agree to such an appointment.

I believe you have engaged in discussion with Mr Renton to work on funds or funding bodies for Yamanah Investments and Primary Partners. I remind you that you have no delegated authority to propose the engagement of an individual for this work which is a material matter that resides with the Strategic Reform Unit (SRU), as approved by the ILSC Board.

Having also reviewed an email from Barry Petty to yourself dated 4 May 2020, regarding draft consultancy agreements between Primary Partners and Mr Nigel Renton, I am very concerned with your lack of understanding regarding conflicts of interest. Barry states in his email that he has discussed the potential conflicts of interest with you.

It is my understanding that you have sought Mr Renton's contribution to various roles in the ILSC Group and I feel obliged to raise a matter of conflict in this proposal. I do not support further appointments of Mr Renton and I find it

Office of the Chairperson

Mail: Sheelagh.loss@ilsc.gov.au

Telephone 08 8100 7100 | ABN 59 912 679 254

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staggering that you would propose he be involved in actions that would amount to a clear conflict of interest with his position on the Indigenous Investment Committee (IIC). How can Mr Renton give an independent assessment as a member of the IIC on a project he may have provided advice upon to Primary Partners or Yamanah? I note Mr Renton has submitted invoices for services to both Yamanah and Primary Partners.

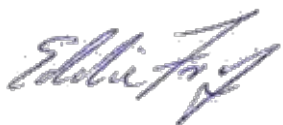
Furthermore, I note that the scope of work that Mr Renton proposes for Primary Partners includes legal and operational work that is in breach of the ILSC and Primary Partners [AIAC] management and Services agreement resolved upon at the December 2019 ILSC Board meeting. This agreement included the provision by ILSC to Primary Partners, of essential back office services including legal, finance, accounting, human resources, IT and communications services.

For clarity, I wish to remind you as the Chair of Yamanah and Primary Partners, you have no delegated authority to commit these organisations to work on activities that are clearly out of step with the ILSC Board decision to have this scope of work proposed for Mr Renton undertaken by the SRU.

I am writing to you as Chair of the ILSC Group to request that you cease to engage Mr Renton's services both verbally or in writing, for Yamanah Investments and Primary Partners.

Again, I would like to advise that this will be taken up in full at the ILSC Board meeting of 17 June 2020.

Yours faithfully



Eddie Fry
ILSC Chair



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17 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Board meeting 17 June 2020

On behalf of the Indigenous Land and Sea Corporation (ILSC) Board and in accordance with section 19 of the *Public Governance, Performance and Accountability Act 2014*, I am writing to inform you of significant events that occurred at the Board meeting held today. Considering the seriousness of the matter I provide this to you as a matter of urgency.

I understand you are well aware of the internal divisions that now exist within the membership of the ILSC Board and as Chair, it is my obligation to provide a record of the many issues of significant concern that arose today.

The items discussion included the ILSC budget requiring Board action in order to meet a 30 June deadline to auditors, a landmark divestment and the COVID-19 package that you, NIAA and the ILSC Executive have been working, which due to the actions of four Directors, will have to be deferred. For your information, a copy of the Agenda is attached.

From the commencement of the meeting, it was clear that four Directors; Odegaard, Crossin, Martin and Ah-See had an agenda themselves and in effect took over the meeting and its processes in what appeared to be a preconceived ambush.

The matters raised, in my clear view and that of the remaining Directors, Elu and Tucker, were not appropriate at the time, particularly considering the many significant matters on the Agenda that required resolution by a quorum of Directors.

Matters commenced (once some initial formalities were dealt with) with Director Odegaard raising without prior notice to all Directors a motion of no confidence in myself as Chair, which was immediately supported by Director Ah-See. Notwithstanding it being pointed out that any such motion would have no practical effect; noting you as Minister are solely charged with the appointment and removal of Board members, including myself, the aforementioned four Directors wished to continue with the motion.

There was considerable discussion amongst the Directors on the motion, including any effect such a motion would have on the remainder of the meeting. The matter was eventually put as a motion of no confidence in my management and leadership as Chair of the ILSC. This was accepted 4:3, with Directors Odegaard, Crossin, Martin and Ah-See in favour and Directors Elu, Tucker and myself opposing.

Director Martin then raised a further motion of no confidence in the ILSC Acting GCEO, Mr Leo Bator, requiring him to stand down and the Deputy CEO, Ms Tricia Stroud, be appointed as Acting GCEO and that she investigate the process of the appointment of the ILSC's new GCEO. The motion was again supported by the same four Directors and opposed by Directors Elu, Tucker and myself.

While a "motion", I do (as does Mr Bator) consider this a resolution and we are looking to transition the role to Ms Stroud. I do note however the position adopted by these four Directors is contrary to the many unanimous resolutions in support of Mr Bator passed by the ILSC Board prior to his analysis and questioning of the activities of the Subsidiaries

Office of the Chairperson

Mail to: Sheelagh.loss@ilsc.gov.au

Telephone 08 8100 7100 | **ABN** 59 912 679 254

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Primary Partners and Yamanah Investments of which these four are Directors and which has been the subject of my previous correspondence to you.

Having passed these two motions, my noting them and moving back to the Board meeting Agenda, each of the four Directors in similar language stated they would now make no decisions and take no further part in today's meeting, notwithstanding the many important matters on the Agenda, until you, as the Minister responsible for the ILSC, were aware of the outcome of the meeting and had provided "directions". I am unsure if that meant directions to the Board as a whole, to each Director individually or specifically to themselves.

However, before departing, they did seek confirmation that as a result of their departure, there would be no quorum for the meeting and therefore no matters could be formally determined. Upon receipt of that confirmation, they each departed.

As mentioned, there were a number of matters of significance that needed to be resolved at this meeting and the departure of the four Directors meant it was not possible to address these.

Significantly, the Board was scheduled to approve a Budget for the ILSC group for the forthcoming financial year. At the previous Board meeting, one Director had expressly directed the ILSC GCFO to, in light of COVID-19, present options to the Board at this meeting allowing for cost savings and a "war chest" of uncommitted funds to deal with any contingencies. However, due to the lack of a quorum, the Budget was not able to be considered. I would like to add that Director Crossin was extremely and unnecessarily abusive to the GCFO Mr David Silcock before her departure, accusing him of incompetence, apparently because she did not understand these financial papers. I would like to point out that the financial papers were of a very high standard and quite clearly laid out.

In addition, the Board was being asked to consider the COVID-19 package to assist subsidiary entities, a package that I know has been developed with the assistance of NIAA and more recently signed off by yourself. The importance of this package to approximately 600 employees (including Indigenous employees) cannot be understated. However, the actions of these four Directors in my clear opinion and that of Directors Elu and Tucker, of placing their own self-interest in avoiding discussions concerning their activities as subsidiary directors, and not remaining to consider this (and indeed other matters) shows a clear disregard for their duties not only to the ILSC but to the broader Indigenous Estate.

Their failure to remain also meant that the ILSC was unable to consider and approve letters of comfort for subsidiaries that are required to be provided to the ILSC's auditors to allow the auditors to in turn provide an unqualified audit opinion on the subsidiaries' FY20 financial statements. The failure to provide the letter may also have an impact on the funding arrangements currently being negotiated by Voyages Indigenous Tourism Australia Pty Ltd with the ANZ.

Finally, there was also an acquisition of property of great significance to the Noongar people in Western Australia that required consideration and approval by the ILSC Board to proceed. The matter has been the subject of both lengthy and at times delicate negotiations and there are tight timelines on the ILSC if it is to proceed. It is also the first example of the ILSC working with third party experts (in this case in horticulture) that needed the Board's acceptance.

I do wish to restate that the decision of the four Directors to walk out of the meeting when they did, in my opinion, was an abrogation of their responsibilities not only as ILSC Directors but to the greater Indigenous Estate.

This is, to me, another clear indication of the matters previously raised as to the suitability of these four Directors to remain Directors of the ILSC. I am aware Directors Elu and Tucker are of a similar view.

As noted earlier, this is a serious matter for the ILSC that has the potential for both reputational damage and adverse financial outcomes and I urge you to consider the situation, and act, at your earliest opportunity as recommended in my correspondence to you of 20 May 2020 and my further recommendation of 01 June 2020 to refresh and upskill the ILSC Board. Please contact me at any time for additional information you might require.

Yours faithfully



Eddie Fry
ILSC Chair

Attachment A: 17 June ILSC Board meeting agenda

Attachment A

Board-in-Confidence

ILSC BOARD MEETING No 256

Wednesday, 17 June 2020 commencing at 08:30 ACST

Board Members:

Mr Edward Fry (Chair)

Mr Joseph Elu, AO (Deputy Chair)

Ms Patricia Crossin

Mr Bruce Martin

Dr Donna Odegaard, AM

Mr Roy Ah-See

Mr Daniel Tucker, AM

AGENDA

<i>Time</i>		<i>Discussion Leader</i>
	1. STANDING AGENDA ITEMS	
	1.1 Apologies/Approved Leave of Absence	Chair
	1.2 Declaration of Conflicts of Interest	Chair
	1.3 Minutes of Previous Meeting	Chair
*	1.3.1 Meeting No. 255 of 27 May 2020	
	1.4 Actions Arising Status Report	Chair
	1.5 Chair's Report	Chair
	1.6 Acting GCEO's Report	A/GCEO
	2. GOVERNANCE AND ADMINISTRATION	
	2.1 Remuneration and Nomination Committee	Chair
*	2.1.1 Primary Partners Pty Ltd – Removal of and Appointment of New Directors	
*	2.1.2 Yamanah Investments Pty Ltd - Removal of and Appointment of Interim Directors	
	3. FINANCE, RISK AND COMPLIANCE	
*	3.1 COVID-19 Budget Response 2020/2021 Financial Year Budget	GCF0
	3.2 Yamanah Investments Pty Ltd	
*	3.2.1 COVID-19 Budget Response	A/GCEO
	3.3 Primary Partners Pty Ltd	
*	3.3.1 COVID-19 Budget Response	A/GCEO
*	3.4 Australian Government COVID-19 Support Package	DCEO
*	3.5 Subsidiary End of Financial Year Letters of Comfort	GCF0
	4. MANDATE AND INVESTMENTS	
	4.1 Land Acquisitions	
*	4.1.1 Baldivis Farm Property Acquisition	DCEO
	4.2 Land Management Investments – No report	
	4.3 Divestments – No report	

5. OTHER BUSINESS

6. IN CAMERA SESSION

7. SUPPLEMENTARY READING

7.1 ILSC Subsidiaries Management Reports

7.1.1 NCIE March 2020 Management Report

7.2 Reports for Information

7.2.1 Power of Attorney Register

7.2.2 Common Seal Register

8. MEETING CLOSE – Next Meeting, 19 August, 2020

*** Decision required**

Chair – Chair, ILSC (Edward Fry)

A/GCEO – Acting Group Chief Executive Officer (Leo Bator)

GGC - Group General Counsel (Trevor Edmond)

GCIO - Group Chief Information Officer (Tim Price)

DGCEO - Deputy Group Chief Executive Officer (Tricia Stroud)

GCFO - Group Chief Financial Officer (David Silcock)

ARC - Chair, Audit and Risk Committee (Maria Storti)

RANC - Chair, Remuneration and Nomination Committee (Edward Fry)



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19 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Board meeting 17 June 2020 and your reference MB20-000180

I write in response to your letter of yesterday addressed to myself and copied to the ILSC Directors of the Indigenous Land and Sea Corporation (**ILSC**). In keeping with your letter, I am copying all ILSC Directors in my reply.

As you so rightly state in your letter, the ILSC plays a critical role in assisting the enhancement of the Indigenous Estate. That has always been and will always be my driving motivation while Chair of the ILSC. It is my hope that all Directors are similarly motivated.

On that basis, may I state for the record, I fully support the suggestion in your letter that the ILSC Board agree to the appointment of an external person to not only deal with the matters raised in your earlier correspondence, but the activities that have been the subject of the ILSC Board's deliberations since mid-2019, particularly the activities of various subsidiary entities.

Also, on that basis and noting the contents of your letter concerning the need for the ILSC Board to consider several critical matters, I write seeking leave of absence from the next ILSC Board meeting under s192C of the Aboriginal and Torres Strait Islander Act 2005. I ask that the Deputy Chair table this request at the next Board meeting and the Board, by writing grant me that leave.

Yours faithfully

Eddie Fry
ILSC Chair

Cc:
Mr Joseph Elu AO, Deputy Chairperson
Mr Roy Ah-See, Director
Ms Patricia Crossin, Director
Mr Bruce Mmtin, Director
Dr Donna Odegaard AM, Director
Mr Daniel Tucker, Director



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17 June 2020

The Honourable Ken Wyatt AM MP
Minister for Indigenous Australians
Parliament House
Canberra ACT 2600

Email: minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Group Acting CEO

I am writing in relation to the above matter.

As previously advised, the ILSC Board at meeting of 17 June 2020, resolved to stand down Mr. Leo Bator from his position as Acting Group CEO and to appoint the ILSC's current Deputy CEO Ms. Patricia Stroud as the ILSC's Acting GCEO effective from 17 June 2020 until 30 November 2020, or until the appointment of the ILSC GCEO resulting from the current recruiting process, whichever first occurs.

I write to seek your consent for this appointment of an Acting CEO, for this period of time is something that under the current Cabinet Handbook, requires your consent as the relevant Minister.

Ms. Stroud has considerable experience in Indigenous matters both within the ILSC and more broadly and has filled the role of Acting GCEO on several occasions.

I have no hesitation in supporting her in the role.

Yours sincerely

Eddie Fry
ILSC Chair



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01 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: Proposed Performance payment for Mr John Maher

Thank you for your correspondence reference MC20-000051, regarding the proposed performance payment for the former ILSC Group CEO Mr John Maher. I note your concerns regarding governance of the ILSC during the 2018-2019 performance period for Mr Maher and respect your decision based on information that was available to you. However, I would like to clarify the ILSC Board determination of the superior performance of Mr Maher.

Had Mr Maher not changed the 'business as usual' operations at the ILSC and orchestrated directional, management and financial improvements, the Board would not have seen the financial benefits to our balance sheet and thus the Indigenous Estate that were evident at the end of the 2019 financial year. Changes such as these create disruption and naturally affect the daily routine of the staff and predictably create some resistance and angst. However, it is testament to Mr Maher's stoicism that he determinedly promoted development opportunities for members of the Executive and encouraged them to develop their teams accordingly.

By the end of the 2018-19 financial year the Board could clearly see a recalibration and evidence that we as a Group were doing far more for Indigenous Australians and the Indigenous Estate than had been achieved previously. Just prior to Mr Maher's departure, Program Delivery proudly presented their vastly improved results due to changes that had been implemented, which was very well received and celebrated by the staff. The KPI performance had been tripled and turnaround times had been halved. This outcome, this turnaround of the ILSC Group would not have been possible without the determination of the Group CEO. Throughout his tenure, Mr Maher presided over the ILSC team to reposition the ILSC group to deliver more and measure its performance with a greater degree of strategic clarity of purpose. These changes alerted the Board to the possibilities of greater changes and greater outcomes, which formed the basis for the Strategic Reforms that the ILSC is working on today.

I have attached a copy of the speech I delivered to the ILSC team at Mr Maher's farewell gathering which highlights his achievements. He identified changes that would be effective and had the courage to apply these changes. I am confident that you would be aware that performance and higher productivity outcomes occur through intervention and often with a backdrop of resistance, which has never been defined as easy or painless. Resistance to change is not an unusual occurrence, when more accountability, good old-fashioned

hard work and expectations on the timeliness of set tasks that have been requested, fail to be delivered. The application of a more productive and commercial mindset are hard learnings, but staff can take pride in the achievements of greater outcomes. These outcomes are of course viewed with hindsight and are a direct result of the instigation of change mechanisms and impact measurements.

Your 'governance' reference may be referring to a matter that is an anonymous accusation that have been brought to attention. I would like to assure you that these were taken into consideration and the Board, who instigated investigations regarding these, giving Executive staff an opportunity to speak with an external independent body, that from the Boards knowledge is used by the Federal Government. These matters were never overlooked or taken lightly. Board members also took the time to speak to various members of the Executive about their issues. It should be noted that there was a general lack of eagerness by these individuals to participate in this thorough investigation which we believe forms the basis of your perceived governance issue.

Mr Maher in his capacity as CEO of the ILSC Group was charged within the corporate governance framework to reconfigure the organisation and reconstruct its settings via the standard rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. You will be familiar I am sure, that this encompasses the mechanisms by which companies, and those in control, are held to account. Holding individuals to account during this period that you refer to as the 'governance of the ILSC during the relevant period' meets corporate expectations and may I say, meets the expectations of the people of the Indigenous Estate who crave a higher performing ILSC.

To diminish Mr Maher's performance in this way, I politely and respectfully suggest, does not reflect the outcomes of this entire period and of the environment that he operated in.

I am writing in response to your decision, not seeking anything other than for you to know that the reconfiguration of the ILSC and its performance under his watch, had been a long time coming. Mr Maher, despite what certain people might think of his management style, left the organisation in a far superior state than what he found it to be at commencement of his tenure. The 2018-19 year is highly reflective of a CEO who in the previous years was prepared to intercept the entitlement culture of the organisation and rebalance its settings that has stood us well in this COVID-19 period and positioned the ILSC for a brighter future.

As Chair of the ILSC, I just thought it important that you as our Minister is provided with the knowledge that the Board saw two sides to this story and are very grateful that we had a person in Mr Maher who was prepared to put his own reputation on the line for the well-being of our customers. Since his departure, several of our customers have sought his on-going advice and guidance on their land and water related businesses which demonstrates the high regard in which he is held, and I understand this advice is provided by Mr Maher pro-bono.

Finally, it is not often that you have a chance to witness the turnaround of an organisation that was so misdirected and mismanaged in times prior to Mr Maher.

Yours sincerely



Eddie Fry
ILSC Chair

Cc Ray Griggs CEO NIAA and Brendan Jacomb NIAA

Attachment: A: Farewell speech for John Maher

Attachment A: Farewell speech for John Maher

ILSC Chair Eddie Fry farewell speech for GCEO John Maher

As Chair of the ILSC, I believe the most important outcome of the Board's ambitious transformational agenda is the fact that I think everyone can see that we as a Group, are doing far more for Indigenous Australians and the Indigenous Estate now than we were three or four years ago. Indeed I believe that many of you heard about the huge growth in CDO's presentation yesterday with vastly improved results due to implemented changes to date.

This outcome, this turnaround of the ILSC Group would not have been possible without the determination of the Group CEO - John Maher.

Throughout his tenure, John has presided over the ILSC team to reposition the ILSC group to deliver more and measure its performance with a greater degree of strategic clarity of purpose.

Change is hard – but essential.

The need for change to improve outcomes for Indigenous Australians required John's enormous resolve to visit, analyse and rethinking every aspect of the business.

John's journey has been constantly challenging - to manage the changes necessary to enrich the Indigenous Estate to provide a sustainable economic future of our customers. This change journey greatly impacted his personal life and it would be remiss off me not to stress that this impact was both positive and negative.

Personally, having spent time with John I have seen him rise above the negative which pales into insignificance as he embraces the positive achievements and his enjoyment in this role as his lasting impressions.

John's focus and hard work achieved:

1. **A greatly heightened awareness of safety of our people**, throughout the whole Group;
2. **A new customer focus** - deeper engagement with Indigenous Organisations and communities
3. **The formation of new partnerships** with Indigenous groups, Government and Corporate Australia;
4. **Driving the ILSC team** hard work to facilitate the passing of legislation creating the Indigenous Land and Sea Future Fund and extending our remit to fresh and saltwater. The roadshow visiting 75 Indigenous organisations and parliamentarians for the necessary support for the Bills and many hours liaising with the Minister's office was a great achievement for the extensive team effort across many divisions;
5. **The successful conclusion** of the ILSC Enterprise Agreement;
6. **The development of a Group funding allocation framework** resulting in the ILSC spending our money more wisely;

7. **Financial confidence** –reconfiguration of the Group’s balance sheet and strategic direction of its agribusiness and tourism allowing a far greater spend on our mandate. This is evident in greatly increased potential for land acquisition for divestment, land and sea management programmes and employment;
8. **Executive team development opportunities** - blending commercial experience in finance, legal, governance and HR along with promoting and championing the development of Indigenous executives from within the organisation;
9. **Accountability and accuracy** - Successfully putting the case to the Board for a far greater spend on systems and people development within the ILSC; and
10. **Inviting feedback from staff for cultural and business development**, staff induction workshops, service awards and the establishment of an Indigenous alumni to strengthen the foundations of the Indigenous Estate.

We all have dreams, which drive us, the future and the changes required for our journey.

John has been able to adapt our business to accommodate Indigenous dreams because he understood:

1. **The importance of homelands which are a source of strength and opportunity;**
2. **The importance of working with Indigenous visions for the future to achieve what they want to see for their children;**
3. **The importance of looking after country that will then look after us;**
4. **The important understanding that the lands and waters are alive, and they strengthen culture, ceremony, patterns and designs equally; and**
5. **The importance of forward thinking with new partnerships and new technology for opportunities to look after families and communities into the future.**

Please join me on behalf the Board - in thanking John for his tireless efforts and wishing him the best for the future.



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01 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Board membership going forward

Thank you for your letter of 13 May, reference MC20-000838 regarding the continuation of Directors at the ILSC. I also refer to my letter to you of 20 May 2020 in which I ask for a staged approach to changes of the ILSC Board Directors and advised that I would like to provide you with Board nominations for your consideration.

I would firstly like to confirm the availability and ongoing willingness of Mr Joseph Elu to continue in his capacity as Deputy Chair on the ILSC Board. I am extremely pleased to maintain Mr Elu as he understands the long-term benefits of the changes taking place within the ILSC to Indigenous Australians. His elder statesmanship and business knowledge that spans both the ILSC, IBA and the Torres Strait entities uniquely places him to continue his valuable contribution.

I would like to take the opportunity of the expired tenure of Directors Martin and Crossin, to nominate the following candidates who are available immediately and keen to contribute to the ILSC Board during this time of corporate and operational reconfiguration and growth:

New Board nominees: Ms Jacqui McGill and Ms Jane Jeffreys.

Both candidates are highly recommended and as you will note from their resumes (attached). The ILSC is fortunate to attract this calibre of Directors who will provide high control focus on our business activities with robust governance. They understand the mechanics of the next level of transformation and will interrogate the validation of this transformation of our proposed forward business model. They will bring a see-through understanding, on all the issues we need to address, particularly a focus on public sector investment and acquisitions, equity capital markets and business management insight. Their experience will be invaluable to the ILSC.

Ms McGill, a former BHP Executive who at one point was the CEO of the Olympic Dam operations, will provide comprehensive insights into large-scale capital-intensive operations, complex transformation analysis and strong stakeholder negotiation capabilities to enhance the strategic success of partnerships. (Resume attachment A)

Ms Jeffreys comes with strong governance capability and human resource experience. Complimenting her broad experience in business, facilitating strategic planning with specific knowledge across the financial and tourism and hospitality sectors will contribute to our focus in these areas. (Resume attachment B)

I hope that you will share with me, the excitement of having these two outstanding candidates, making themselves available and bringing their talents, networks, personal and business acumen to our business model for the future securitisation of the Indigenous Estate.

I am available to discuss these nominations for appointment at your convenience.

Yours sincerely



Eddie Fry

ILSC Chair

Cc Ray Griggs CEO NIAA

Cc Glen Taylor and Anne Patterson NIAA

Attachment A: Ms Jacqui McGill Resume

Attachment B: Ms Jane Jeffreys Resume

JACQUI MCGILL

Phone: (+61) [REDACTED]
jacqui@jacquimcgill.com.au

Australia

Jacqui is a highly accomplished Executive and Non-Executive Director in range of sectors including Resources, Ports, Rail, Logistics, Infrastructure and Education. Her experience in a Global Mining company in a range of commodities including Coal, Iron Ore, Copper, Gold and Uranium ensures that she has comprehensive insights into industries that are large scale, complex, and capital intensive.

As a deeply experienced Operational Managing Director of large scale, risk laden mining businesses she can bring to a board insights into;

- Governing a risk laden business
- Navigating complex stakeholder relationships
- Overseeing transformations of large complex businesses
- Reshaping strategy for complex, capital intensive businesses
- Delivering a step change work place health and safety.

These skills are enhanced by her experience as a Non-Executive Director at;

- Dalrymple Bay Port and Coal Terminal
- Red Mountain JV
- Mitsui JV
- Integrated Logistics company.
- Chairman of TAFE SA

BOARD SKILLS

Strategy

Experienced in crafting strategic plans for complex organisations in periods of disruption and change.

Transformation

Knowledgeable in overseeing transformations of large organisations, including the different facets of change including culture, systems of work and organisational structures.

Project Frameworks

Deeply experienced in oversight and governance of large scale capital portfolios to deliver superior returns on investment.

Stakeholder relationship

Comprehensive experience in navigating the multi-layered stakeholder relationship framework with a view to building sustainable outcomes.

BOARD EXPERIENCE

- Chairman of TAFE SA, since December 2018. Leading a transformation of TAFE, to ensure that TAFE SA is competitive in a contestable market and benchmark for quality vocational education and training.
- Director of the Dalrymple Bay Coal terminal from 2013 to 2015; successful in the delivery of a range of major investments, significant reduction in risk exposure and improved the productivity and effectiveness of the terminal.
- Director of Integrated Logistics Company, responsible for the Management of the Coal Supply Chain in Northern Qld 2013 to 2015.
- Executive Director of BHP Mitsui Coal 2013 – 2015. During this time BMC delivered record profitability, improved performance in Risk, OH&S and productivity.
- Red Mountain JV Director 2013 to 2015, successfully negotiated with JV partner increased access to production, delivered on WHS improvements.
- Executive Director and Chair of Olympic Dam Audit and Risk Committee, Occupational Health and Safety Committee, and Capital Investment Committee from 2015 to 2018.
- Non Executive Director of South Australian Art Gallery, 2017 to current.
- Vice President of South Australian Chamber of Mines and Energy 2016 – 2018.
- A member of the South Australian Premier’s Economic Advisory Council, to provide insight and advice to the SA Premier for the benefit of the state of South Australia.

EXECUTIVE EXPERIENCE

Asset President Olympic Dam

As Asset President of Olympic Dam Jacqui led a team of 3500 personnel, and was fully accountable for the operation’s performance including full P/L. Olympic Dam is a highly complex organisation which includes underground and surface plant facilities, administration of all associated infrastructure including Airport, and co-stewardship of the town of Roxby Downs. As BHP’s most senior executive in South Australia she was responsible for the Government relationships and broader stakeholder relationships in the state including traditional owners, and customers across Asia, Europe and USA.

As a senior leader in BHP Jacqui also played a broader enterprise role including strategy development for BHP as well as building strong commercial relationships, steering growth projects and organisational transformation.

Appointed to Olympic Dam in 2015 to turn around the finances and culture of the business, Jacqui successfully delivered a business turnaround whilst developing a new vision for the strategic development of this large scale business, which was sustainable and competitive.

Asset President BHP Billiton Mitsui Coal

As Asset President of BMC Jacqui was accountable for delivering on high standards of business performance from two Coal Mining operations in the Bowen Basin resulting in these businesses becoming one of the most profitable business in BHP. The success was delivered through a turbulent time in the Coal industry sector and the focus on culture, and operational excellence ensured that this success continues to this day.

Executive Experience

In the 16 years with BHP Jacqui worked across a range of commodities including Iron Ore, Coal, and Copper. With her executive experience covering operational leadership, logistics, strategy and acquisitions, and technical delivery.

Prior to BHP Jacqui worked a range of small and medium scale resource firms including North Ltd, Pegasus Mining, and WMC encompassing Uranium and gold sectors in a variety of technical and leadership roles.

EDUCATION

MBA La Trobe University, Master of Business Administration	2008
BSc Murdoch University, Bachelor of Science	1993
Executive Development Program Wharton Business School (CEW Scholarship)	2016
Graduate of Australian Company Directors Program	2011

HONORS AND AWARDS

Honorary Doctorate Adelaide University	2017
SA Government Women's Honor Roll	2017
Australian Resource Gender Diversity Champion	2016

REFERENCES

Upon application.



Jane

Jeffreys

FAICD, FAHRI, FAIM

Jane Jeffreys Consulting

167 Flinders Street
Adelaide
South Australia 5000

Mobile Phone:



Business Phone:
0439 438 076

Email:

jane@jjconsulting.net.au

Web:

www.jjconsulting.net.au



PROFILE

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Jane is an accomplished Company Director and experienced businesswoman with extensive board, executive and consulting expertise across the private, public and not-for-profit sectors. She has outstanding communication skills and established networks within business and government.

Jane has more than 30 years' experience as an Executive, Chief Executive, Director and Chair of organisations in sectors which include Tourism and Hospitality, Education, Aged Care, Financial Services, Business, Technology, Community, Arts and Sport.

She has extensive executive experience including Chief Executive roles with the Adelaide Casino and the South Australian Tourism Commission. Jane has many years' experience as a Facilitator for the Australian Institute of Company Directors' Course, in-boardroom workshops and other short courses. She has also completed the AICD Mastering the Boardroom program.

The principle areas of Jane's professional and consulting practice include strategy and business planning, governance, strategic human resources management, executive and Board performance, organisation reviews and executive coaching.

Jane is currently Chair of Data Action Pty Ltd, Gannon Lifestyle Communities Pty Ltd, West Beach Parks and Gaming Care and Director of Funds SA and Iocane Pty Ltd. Jane also gives her time in a voluntary Chair capacity to various Arts and Community organisations.

Previous appointments include chairing the South Australian Tourism Commission, the award-winning Adelaide Convention Centre, ECH Aged Care and St Peter's Collegiate Girls School. She was a Director at Tourism Australia, Le Cordon Bleu Academic Board and Member of the Independent Gambling Authority and Kangaroo Island Futures Authority.

Jane has also been recognised for the achievement of being the first woman appointed to an AFL Board in South Australia, the Port Adelaide Football Club and as an inaugural Director of the Australian Human Resources Institute.

Jane is Fellow of the Australian Institute of Company Directors, Fellow of the Australian Institute of Management and Fellow of the Australian Human Resources Institute and holds qualifications in Personnel Management and Industrial Relations.



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

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26 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: ILSC Subsidiary COVID-19 Support Package

As you were advised earlier, the ILSC Board yesterday approved the abovementioned funding agreement with the National Indigenous Australians Agency (NIAA). I understand that the funding agreement has now been executed by all parties.

With the formalities now finalised, on behalf of the ILSC Board, I wish to express our gratitude and tremendous appreciation of your efforts. I extend this on behalf of the Boards and staff of the ILSC, Voyages and NCIE.

The impact of COVID-19 on our economy more broadly but also on the lives of Australians and the commercial stability of Indigenous businesses cannot be understated.

Voyages and NCIE, as Indigenous businesses held in trust for the ownership of, and socio-economic benefit of Indigenous Australians, have not been immune to these economic effects. The ILSC Group remains committed to ensuring that these valuable Indigenous assets survive COVID-19 and thus remain significant contributors to Indigenous training and employment. The contribution of the Australian Government to this end is something that the ILSC is extremely grateful for.

Your efforts as the Minister for Indigenous Australians, and that of your office to champion this support package is something the ILSC acknowledges and appreciates.

On behalf of the Board and ILSC Executive I wish to also convey our appreciation for the work of your Agency staff in facilitating this.

Once again, thank you for your significant contribution in assisting the ILSC during this very challenging period.

Yours sincerely

Eddie Fry
ILSC Chairman

Cc:
Deputy Chair Joseph Elu, AO
Director Roy Ah-See
Director Patricia Crossin

Director Bruce Martin
Director Dr Donna Odegaard, AM
Director Daniel Tucker, AM



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

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19 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: Board nominations

Thank you for noting my request in your correspondence reference MC20-001869 regarding a staged approach to renew the current ILSC Board membership to upgrade skill sets. I understand that the names I have already suggested to you will take some time to consider.

Mindful that new board appointments take time, I wish to nominate two Indigenous women that already hold positions on the IBA Board and would be able to commence immediately on the ILSC Board. Ms Shirley McPherson and Ms Valerie Coombs have a keen prudential focus, proven competence in Board decision making and broad networking with corporate and operational connections to their communities and beyond. They are well regarded with strong standing Australia wide both within the Indigenous community and in the broader community.

These appointments will not only enhance the alignment that I am orchestrating with IBA but will have many other long-term benefits for the work of both organizations and most importantly for our clients. In order to continue the momentum of promoting a progressive ILSC to Indigenous groups and the investment market and to maintain the priorities of the ILSC to effect change in our operations to enhance the delivery of our mandate, I commend these Directors to you.

The ILSC and indeed the Indigenous Estate are at a critical point in development of greatly improved outcomes for Indigenous Australians. Over the last few years, I have gathered a team of talented, passionate and dedicated people who are working together to build a stronger, brighter future for all Australians with the Indigenous Estate at its centre. The new ILSC will bring in private capital which, apart from financial advantage, will also attract philanthropic interests which with an Indigenous led team, will tangibly contribute to closing the gap. Board talent is the key attribute to attract these interests.

I am available to discuss this in more detail with you at any time and I hope this can be actioned swiftly.

Your sincerely

Eddie Fry
ILSC Chair



22 June 2020

The Honourable Ken Wyatt AM, MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600
Email minister.wyatt@ia.pm.gov.au

Dear Minister Wyatt

Re: Provision of information requested in correspondence reference MS20-000371

Thank you for your correspondence dated 12 June 2020 and the opportunity to provide documents to inform you of the activities of the ILSC Board since 01 April 2020 and related information pertaining to Board matters.

1. **The minutes, agendas and Board papers and records of decisions of the Board made after 01 April 2020** will accompany and follow this letter, spread over several emails due to quantities.
2. **Conflicts of Interest**

As a Commonwealth Statutory corporation, it is noted the provisions of the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act) apply to the ILSC. While not all provisions do, those relating to the duty to disclose interests contained in section 29 do. Under that section, ILSC Directors have a duty to notify of any material personal interests that may lead to a conflict and under the Rules made under the PGPA Act, particularly Rules 14 and 15, they are required not to be present or vote on matters where such an interest arises.

These obligations are reinforced in the Code of Conduct contained as part of the ILSC Board Charter. In particular Attachment 6.2 to the Board Charter (being the attachment A to the Guidelines for the Interpretation of the Principles of the ILSC Code of Conduct) expressly confirms that:

1. A Director has an obligation to inform other Directors of any personal interest that relates to matters before the ILSC
2. This must occur as soon as possible after the matter comes to the attention of the Director
3. It must include details of the nature and extent of the interest and how it relates to the ILSC
4. It must be recorded in the minutes of the Board meeting
5. A Director with a material personal interest must not vote on a matter that relates to that interest
6. A Director must not be present while that matter is considered.

It is noted the onus of disclosure falls on the individual Director.

The Protocol also includes an obligation to consult with the ILSC Chair before accepting any Board appointment that may give rise to a potential conflict

As part of each meeting Directors are asked if they have any conflicts to declare, whether specific to the matters to be discussed or any potential conflicts arising out of any recent appointments or interests. Further, when the final version of the Agenda is sent out (prior to the issuing of papers) Directors are asked to disclose any conflicts they may have.

The ILSC keeps a register of disclosures made by Directors, but, again, it is noted that the mere disclosure does not alleviate the need to comply with the protocols listed above.

Good governance separates parent Director decisions from Subsidiary Directors as recipients.

Current Subsidiary Directorships by ILSC Directors

Yamanah Investments: Directors Martin, Odegaard and Ah See

Primary Partners: Directors Martin and Crossin

Voyages: Director Crossin (Director Tucker has resigned in self-assessment and agreement on conflict of interest)

NCIE: Directors Odegaard and Ah See

Current Conflicts of Interest that have arisen for Board members since the 7 May 2020 Board meeting:

- 1) 7 May Board meeting: ILSC Groupwide Core Governance Principles: Directors Martin, Crossin, Odegaard and Ah See (four Directors) refused to deliberate and discuss ILSC Groupwide Core Governance Principles with an open objective mind towards good governance.
- 2) 17 June Board meeting: Items on Governance and Administration, Finance Risk and Compliance. Directors Martin, Crossin, Odegaard and Ah See obstructed the Board meeting by refusing to participate beyond Item 1. Item 2 would directly impact on their Directorships of Subsidiaries
- 3) 17 June Board obstruction resulted in a vote of no confidence in the Chair and Acting GCEO by four Directors, with no prior discussion or forewarning of any discontent, their reasoning lacked substance - blaming non completion of some of the comment sections of the Action Items. This has never been raised before, is of a non-material matter and disregards the context of the 2020 Bushfires and COVID-19 responses that have substantially altered the attention and work of the ILSC Management.
- 4) Yamanah and Primary Partners Board meetings proceeded regardless of the ILSC Chair request to reschedule
- 5) Director Martin failed to provide updated declarations of interest at Board meetings 255 and 256. I believe he should be excluded from further Board meetings until such time as his conflicts have been disclosed.
- 6) Directors of Yamanah and Primary Partners considering appointment to their Boards of the ILSC Investment Committee Independent Chair Nigel Renton. He was to conduct specific work that he would later assess as a member of the Investment Committee presenting to the ILSC Board
- 7) ILSC Directors participating on agenda items specific to Subsidiaries
- 8) Yet to be determined in relation to financial activities undertaken by Yamanah and Primary Partners via an ILSC forensic investigation
- 9) 17 June Board meeting: RANC decision clearly seeks to remove Directors from Subsidiaries

The management of the current conflict of interests

- a. Daniel Tucker has resigned from Voyages in self-assessment and agreement on conflict of interest
- b. Deputy Chair Elu will preside over the next Board meeting to allow important decisions to be made
- c. Director Martin will be required to declare his conflicts of interests or excuse himself from Board meetings
- d. ILSC Board will continue to request ILSC Directors to self-assess and remove themselves from Subsidiary Boards
- e. In the event ILSC Directors don't voluntarily remove themselves from Subsidiary Boards, the ILSC Board must uphold the RANC decision to remove them as presented at the 17 June Board meeting. This meets the governance standards of the ILSC in this regard. No Board member holds higher office or influence that is greater than these governance standards. This particular RANC process and decision is legal & binding **and currently remains on foot** and no Subsidiary Directors can have any role in participating in this decision.
- f. The RANC decision pertaining to conflicts of interest has to be resolved in accordance with proper governance standards. It must be dealt with and cannot be avoided simply because Directors don't like the personal impact

of this decision. This will be presented at the next Board meeting at which Subsidiary Directors must remove themselves from discussions due to conflict of interest.

In matters pertaining to the budget (point 2 above) of the ILSC relevant to these Subsidiaries, four Directors Martin, Odegaard, Crossin and Ah See fail to self-assess their conflicts of interest. They cannot participate in discussions on the ILSC Board about groupwide budgets, or any other matter which have direct and non-direct implications on the amount in particular that Subsidiaries receive or any Letters of Comfort. If these four Directors were removed from Subsidiary positions, then they could participate in ILSC Board Budget decisions and other matters pertaining to the Subsidiaries.

This removes any blurring of conflicts of interest that may raise the risk level of reputational and financial asset damage.

Full details of these conflicts will be presented to the independent external investigation.

3. Chronology of appointment process for new Group CEO:

4 March: I requested the ILSC General Counsel and Executive Director or People and Culture identify suitable Executive search agencies and commence the process to recruit for the role of GCEO.

12 March: RANC meeting received the paper containing information on tenders and the summary of proposals from four agencies and considered the following recommendations:

- Recommended to engage Robert Walters based on their national/global scope, ILSC familiarity and their fees
- Recommended that the RANC Committee determine a Selection Committee to review short-listed applications, interview and assess candidates, and make recommendations to the Board for its final decision.
- Recommended that the Selection Committee comprise the ILSC Chair, Directors Joseph Elu and Donna Odegaard and the appointed recruitment firm. It was further recommended that the ILSC Chair be appointed Chair of the Selection Committee.

The Paper recommended that RANC resolve to approve the following resolutions to be put to the ILSC Board:

1. Note the contents of the paper;
2. Consider the proposals from identified Executive Recruitment firms to recruit for the ILSC Group Executive Officer (CEO) position and endorse Robert Walters as the preferred firm;
3. Determine the location or a range of locations for the CEO role;
4. Determine the Selection Committee; and
5. Endorse the Chair and Management engaging and negotiating terms with the preferred executive search firm

13 March: Board meeting 249 as per Decision No.611, the Board resolved to approve the resolutions (Attachment A), Appointment of AGCEO Mr T Edmond (14-20 March), Appointment of Mr L Bator as AGCEO (21 March-20 Sept 2020), Engagement of External Recruiter for ILSC GCEO

18 March: Management provided a briefing to Robert Walters on the role

25 March: Robert Walters provided Management a proposed recruitment timeline and advertising campaign.

26 March: Minister Wyatt letter received reference MS20-000184 approving AGCEO Mr L Bator 3 months from 23 March 2020 and seeking Prime Minister approval for up to six months term.

27 March: Management endorsed the proposed timeline and advertisements and provided them to the Chair for review and approval. The Chair acknowledged receipt of the information and advised Management to hold until further advised

06 April: ILSC Chair to Minister Wyatt urging appointment approval for Mr L Bator as GCEO to November 2021

08 May: Minister Wyatt letter received reference MS20-000290 appointment Mr L Bator AGCEO to 22 September 2020

13 May: Management followed up the Chair on the matter and were subsequently advised to proceed with the recruitment process on 21 May.

22 May: The position was advertised online and in print media, with applications closing 19 June 2020.

3 June: The Chair discussed the role of the ILSC GCEO with Robert Walters, in consideration of the change agenda

12 June: The Chair requested Management facilitate Robert Walters contacting the other members of the Selection Committee.

15 June: The Chair approved the position description for the role and approved for it to be shared with Robert Walters and interested candidates. Management provided Robert Walters the approved position description and the contact details of the Selection Committee; and requested that Robert Walters coordinate a briefing with the committee members.

18 June: Robert Walters agency has advised that applications close tomorrow and to date they have received 99 applications and are expecting more.

4. Copy of the ILSC Board Governance Charter 2016 -emailed separately (update in progress 2020)

5. A copy of your correspondence reference MS20-000371 has been provided to the ILSC Independent Audit and Risk Committee Chair, Ms Maria Storti, at your request.

Our corporate structure and operations with regards to sound business capability is our key objective. I will be writing to you separately, to provide the blueprint that I have applied to lead our affairs on the corporate and operational normalization and the strategic outlook during and post COVID-19.

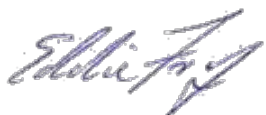
Minister, there is no doubt in my mind why the ILSC is currently having to manage a matter that has escalated and has the ILSC Board at odds with itself. Unfortunately, it seems somewhat coincidental that four Directors of Yamanah and Primary Partners, (three whose Directorship terms have expired) behaviour towards me and the former Acting Group CEO coincides with the raising of significant financial and reputational issues pertaining to these Subsidiaries in April. Prior to April, there was clear confidence in myself as Chair and the Acting GCEO, until we turned our attention to the operations and fiscal management of both Subsidiaries.

As you are aware, the ILSC Group since December 2019 has proactively designed, constructed, commissioned and is now managing the rapid response to bushfires and the pandemic. Our attention is heavily focused on the reconfiguration of the ILSC Group to ready the entity for the post COVID-19 period. In parallel with this effort, the ILSC is well into its restructure and validation work to increase the performance of the ILSC Group to deliver a far greater mandate. As I have pre-stated in other correspondence to you, the ILSC in this very unfamiliar economic and social environment has to ready itself by pulling back Yamanah and Primary Partners management and funds into the core, to ensure our future. Cost control will be a key feature of our readiness.

Dealing with conflicts of interest was always going to occur. The timing for the ILSC reconstruction is now. Changes such as Directorships on Subsidiaries and prudent fiscal management is required. This organisation at the Board level is dealing with governance and apparent self-interest and I would trust for the well-being of Indigenous Australians, that the behaviour of the four Directors displayed at the Board meetings 7 May and 17 June does not take precedence over the wider Indigenous community nor should their behaviour take precedence over the ILSC's mandate.

Should you require any further clarification on the above matters, I am available to discuss.

Yours sincerely



Eddie Fry
ILSC Chair

Cc
Mr Joseph Elu
Ms Donna Odegaard
Ms Patricia Crossin

Mr Daniel Tucker
Mr Roy Ah-See
Mr Bruce Martin



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MS20-000371

Indigenous Land and Sea Corporation Board
 Indigenous Land and Sea Corporation
 GPO Box 652
 ADELAIDE SA 5001

Dear Directors

I write to you in your capacity as the accountable authority of the Indigenous Land and Sea Corporation (ILSC) for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth) (the PGPA Act).

Under paragraph 19(1)(b) of the PGPA Act, the accountable authority of a Commonwealth entity must give the responsible Minister for that entity any reports, documents and information in relation to the activities of the entity that the Minister requires. I am the responsible Minister for the ILSC.

I write to require the ILSC Board to provide me the following:

- All minutes, agendas, and agenda papers of Board meetings held, and records of decisions of the Board made, after 1 April 2020.
- A description of how the Board manages conflicts of interest pertaining to Board members and a description of any recent conflicts of interest that have arisen for Board members and how these have been managed by the Board.
- A description of the process that the Board has undertaken to this date to appoint a new Chief Executive Officer of the ILSC. The description should document the measures taken, if any, to ensure that the appointment process has been conducted expeditiously and followed principles of merit-based selection.
- A copy of the Charter of the ILSC Audit and Assurance Committee and a copy of the Charter of the ILSC Board.

I require this information to be provided to me as soon as is reasonably possible. I request that you contact my office to advise them when it would be possible for you to provide this required information. I also ask that you provide a copy of this letter to your Audit and Assurance Committee.

In the interim, I invite you to contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152 3555 should you have any questions concerning this letter.

Yours sincerely



The Hon KEN WYATT AM MP
Minister for Indigenous Australians

12 / 6 / 2020

Cc

Mr Edward Fry, Chairperson
Mr Joseph Elu AO, Deputy Chairperson
Mr Roy Ah-See, Director
Ms Patricia Crossin, Director
Mr Bruce Martin, Director
Dr Donna Odegaard AM, Director
Mr Daniel Tucker, Director

OFFICIAL: Sensitive



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MC20-001869

Mr Edward Fry
Chairperson
Indigenous Land and Sea Corporation
Sheelagh.Loss@ilsc.gov.au

Dear Mr Fry

Thank you for your correspondence of 20 May 2020 regarding the Indigenous Land and Sea Corporation (ILSC) Board membership and the ILSC Group Core Governance and Operating Principles, and subsequent correspondence of 1 June 2020 providing Director nominations.

I note your request in your letter of 20 May 2020 for a staged approach to renew the current ILSC Board membership and skill sets, arising from the lack of support by some Board members in adopting the eight ILSC Core Governance and Operating Principles. I appreciate your concerns on the matter of a real, perceived or potential conflict of interest of Directors that sit on various ILSC subsidiary boards. I also note the ILSC's decision for this practice to cease in the interests of best practice corporate governance.

I would also take this opportunity to reiterate my expectation that ILSC Directors should be fully aware of their obligations and duties under the *Aboriginal and Torres Strait Islander Act 2005* and *Public Governance, Performance and Accountability Act 2013*.

I appreciate your advice in your letter of 1 June 2020 on the availability and willingness of Mr Elu to continue as Deputy Chairperson for a further term, as well as the ILSC Board nominations of Ms Jacqui McGill and Ms Jane Jeffreys as suitable skilled Directors for my consideration. As you know, in making appointment to the ILSC Board I take into account legislative requirements, including overall skill requirements, gender balance and diversity.

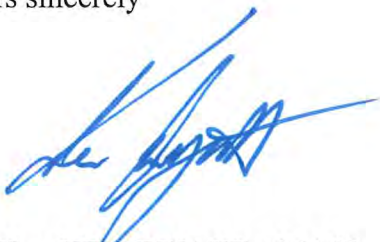
As you will be aware appointments to the Board of the ILSC are considered significant under the Cabinet Handbook and are subject to formal Australian Government processes, and therefore take time. The ongoing availability of the Directors, Ms Crossin, Mr Martin, Dr Odegaard in the interim, will provide assurance that the ILSC can continue to properly function until a decision on longer term appointments is made later in 2020.

OFFICIAL: Sensitive

You will also be aware that I wrote to you on 5 May 2020 (Reference: MS20-000290) asking that the ILSC Board provide me with their recommendation of a new ILSC Chief Executive Officer (CEO) by 1 July 2020 for me to seek Government approval in early August 2020. I would therefore ask that the ILSC Board provide me with an urgent update on the progress of the formal selection process for the ILSC CEO position by cob 17 June 2020.

If you have any questions regarding this matter, the contact officer in the National Indigenous Australian Agency is Mr Brendan Jacomb, Chief Lawyer, Legal Services Branch. Mr Jacomb can be contacted on (02) 6152 3555 or brendan.jacomb@niaa.gov.au.

Yours sincerely



The Hon KEN WYATT AM MP
Minister for Indigenous Australians

15 / 6 / 2020



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MC20-001907

Mr Eddie Fry
Chairperson
Indigenous Land and Sea Corporation
Sheelagh.Loss@ilsc.gov.au

Dear Mr Fry

Thank you for your correspondence of 1 June 2020 responding to my views on the Indigenous Land and Sea Corporation (ILSC) Board's proposed 2018-19 performance payment for the previous Group Chief Executive Officer (CEO), Mr John Maher.

I note your rationale for the ILSC Board's rating and the achievements you have highlighted which relate to the overall performance of the ILSC throughout Mr Maher's tenure. I also note that Mr Maher had received performance payments from the ILSC Board for previous performance periods.

With reference to my correspondence to you of 5 May 2020 on this matter, my concerns relate to the governance of the ILSC during the 2018-19 period to which the proposed performance payment relates. The governance concerns I have are those of which you are also aware. I therefore reiterate my view that I do not support a performance payment for Mr Maher for the 2018-19 period.

If you have any questions regarding this matter, the contact officer in the National Indigenous Australian Agency is Mr Brendan Jacomb, Chief Lawyer, Legal Services Branch. Mr Jacomb can be contacted on (02) 6152 3555 or brendan.jacomb@niaa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Wyatt', written over a large, light-colored scribble or watermark.

The Hon KEN WYATT AM MP
Minister for Indigenous Australians

15/6/2020



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MB20-000180

Mr Eddie Fry
Chairperson
Indigenous Land and Sea Corporation
GPO Box 652
ADELAIDE SA 5001

Dear Mr Fry

Thank you for your letter of 17 June 2020 informing me of significant events that occurred at the Indigenous Land and Sea Council (ILSC) Board meeting earlier the same day.

As I am sure you would agree, the ILSC plays a critical role in providing assistance to Aboriginal and Torres Strait Islander Australians and I do not want there to be any compromises in the delivery of services.

I note from your letter that following a Board motion of no confidence in the ILSC Acting GCEO, Mr Leo Bator, Ms Tricia Stroud is now the Acting GCEO. Given this situation I would like to see the appointment process for a permanent CEO expedited in line with my previous advice on this matter.

You also informed me that the Board passed a motion of no confidence in your management and leadership as chair of the ISLC. Clearly from your letter there are some significant matters that require the urgent and immediate attention of the Board.

I believe in order to ensure that the priorities of the organisation are met it is necessary for you to temporarily step aside as Chair and have an extraordinary Board meeting called and chaired by the Deputy Chair, Mr Joseph Elu at the earliest opportunity.

At this meeting, the more urgent matters of the 2020-21 budget and the employment support to Voyages and the National Indigenous Centre of Excellence can then be dealt with.

Given the current situation I request the Board consider seeking the appointment of an external person nominated by me to investigate the matters that I set out in my recent correspondence to all Board Members and any information contained in the response to my correspondence. I would ask that the Board's endorsement of this request, or otherwise, be

considered at the extraordinary board meeting and the Board's decision be transmitted to me as soon as possible.

I have provided a copy of this letter to all other Board members. Noting the need to deal with these matters promptly I would appreciate a response by close of business tomorrow please.

Yours sincerely



KEN WYATT

18 / 6 / 2020

Cc:

Mr Joseph Elu AO, Deputy Chairperson
Mr Roy Ah-See, Director
Ms Patricia Crossin, Director
Mr Bruce Martin, Director
Dr Donna Odegaard AM, Director
Mr Daniel Tucker, Director

OFFICIAL: Sensitive Personal privacy



The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Member for Hasluck

Reference: MS20-000371

Mr Eddie Fry
Chairperson
Indigenous Land and Sea Corporation
GPO Box 652
ADELAIDE SA 5001

Dear Mr Fry

I refer to my letter to the accountable authority of the Indigenous Land and Sea Corporation (ILSC) pursuant to paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013*.

I am writing to inform you that I have received correspondence from several board members relating to your conduct as Chair. As a result I have written to each member of the Board of Directors seeking their perspective on these matters.

Given that these concerns relate to your alleged conduct I would like your perspective of the issues outlined below so that I can weigh up the relative views before deciding on any course of action. It goes without saying that it would be inappropriate for you to try to ascertain who has written to me or to try to influence any other board member in relation to this issue.

So that you have visibility of the letters I have sent to board members, each of my letters were on the following basis:

“I am writing to you in your capacity as a member of the Board of Directors of the Indigenous Land and Sea Corporation (ILSC).

The work of the ILSC is vitally important in assisting Aboriginal and Torres Strait Islander Australians to realise economic, social, cultural and environmental benefits that the ownership and management of land, water and water related rights can bring.

As the ILSC Board is responsible for ensuring that the functions of the ILSC are performed properly and efficiently, it is important that the conduct of board members in carrying out their duties is consistent with this responsibility.

OFFICIAL: Sensitive Personal privacy

Recently, some board members have contacted me to express concern about the conduct of the Chairperson. In particular it has been alleged:

- that the conduct of the Chairperson at meeting 254 of the Board on 7 May 2020 was disrespectful to other Board members; and
- the Chairperson has refused to include items on the Board's agenda in accordance with requests of Board members, including an agenda item to instigate a recruitment process to recruit a Chief Executive Officer.

So that I can better understand these issues and consider any appropriate action, I invite you to write to me detailing any concerns you may have in regards to the conduct of the Chairperson or any other board member. Please note that I cannot ensure that any correspondence to me can be kept confidential.”

I invite you to respond to me in writing outlining your views by 24 June 2020. Should you wish to discuss this letter, please contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152-3555.

I ask that you refer this letter to the Audit and Assurance Committee of the ILSC.

Yours sincerely



The Hon KEN WYATT AM MP
Minister for Indigenous Australians

12 / 6 / 2020