

Sensitive



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

Reference: MS20-000545

Indigenous Land and Sea Corporation Board  
Indigenous Land and Sea Corporation  
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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* (the PGPA Act).

I wish to advise you that the Independent review of governance issues of the ILSC Board that was conducted by Dr Vivienne Thom AM is now complete. Please find enclosed a copy Dr Thom's report dated 25 August 2020.

The report concludes that there is a high risk that the ILSC Board cannot currently fulfil the functions as set out in the ATSI Act and its Charter. Unless urgent action is taken this will place at risk the proper and efficient performance of the functions of the ILSC as well as potentially its longer-term viability.

The report from Dr Thom contains a total of ten recommendations. Eight recommendations are addressed to the ILSC Board to improve the governance arrangements and to support the ongoing functioning and strategic leadership of the ILSC; one recommendation relates to the engagement and behaviour of the ILSC Chairperson; and one recommendation is for me as the Minister responsible for making director appointments to the ILSC Board.

Coupled with the adverse findings and concerns outlined in the Commonwealth Ombudsman Public Interest Disclosure Investigation Report of 31 January 2020, I am very concerned for the governance of the ILSC.

It is my expectation that the ILSC Board will provide me with a detailed response on how it will respond to the recommendations in the Thom's report and the concerns I have raised here. The Board needs to address the current conflict within its ranks and ensure it is able to fulfil its functions and comply with its obligations under the PGPA Act.

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I require the ILSC Board's response by 4 November 2020 in order for me to consider more fully my response to Dr Thom's report.

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

12 / 10 / 2020

Encl (report of the Independent review of governance issues of the ILSC Board)

Cc: Mr Edward Fry, Chairperson  
Mr Roy Ah-See, Director  
Ms Patricia Crossin, Director  
Mr Bruce Martin, Director  
Dr Donna Odegaard AM, Director  
Mr Daniel Tucker, Director



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**Independent review of governance issues of the  
Indigenous Land and Sea Corporation Board**

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**Dr Vivienne Thom AM  
25 August 2020**

  
  
ABN 73422163798

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## Executive summary and recommendations

On 9 July 2020 the Minister for Indigenous Australians appointed Dr Vivienne Thom AM to inquire into concerns raised about the governance arrangements and performance of the Board of the Indigenous and Land and Sea Corporation (ILSC) and to investigate complaints made about the conduct of the Chairperson, Mr Eddie Fry. This is the report of that review.

### Corporate governance

The review concludes that there is a high risk that the Board cannot currently fulfil the functions as set out in the ATSI Act and its Charter. Unless urgent action is taken this will also place at risk the proper and efficient performance of the functions of the ILSC as well as potentially its longer-term viability.

The current level of conflict in the Board also carries with it significant risks in terms of the morale, wellbeing and, ultimately, retention of ILSC management and staff.

### Guidance documents

The existing ILSC Board Charter, Code of Conduct and related guidance documents provide a practical framework for ensuring sound ILSC Board governance but there is limited familiarity with their contents.

**Recommendation 1**

**The ILSC Board should enhance its promotion of the ILSC Board Governance Charter, Code of Conduct and related guidance documents to new and existing Directors to improve familiarity and use.**

### Conflicts of interest

The identification and management of conflicts of interest is causing division in the Board particularly in respect of the role ILSC Directors on subsidiary Boards. This question needs to be resolved in a way that is accepted by all parties.

**Recommendation 2**

**ILSC Directors who are also Directors of subsidiaries should consider requesting independent legal advice. This advice could cover:**

- **Under what circumstances is there a conflict of interest in respect of the duty of a Director of the ILSC and their duty as a Director of a subsidiary.**
- **How these conflicts can be avoided or managed.**

### Governance of ILSC subsidiaries

There is disagreement in the ILSC Board in respect of the governance of ILSC subsidiaries, particularly in respect of the role and powers of the ILSC Chairperson. This needs to be resolved.

**Recommendation 3**

**The ILSC Board should clarify and document the role and powers of the ILSC Chairperson in relation to the governance of ILSC subsidiaries.**

### In-camera sessions at meetings

Given the current high level of tension and conflict on the Board it is particularly important that sensitive issues can be discussed in meetings in the absence of ILSC management.

**Recommendation 4**

**The ILSC Board should consider reinstating an in-camera session at the beginning of each Board meeting.**

**SENSITIVE: Personal***Setting a strategic direction*

ILSC Directors do not share a common vision or a common view of the current strategic opportunities and risks facing the ILSC. It is the Board, not the Strategic Reform Unit or the Chairperson that must develop and set the strategic direction. Unless the Board as a whole can engage with trust and reach some kind of consensus about the environment, business risks and opportunities, the Board will not be in a position to develop a coherent and robust strategic plan to guide the business in the future.

*Recruitment of a CEO*

While the administrative processes of the CEO recruitment are being progressed, a number of Board members have expressed a lack of trust and confidence in the process. While it will be hard to resolve this, the Board as a whole is responsible for the outcome, and all Directors need visibility of and some level of involvement in the process.

**Recommendation 5**

**The ILSC Board should progress the recruitment of the CEO as a matter of urgency. The recruitment should be a standing item on the ILSC Board's agenda until the process is complete.**

*Approving the budget*

At mid-August 2020 the Board had not yet approved the full 2020-21 budget. It appears that the difference in views on the Board, particularly relating to the funding of subsidiaries, means that a consensus decision on this by the Board remains unlikely without considerable compromise which might not achieve the best outcome.

*Setting policies*

There are differing views in the Board about priorities for determining policies which could detract for its ability to fulfil this function. The number and range of the matters raised indicates frustration by a number of Directors, a lack of trust, and an inability to reach a consensus about how these perceived strategic matters should be progressed.

*Monitoring performance*

The ILSC Board commissioned a Board review in early 2019. The report of that review contains observations, priorities, strategies and recommendations that would appear still to be relevant but have not been followed up.

**Recommendation 6**

**The ILSC Board should review the priorities and strategies identified by the Board review conducted in April 2019 and formally decide whether to accept the recommendations of that review. If the Board does decide to accept recommendations it should also commit to an implementation timetable and allocate appropriate resources.**

It is difficult to see how the Board currently can conduct performance assessments of individual Directors. It might be useful for the ILSC Board to consider engaging an independent external Board coach to observe Board meetings and provide confidential feedback and appraisal to individual Board members.

**SENSITIVE: Personal****Recommendation 7**

**The ILSC Board should consider engaging an independent external Board coach to observe Board meetings and provide confidential feedback and appraisal to individual Board members. Any person engaged for this purpose must be acceptable to all Board members and there should be clarity and agreement about how any information about the skills and competencies about individual Directors will be used.**

### Nomination and appointment of Board members

The future of the ILSC will to a large extent depend upon the quality and performance of its Board. The skills and experience of individual Directors will be critical as well as their ability to contribute collaboratively in a Board environment. Further essential personal attributes are resilience and the ability to test the status quo. In addition to the consideration of new candidates identified by the Board, and existing Directors seeking re-appointment, additional processes for identifying board candidates such as public advertising or the use of executive search processes independently of the ILSC Board should help ensure appointments are drawn from the best possible field of candidates.

**Recommendation 8**

**The Minister could consider using processes including public advertising or the use of executive search processes independently of the ILSC Board to help ensure appointments are drawn from the best possible field of candidates.**

### Complaints about the conduct of the Chairperson

The evidence supports the allegation that Mr Fry raised his voice at a Board meeting on 7 May 2020 and spoke in a disrespectful way. While it could be questioned whether Mr Fry's direct communication style with fellow Directors is appropriate or productive, the evidence is not sufficient to support an allegation of bullying.

**Recommendation 9**

**The evidence considered by this review supports the allegation that, on the balance of probabilities, Mr Fry did raise his voice and speak in a disrespectful way to other Directors at the Board meeting on 7 May 2020.**

The evidence does not support a finding on the balance of probabilities that Mr Fry's conduct amounted to misbehaviour under s 192H of the ATSI Act, or a breach of the general duties of officials under the PGPA Act.

Based on the information provided to this review, it would be open to a decision-maker to conclude, on the balance of probabilities, that Mr Fry's conduct has breached the ILSC's Code of Conduct. It is not, however, within the power of this review to make such a finding. That is a decision for the ILSC Board.

**Recommendation 10**

**The ILSC Board should consider whether to apply the procedure set out in clauses 11.3 and 11.4 of the *Guideline for the Interpretation of the Principles of the Code of Conduct* using this report as a basis on which to make findings of fact. According to these guidelines, Mr Fry should be given written notice, an opportunity to obtain his own independent legal advice and to provide a written response before any final deliberations and resolution of the Board.**

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## The Board of the Indigenous Land and Sea Corporation

The Indigenous Land and Sea Corporation (ILSC) is established as a body corporate under s 191A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). The ILSC assists Aboriginal persons and Torres Strait Islanders to acquire and manage land and water-related rights so as to provide economic, environmental, social or cultural benefits.

The ILSC Board consists of a Chairperson, a Deputy Chairperson and five other Directors. Section 191W of the ATSI Act states that it is the responsibility of the Board to ensure the proper and efficient performance of the functions of the ILSC and to determine the policy of the Corporation with respect to any matter. In particular, the Board is responsible for preparing and revising the national indigenous land and sea strategy, and for appointing the ILSC Chief Executive Officer (CEO).

The ILSC is also a Corporate Commonwealth Entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The ILSC Board of Directors is the accountable authority under the PGPA Act.

As at 1 May 2020 the Directors of the ILSC were:

- Mr Eddie Fry (Chairperson)
- Mr Joseph Elu AO (Deputy Chairperson) (resigned 26 June 2020)
- Mr Roy Ah-See
- Mr Daniel Tucker AM
- Ms Patricia Crossin
- Mr Bruce Martin
- Dr Donna Odegaard AM.

## Background to the review

On 7 May 2020 Dr Donna Odegaard wrote to the Hon Ken Wyatt AM MP, Minister for Indigenous Australians. In her letter she complained about 'unacceptable conduct' by the Chairperson, of the ILSC Board, Mr Eddie Fry, towards ILSC members. She claimed there had been recurring behaviour that had been 'brought to a head;' at a meeting held that day. Dr Odegaard wrote that she was concerned that the alleged conduct was a breach of the Chairperson's position, role and responsibilities. Dr Odegaard set out a number of concerns about Mr Fry's conduct. Dr Odegaard advised the Minister that she had contacted the other Directors and suggested that they also contact the Minister. She wrote that she felt that they had been placed in an untenable position under duress with a hostile Chairperson and that this had escalated to the point where she felt she had no alternative but to turn to the Minister for guidance.

On 11 May 2020 Mr Bruce Martin also wrote to the Minister's office. He advised that he agreed with the matters set out in Dr Odegaard's letter and said that the alleged conduct was symptomatic of larger governance issues present within the ILSC as a whole. Mr Martin set out a number of matters of concern to him and requested advice and support to resolve the matter quickly.

On 13 May 2020 Mr Roy Ah-See emailed the Minister and advised him that since joining the ILSC Board he had experienced what he described as 'some serious governance problems'. Mr Ah-See set out complaints about Mr Fry's conduct and other governance concerns.

On 12 June 2020 the Minister wrote to the Directors of the ILSC Board as the accountable authority of the ILSC requesting specified documents and information, including information relating to the management of conflicts of interest pertaining to Board members and the appointment process for a new chief executive officer (CEO). A copy of this letter is at Attachment A.



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On the same date the Minister wrote to all ILSC Directors individually, except for Mr Fry, advising them of the concerns that had already been raised and inviting them to detail any concerns they may have in regard to the conduct of the Chairperson or any other board member. A copy of one of these letters is at Attachment B. The Minister also wrote to Mr Fry to advise him of the contents of these letters and asking him to outline his views.

On 17 June 2020 Mr Daniel Tucker wrote to the Minister advising him that, although the focus and tone of discussions at the meeting on 7 May 2020 had been robust, it was Mr Tucker's view that the Chairperson conducted himself appropriately in the context of challenging times.

On 17 June 2020, the acting Group ILSC CEO, Ms Patricia Stroud, wrote to the Minister to inform him about decisions taken at the meeting held that day. She wrote:

*Following Agenda item 1.4 (Actions Arising), a number of motions were proposed and discussed:*

1. *A motion of no confidence in the ILSC Chairman. This motion was carried by 4 Directors and opposed by 3.*
2. *A motion of: (i) no confidence in the Acting ILSC Group CEO; (ii) that the Acting ILSC Group CEO be stood down; (iii) that the Deputy CEO be appointed Acting GCEO; and (iv) that the process of appointing the ILSC GCEO be actioned. This motion was carried by 4 Directors and opposed by 3.*

*The ILSC Board directed that you be advised by COB today of these matters.*

*Following these motions, four Directors left the meeting resulting in a lack of a quorum. As such the meeting ended and no resolutions were made concerning the remainder of the Agenda items.*

The Directors who left the meeting (the 'four Directors') were Ms Crossin, Dr Odegaard, Mr Ah-See and Mr Martin.

On 17 June 2020 Dr Odegaard also wrote to the Minister about this meeting informing him of the motions of no confidence and reiterating her concerns about Mr Fry's conduct. Ms Crossin emailed the Minister on the same day with similar concerns about the meeting held that day. Ms Crossin wrote again to the Minister on 1 July 2020 providing her views and information in response to the Minister's correspondence of 12 June 2020.

On 17 June 2020 Mr Fry also wrote to the Minister expressing concern about that day's meeting and describing the four Directors' action in walking out as 'an abrogation of duty'. On 22 June 2020 Mr Fry sent a further letter in response to the Minister's correspondence of 12 June 2020.

On 18 June 2020 the Minister wrote to Mr Fry. In the letter he noted that there were significant matters that required the Board's attention and advised Mr Fry that he considered it necessary for Mr Fry to step aside as the Chairperson and have an extraordinary Board meeting called and chaired by the Deputy Chairperson, Mr Elu.

The Minister also requested the Board consider seeking the appointment of an external person nominated by the Minister to investigate the matters set out in his correspondence of 12 June 2020. He asked that this request be considered at the extraordinary Board meeting.

On 19 June 2020 Mr Fry wrote to the Minister agreeing to stand aside for the next meeting and supporting the engagement of an external reviewer.

On 25 June 2020 Ms Stroud wrote to the Minister advising him that at an extraordinary meeting held that day the Board requested that the Minister nominate and appoint an external investigator, of the Minister's selection, to look into the matters referred to in his letter of 12 June 2020.

Mr Elu resigned from the Board on 26 June 2020.

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On 1 July 2020 the Minister advised Ms Stroud that he intended to appoint Dr Vivienne Thom AM to investigate various governance issues. Dr Thom was appointed by the Minister on 9 July 2020 and this review commenced on 10 July 2020.

### Scope of the review

The terms of reference for the review are set out below:

#### **Corporate governance issues**

1. *Inquire into the issues raised in the letters from the Minister for Indigenous Australians dated 12 June 2020 to the Accountable Authority of the ILSC and to individual directors of the ILSC (including having regard to any correspondence from the Board or Board members related to this matter) and assess how the Board is functioning taking into account the effectiveness of overall governance arrangements at the ILSC.*
2. *Consider any other related matters.*
3. *Make any recommendations arising out of your inquiry that you consider appropriate.*

#### **Complaints about the Chairperson**

4. *Investigate the complaints referred to in the letters from the Minister for Indigenous Australians dated 12 June 2020 that were sent to each member of the ILSC Board, including having regard to any correspondence from Board members related to this matter.*
5. *Consider any other related matters.*
6. *Make any recommendations arising out of your investigations that you consider appropriate.*

The letters referred to in clauses (1) and (4) are at Attachment A and Attachment B to this report.

It should be noted that the terms of reference require this review to address matters relating to governance arrangements and complaints about the conduct of the Chairperson. Some information provided to this review relates to allegations of failure by individual Directors to address conflicts of interest; and allegations of poor commercial expertise, poor financial management skills and poor professional judgement by Directors. While the review might examine how conflicts of interest are identified and resolved by the ILSC Board, it does not give any advice or make any conclusion about any particular alleged conflict of interest. Similarly, it does not give any opinion or make any judgement about the financial management skills, commercial expertise or professional judgement of any Director. These matters are not within the scope of the terms of reference.

In Mr Fry's letter of 19 June 2020 supporting the appointment of an external reviewer, he suggested that the review should also look at 'the activities that have been the subject of the ILSC's Board's deliberations since mid-2019, particularly the activities of various subsidiary entities'. The settled terms of reference do not encompass the extended scope proposed by Mr Fry.

### The process of the review

The review was initially provided with extensive documentation including:

- minutes, agendas and agenda papers of Board meetings held, and records of decisions the Board made, after 1 April 2020
- a copy of the Charter of the ILSC Board, the Charter of the ILSC Audit and Assurance Committee and the Charter of the Remuneration and Nominations committee
- relevant correspondence between the Minister and Board members and the Acting Group CEO.

Between 16 and 20 July 2020 the reviewer interviewed Mr Tucker and the four Directors who had made complaints. Mr Elu was invited to participate in the review but did not respond. Interviewees

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were advised that any information they provided would be on the record and that what they said that related to another person may be shown to that other person and to other affected parties. All interviews were recorded and transcripts prepared and provided to interviewees for comment. Directors were also given the opportunity to provide further documents or comments.

On 27 July 2020 Mr Fry was provided in writing with details of the matters that have been raised in the interviews and in the other information provided to the review. Mr Fry was invited to respond in writing and to discuss the matters. Mr Fry provided a detailed written response and substantial supporting documentation on 3 August 2020 and was interviewed on 5 August 2020. Mr Fry also provided further documentation and comments following his interview.

### Corporate governance

The terms of reference require an assessment of how the Board is functioning taking into account the effectiveness of overall governance arrangements. It is convenient to look first at governance arrangements and then assess how well the Board is placed to achieve its functions.

#### Governance arrangements

##### Guidance documents

The *ILSC Board Governance Charter* (the Charter) sets out the corporate governance responsibilities of the ILSC Board.<sup>1</sup> The Charter documents the roles and functions of the Board and sets out Board processes. Directors are bound by the ILSC Directors Code of Conduct (the Code) which includes guidelines for identifying and managing actual and potential conflicts of interest. There is also guidance relating to ILSC subsidiaries and Board committees. The Charter also sets out a protocol for conduct at Board meetings. Although four years old and perhaps in need of a refresh, the Charter and related documents appear to be comprehensive, relevant and reflective of contemporary best practice. If followed, they would provide a practical framework for ensuring sound ILSC Board governance.

Although the Charter and related documents contain guidance directly related to a number of matters raised in their review, it was apparent from discussions with Directors that these resources were not routinely referred to by most Directors, and that they were not familiar with the contents. The Charter states under 'Director Guidance and Development' that new members would be provided with a copy of the Charter in a briefing pack. It would be expected that at this early stage, a new Director would also be coming to grips with the business of the ILSC and perhaps familiarisation with the Charter would not be a priority. In any event, there should be increased promotion of awareness of the Charter, Code of Conduct and related guidance documents.

#### **Recommendation 1**

**The ILSC Board should enhance its promotion of the ILSC Board Governance Charter, Code of Conduct and related guidance documents to new and existing Directors to improve familiarity and use.**

#### Implementation of Board decisions

Directors expressed concern that Board decisions were not followed through by the executive and gave the following two examples. These examples demonstrate a lack of shared understanding of the role of the Board in relation to the role of management.

##### *The Social Impact Measurement Initiative*

One example where it was alleged that the executive did not follow through with a Board decision was in relation to the Social Impact Measurement Initiative that the ILSC was launching through a

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<sup>1</sup> The Board Charter is dated April 2016 and refers to the ILC, the precursor of the ILSC. It has not been amended to reflect the change in name but continues to have effect.

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subsidiary, the National Centre of Indigenous Excellence (NCIE). The review was advised that the ILSC Board made the decision to allocate \$1.5m to build a social impact measurement team which could report back on the positive social outcomes achieved by ILSC investments and help guide future investments to achieve maximum impact.

Mr Ah-See said that they were recently informed that the Acting CEO, Mr Leo Bator, had told the NCIE they could no longer deliver the project and were to return the funds to ILSC. He said that Mr Bator did not inform the ILSC Board and that Board approval was not obtained for the change. This was seen as an example of the CEO is acting against the direction of a Board and cited as 'extremely poor governance'.

Mr Fry advised that the Board did not actually allocate the money to the NCIE but allocated the money to be utilised by the NCIE with the funds being held by the ILSC for this purpose. He said that further work is currently underway to determine how this impact measurement could be carried out within the proposed restructure. Mr Fry viewed this as an operational matter.

#### *Salary increases for staff*

Ms Crossin said that at a Board meeting on 9 April 2020 the Board agreed to pay a salary increase to staff covered by the Enterprise Agreement (EA) but not to pay senior executive an increase at that time. Ms Crossin said that at the next meeting Mr Bator had advised them that all staff members had been sent a survey asking them if they wanted their pay increase. Ms Crossin said she had been angry because this was in direct contradiction to the Board's decision and was done without the Board's authorisation. She was concerned that the memo had been put out purporting to come from the Board and that concern had never been resolved.

Mr Fry's recollection differed. He said that he thought that the board had agreed to pay the increase due to executives but that the executives not covered by the EA agreed to defer their increase due to the economic situation. He said that staff covered by the EA were asked to consider deferring their pay increases because of the economic situation and the request by the Government to freeze wages and that this was a reasonable action for management to take. Mr Fry said that when this matter was discussed, he and Mr Tucker and Mr Elu considered this to be an operational matter and Dr Odegaard, Mr Martin and Mr Ah-See did not comment.

#### *Managing conflicts of interest*

Clause 7 of the Guideline addresses conflicts of interest. It explains the responsibility of a Director to avoid conflicts and to disclose any conflict or potential conflict to the ILSC Board. There is also a protocol to the Charter which relates to the discharge of duties and obligations for directors of two or more entities. This protocol directly addresses the situation where there may be circumstances where the interest of the ILC and another entity, for example the IBA, conflict and gives guidance about what to do in such situations.

The issue of conflicts of interest was a principal concern in relation to the Groupwide Core Governance and Operating Principles agenda item at the 7 May 2020 Board meeting. The third principle states;

3. *ILSC Board members are not to hold a Directorship role on the Board of an ILSC subsidiary*

The following explanation for this principle is given in the Board paper:

*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.*

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*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.*

In a letter to the Minister dated 20 May 2020 Mr Fry wrote that:

*Principle 2 addresses review findings and best practice that ILSC Directors holding remunerated positions on subsidiaries poses potential, real or perceived conflicts 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.*

In his letter to the Minister of 22 June 2020 Mr Fry outlined his concerns about the 7 May 2020 meeting. In respect of the issue of conflict of interest, he wrote that:

*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?)'.*

In that letter he asserted that 'it is difficult to find the objection to these Governance Principles to be based on anything other than self-interest'.

Ms Crossin noted in her letter of 1 July 2020 to the Minister that this issue had not been raised in the four years that she had been on the ILSC Board and that she believed her appointment to the ILSC subsidiary was to 'represent the ILSC Board and maintain an alignment between the strategy of the ILSC with its subsidiaries'.

Ms Crossin wrote that

*While it is timely to reconsider the interaction between the appointment of Directors from the ILSC Board to subsidiaries, this can be done within a complete and comprehensive discussion of any possible restructure of the ILSC, including a review of the strategy and corporate plan.*

*This is a matter that should and can involve a reasoned and balanced discussion by all Directors. Whether subsidiaries have one, two or no ILSC Directors on their Boards, in the future, is a matter that needs further exploration and deliberation. Making unilateral changes, under the suggestion that there is a matter of conflict of interest is not and has not been productive. If a problem were seen to exist then when this matter is eventually discussed one solution may be to have an external legal observer to assure that such conflicts were handled appropriately, as must have been the case in 2014/2015.*

*The main, and most serious, question though is how does the ILSC Board discuss and resolve the issue of its own Directors being appointed to its subsidiaries, if the Chair is always suggesting that this is a matter of conflict of interest.*

*Until this discussion has been had and resolved then the issue of Directors removing themselves from subsidiaries is in complete contrast with the practise of the last four years and recent recommendations approved by the ILSC Board within the last twelve months.*

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Mr Martin recalled that, on occasion, Directors had sought such guidance from the Group General Counsel about a potential conflict at a Board meeting and had been assured that there was no conflict.

Directors advised the review that there they had not received legal advice on this matter and could not recall previous discussions of any best practice or that this principle was derived from previous Board reviews. Such background information was also not included with the Board paper.

It was generally agreed that there would be times where the position of a Director who was on both the ILSC Board and that of a subsidiary could lead to an actual or perceived conflict of interest. Uncontroversial examples of such a situation included when the ILSC Board made a decision to appoint an ILSC Director to a subsidiary Board, or decided the remuneration of a Director on a subsidiary Board. In such situations it was clear that the personal interest of the Director was in conflict, and that conflicted Directors should not vote in the decision.

Less clear scenarios are where it is the interest of the ILSC and the interest of its subsidiary that may be in conflict, rather than the personal interest of the Director. This may occur in budget discussions. Mr Fry seems to have a strong and genuinely held view that this conflict cannot be avoided or managed and that it is therefore not appropriate for a Director to be on both the ILSC and subsidiary Boards.

Mr Fry's position seems to be at odds with s 187 of the *Corporations Act 2001*. This section suggests that the actions of a Director of a wholly-owned subsidiary of the ILSC could be taken to be in the best interest of the subsidiary if the constitution of the subsidiary expressly authorised the director to act in the best interests of the ILSC, and the Director was acting in good faith in the best interests of the ILSC:

**187 Directors of wholly-owned subsidiaries**

*A director of a corporation that is a wholly-owned subsidiary of a body corporate is taken to act in good faith in the best interests of the subsidiary if:*

- (a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and*
- (b) the director acts in good faith in the best interests of the holding company; and*
- (c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.*

The AICD has also issued guidance for Board directors of a parent company who are appointed to the Board of a subsidiary company. The AICD notes that there may be situations where a conflict exists but that this can be resolved by recognising and addressing such conflicts:

*The main point to remember is that a director's responsibility is to the company of which he or she is a director, not to the organisation – in this case, a parent company – that appointed the director to the board. In the vast majority of cases there will be no conflict between the interests of the parent and the subsidiary, but in the rare situation where a director feels a tension between the two, first remember the rule stated above. If the difficulty cannot readily be resolved it should be brought into the open. The director should bring it to the notice of the chair, of either the parent or subsidiary board as appropriate, and if necessary, seek to have it discussed at a board meeting.*

It is also relevant that the ILSC's own guidance contemplates a potential conflict of interest where a Director is a member of the ILSC Board as well as the IBA Board but that guidance does not suggest that such a situation should be avoided completely. (This is relevant, for example, to the duties and obligations of Mr Fry who is currently the Chairperson of both the ILSC and ILB boards.)

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This issue is complex with opposed views on the Board. The day following the 7 May 2020 Board meeting, Mr Fry sent an email to all Directors requesting that, if Directors did not accept a conflict of interest in Principle 2, they should provide him with an explanation. This might not be the most appropriate way to resolve the situation. This issue needs to be resolved in a way that is accepted by all parties. In the circumstances it would be sensible to consider obtaining independent legal advice for the Directors who are affected.

Clause 4.6 of the Charter's Guidelines indicates that from time to time a Director may need expert legal advice and Protocol 6.3 *Protocol for Directors obtaining expert advice in the exercise of their fiduciary or other duties* sets out the process to be followed. Affected Directors could request that they should be able to obtain independent legal advice about this matter under these provisions.

### **Recommendation 2**

**ILSC Directors who are also Directors of subsidiaries should consider requesting independent legal advice. This advice could cover:**

- **Under what circumstances is there a conflict of interest in respect of the duty of a Director of the ILSC and their duty as a Director of a subsidiary.**
- **How these conflicts can be avoided or managed?**

### Governance of subsidiaries

It was clear from information provided to this review that there is significant conflict in the ILSC Board about the governance of ILSC subsidiaries, in particular in relation to the ability of the ILSC Chairperson to make decisions in relation to subsidiaries.

Mr Martin expressed concerns about the Mr Fry directing subsidiaries or directing subsidiary staff or perhaps acting as a shadow director.

Mr Fry expressed strong concerns about commercial skills of subsidiary boards and questioned their understanding of the current business strategy. He wrote that the directors of subsidiaries were 'operating outside of their guidelines and incurring costs they are not delegated or authorised to undertake'. He advised the review that he requested but did not direct. He wrote:

*It is my responsibility as Chair to ensure the ILSC Group is financially sound with good governance and that the ILSC accomplishes its functions and responsibilities. We are in (COVID-19) uncharted waters and the expenditure outlays require careful fiscal management that is justified and adds value to the liquidity of the ILSC Group and thus the Indigenous Estate. Please refer to the ILSC and PP agreement point 6: 'ILC (ILSC) may Direct the Subsidiary'.*

### Section 191G agreements

Agreements with ILSC subsidiaries under s 191G of the ATSI Act give authority for the subsidiary to carry out certain functions and detail the funding and reporting arrangements between the subsidiary and the ILSC.

Mr Martin advised the review that when the subsidiary Primary Partners was provided with increased operating powers in October 2019, the ILSC Board resolved that the s 191G agreement required updating to allow the operations to proceed lawfully and instructed that the Group General Counsel update the agreement. Mr Martin said that he had followed this up with both the Acting Group CEO, Mr Leo Bator, and General Counsel and was advised that it was with Mr Bator and Mr Fry.

Mr Martin said he was advised by legal counsel that the absence of a current section 191G agreement was the 'single biggest legal risk to the organisation' because any decisions that the Primary Partners Board were making could be deemed as not legal. Mr Martin said he raised it as a matter of urgency with Mr Fry, but it has not been completed.

**SENSITIVE: Personal**

Mr Fry advised the review that the Board had agreed in principle to transition all Agri and water assets, projects and relevant personnel to an ILSC wholly owned subsidiary, AgCo but, before that, protocols were required to be established with the ILSC Group CEO and Group General Counsel. He said that the ILSC Board had endorsed AgCo to oversee the transition and report back to ILSC at each Board meeting. Mr Fry said that Directors of the subsidiary had not reported back to the ILSC Board as required and expressed serious reservations about the direction that the subsidiary Boards were taking. Mr Fry was concerned that there was not a common understanding that Primary Partners had not been set up to own assets. Mr Fry also advised that Mr Martin and Ms Crossin had been appointed to the Primary Partners Board to maintain compliance obligations only while the restructure design, validation and approval process was completed. Mr Fry expressed concerns that Directors of subsidiary Boards had a lack of understanding of important tax considerations. Mr Fry said that he had recommended a 'strategic rethink' but that suggestion had been dismissed.

In respect of the funding to subsidiaries Mr Fry advised that his responsibility included the subsidiaries and that 'ultimate responsibility for the operations and performance compared to the expenditure of Indigenous funds rests with the Chair'. It is questionable whether Mr Fry's formulation of the responsibility of the Chair is accurate and whether the responsibility actually lies with the Board rather than with the Chair as an individual.

*Interference in the Primary Partners CEO recruitment process*

Mr Martin advised that he and Ms Crossin were running a formal process to recruit a CEO for Primary Partners. They considered this to be in the best interests of the subsidiary.

On 9 July 2020 Mr Fry wrote to the Director of Primary Partners to 'please immediately cease the recruitment activity for a Primary Partners CEO'. The request was made in light of tight wage controls and the Minister's request to defer wage expenditure, and possible future changes to the activities of Primary Partners. The Directors questioned Mr Fry's authority to make such a direction.

Mr Fry questioned Mr Martin's and Ms Crossin's judgement about what was in the best interests of the ILSC and advised the review that 'their appointment was for compliance obligations only'. He also advised that as Mr Bator had been appointed as Acting CEO the position was not vacant. Again, Mr Fry advised that it is his 'responsibility as Chair to ensure the ILSC Group is financially sound and this involved constant reprioritization of expenditure'.

*Request by Mr Fry to delay the Board meetings of Primary Partners and Yamanah*

On 4 June 2020 Mr Fry's Executive Assistant emailed Ms Crossin to advise her that Mr Fry had requested Mr Martin 'as Chair of Yamanah Investments (YI) and Primary Partners (PP), to reschedule Board meetings for these entities to occur after the 17 June 2020 ILSC Board meeting' to 'to avoid discussions that may be out of step with the outcomes of the ILSC Board'.

Ms Crossin responded on the same date that the request had been noted but that the meetings would proceed because 'We have a full agenda and plenty of outstanding actions arising from previous meetings that need progressing including our timeline, sign off and compliance with the annual financial reports'.

Mr Fry responded to Ms Crossin on the same date, addressing the email to thirteen other recipients including other Board members and senior executives:

*For the record I will take your response to mean that as a Subsidiary Director you are dismissing the Request of the Chair of the Parent Entity to delay the PP Board meeting.*



**SENSITIVE: Personal**

Mr Fry does not agree that he *directed* the directors of the subsidiaries to delay the meetings; however, the strong and formal tone of the email and the broad audience indicates that Mr Fry expected his request to be agreed to.

*ILSC instructed staff not to attend subsidiary Board meetings*

Mr Martin said that he had been advised that Mr Fry had instructed the current Acting Group CEO, Ms Tricia Stroud, and Mr Barry Petty, Company Secretary for the two subsidiaries not to attend subsidiary Board meetings. Mr Martin questioned Mr Fry's authority to do this.

Mr Fry responded:

*It is my responsibility as Chair to ensure the ILSC Group has sound governance and reprioritization of resources, particularly in this COVID-19 environment. I don't see this as appropriate for two Subsidiaries to keep burning cash and the ILSC Group puts its hand out for any further Job-Keeper when we are not being fiscally responsible because of Directors Odegaard, Martin, Ah See and Crossin.*

Again, it could be questioned whether the power to make these decisions rests with the ILSC Chairperson.

**Recommendation 3**

**The ILSC Board should clarify and document the role and powers of the ILSC Chairperson in relation to the governance of ILSC subsidiaries.**

*Conduct of meetings*

*Giving sufficient notice and allowing sufficient time for agenda items*

Some Directors advised the review that there was insufficient notice and discussion of important agenda items at Board meetings. An agenda item at the Board meeting held on 7 May 2020 was cited as a recent example.

This agenda item related to *The Groupwide Core Governance and Operating Principles*. (This agenda item also raised the issue of the management of conflicts of interest, and the broader work of the SRU which are considered separately elsewhere in this report.) Ms Crossin was concerned that this agenda item was provided to Directors with less than 48 hours' notice rather than a week; that it had not been previously discussed by the Board; was far-reaching; and was not clearly aligned with the Board Charter. She was concerned that it appeared to have been developed by the Chairperson together with executive management in isolation without sufficient Board involvement. She believed that had received insufficient reasons as to why the Principles were required and why those particular Principles had been selected.

Mr Martin expressed similar views. Mr Ah-See also had concerns with the agenda item and said that it appeared that the Board were being asked to 'rubber stamp' the Principles without any input or proper discussion.

In his letter to the Minister of 22 June 2020 Mr Fry advised that these Directors seemed to have pre-planned rejection of the Principles and that they refused to discuss and contribute changes. Mr Fry advised the review that the 'Insufficient Board deliberation was a result of the anger brought to the meeting by these Directors and their inability to maturely deliberate.'

Clause 4.3 of the Guidelines for the Interpretation of the Principles of the Code of Conduct suggests:

*In order to be fully effective, a Director should insist that the Chief Executive Officer provide access to all relevant information to be considered by the ILC Board. This information should be made available in sufficient time to allow proper consideration of all relevant issues. In the extreme circumstance where*

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*information is not provided, the Director should make an appropriate protest about such failure to provide the information and if necessary abstain from voting on the particular matter on the basis that there has not been the time necessary to consider the matter properly. Any abstention, and the reason for it, should be appropriately minuted. It may also be appropriate to vote against the motion or move for the deferment until proper information is available.*

The agenda item that caused concern was significant: it had the potential to make fundamental changes to the operation of the ILSC and its subsidiaries. The paper had a very broad scope with limited supporting documentation. In the circumstances, it was reasonable for Directors to have concerns that they had not received sufficient time or information to allow for proper consideration. Familiarity and closer adherence to the principles set out in the Board Charter could prevent this in the future.

### *In camera sessions*

Directors told the review that up until around mid-2019 the Chairperson would offer an opportunity to have an in-camera session at the start of the meeting to discuss sensitive matter in the absence of executive management. Mr Martin said that since then he recalled occasions where he or another Director had requested an in-camera session at the start of a Board meeting, but the requests were refused. Mr Fry disputes this account. He wrote that he had asked for these sessions to be moved to the end of the meeting in consideration of guests because the sessions were lengthy and Directors often left early.

As a particular example, some Directors were concerned that the meeting of 7 May 2020, which resulted in complaints about a particular agenda item and the conduct of the Chairperson, did not commence with an in-camera session. The minutes note that 'The Chair advised that an in-camera session was not necessary'. Directors advised that an in-camera session could have been useful to air some of the concerns and sensitivities about the agenda item of the in private without management or external parties. It is not clear how an in-camera session at the end of the meeting would have allowed issues of concern to be raised in a timely way. Mr Fry responded to these concerns with the comment that 'By 7 May I was fully aware of the disruptive nature of these Directors and was not prepared to accept the verbal onslaught that was likely to reoccur - without witnesses'.

The Australian Institute of Company Director *Meeting Effectiveness* guide states:

*The inclusion of an in-camera session in the agenda allows non-executive directors to raise or explore issues of concern or clarification prior to the meeting without the presence of management. It's good practice for the in-camera session to be a standing item on the agenda. This means it becomes a habitual part of the board's business and signals to directors there will always be an opportunity to raise sensitive issues with colleagues. A routine in-camera session helps remove any potential management anxiety or mistrust.*

The ILSC Charter Meeting Guidelines state:

*The Board may choose to hold Board only (in camera) discussions at a meeting. The discussion will be recorded by the Board Secretary or the Chairperson may summarise the discussion and report the resolution, if any, to the Board Secretary following any in camera discussion.*

Given the current high level of tension and conflict on the Board it is particularly important that sensitive issues can be discussed in the absence of ILSC management.

### **Recommendation 4**

**The ILSC Board should consider reinstating an in-camera session at the beginning of each Board meeting.**

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### *Other procedural matters*

In addition to these particular concerns discussed above, more general concerns were raised about:

- the lack of preparation by Directors
- Directors absent without approved leave
- Directors departing from meeting early
- inefficient use of time at meetings
- lack of respect for dissenting views.

These concerns could reflect a general lack of courtesy, respect and consideration for other Directors and ILSC staff.

While the review did not seek to verify the accuracy of all of these concerns, they seem to be genuinely held. There is guidance for these matters in the Charter and Code and Directors should be referred to their responsibilities under these guidance documents.

### *How well is the ILSC Board functioning?*

The ATSI Act and the Board's Charter set out the high-level functions of the Board. The Board has the responsibility and authority to:

- Set the strategic directions and identify strategic opportunities and risks for the ILSC.
- Appoint the CEO, in consultation with the Minister, and oversee the activities of the CEO.
- Approve and review the ILSC's budget and performance measures.
- Determine ILSC policies including the policy principles for establishing, directing and monitoring Board committees, ILSC subsidiaries and policy relating to workplace health and safety and staff terms and conditions.
- Monitor and review ILSC performance, including the performance of subsidiaries against objectives ensuring ILSC performance strives for continuous improvement, and review of Board and Board committee performance.

This section looks at how well the Board is positioned to fulfil those functions.

### *Setting the strategic directions and identify strategic opportunities and risks for the ILSC*

While a diversity of views and robust debate can be useful to test assumptions and lead to more robust decisions, Board members need broadly to have a shared vision when it comes to the future of an organisation and its strategies. If Board members have conflicting agendas related to the strategic direction, it will be hard for the Board to make decisions by consensus.

It is apparent from the information and comments provided to this review that the ILSC Directors do not share a common vision or a common view of the current strategic opportunities and risks facing the ILSC.

The setting of strategic direction has also been the subject of considerable conflict in the Board. Over the last twelve months the Chairperson has been working closely with a Strategic Reform Unit (SRU) headed by Mr Bator to develop new strategic directions and an associated business model. Directors advised the review that the SRU was tasked with developing a strategic Roadmap to transform the ILSC but Directors expressed concern about the Board's lack of involvement in this process. Directors claimed that, despite multiple requests from the Board, the SRU has not produced the Roadmap.

Dr Odegaard described the SRU as a 'closed shop' and said that she was advised by an executive that 'This SRU was created to keep Directors out'. She was concerned that the SRU was taking on the Board's role and expressed concerns about the composition and operations of the SRU. Ms Crossin was concerned that the SRU was being given an increasing scope and responsibilities. She said that 'the SRU's been established to circumvent the Board, that the Board's authority and vision has been

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totally disregarded'. Mr Roy Ah-See expressed concern that Mr Fry and the SRU seemed to be 'just out running their own race' without reporting back to the Board about their activities and without Board involvement. Mr Martin was concerned that at some stage the remit of the SRU was extended to include the reform of agribusiness that had previously been the remit of the subsidiary Primary Partners' Board, but that extended remit had not been agreed to by the ILSC Board and was contrary to previous Board decisions.

On the other hand, Mr Daniel Tucker did not express these concerns and said that he thought the Board were 'getting updates at the Board meeting of where the Strategic Review Unit was up to'.

In his letter to the Minister of 22 June 2020 Mr Fry described the SRU as 'an extraordinarily efficient virtual structure whereby work activities are undertaken as a cost centre. It is operating to undertake all manner of activities such as the restructure and efficiency review of the organisation groupwide in progression.'

In response to the concerns of other Directors, Mr Fry advised the review that the Board had participated in a workshop in July 2019 and had approved the budget and the timetable in December 2019. Consultants had presented to the Board in February 2020 and the Board had agreed on the direction to be followed by the SRU. Mr Fry advised that the SRU had been 'proceeding efficiently and their work will be presented to the Board meeting in August 2020 to be finalised in September 2020'. He advised that updates had been provided to the Board in the CEO report at every Board meeting. Mr Fry questioned the suggestion that it was a 'closed shop' noting that it was 'operational work in progress' and did not require micromanagement by the Board. He said that it was not taking on the Board's role but that 'a strategically commercially interrogative governance Board could contribute'.

Mr Fry said that his work with the SRU was in line with his role as Chairperson set out in the Board Charter to 'Maintain a strong working relationship with the (Group) CEO to facilitate implementation of Board Policies and decisions'.

This review is not evaluating the work of the SRU, but it is clear from the papers provided that the work is more than operational. The proposed outcomes could fundamentally change the structure and business model of the ILSC. In an organisation where trust is high and there is already a shared vision, it might be reasonable to delegate this important role to a team such as the SRU with the expectation that recommendations made by this team would be adopted. In the ILSC however, there is currently a lack of trust and there is a high risk that any recommendations made by the SRU will be viewed with suspicion by some Directors, especially if they consider that have not been adequately consulted and engaged in the development of these strategies.

Similar considerations apply to the identification of strategic opportunities and risks. Not all Directors seemed to agree with Mr Fry's assessment of business risk. Whereas Mr Fry explained that he was intent upon what he considered to be prudent financial management, particularly in respect of subsidiaries, other Board members did not seem to share his view and did not agree with, for example, the cutting of pilot programs or a need to limit expenditure on Directors' fees for subsidiaries. Mr Fry assessed that other Directors did not understand the economic climate that the Australian economy is in.

Mr Fry also advised the review about business opportunities with large corporations that he was following up. He advised that it was too early to engage other Directors and that he would involve the CEO if matters progressed. While Mr Fry indicated that this was the usual mode of operation in his experience in the private sector, it is questionable whether this will prove to be a productive approach with the ILSC Board.

## SENSITIVE: Personal

It is the Board, not the SRU or the Chairperson that must develop set the strategic direction. Unless the Board as a whole can engage with trust and reach some kind of consensus about the environment, business risks and opportunities, the Board will not be in a position to develop a coherent and robust strategic plan to guide the business in the future.

### Appointing the CEO

The position of ILSC CEO is currently vacant. It has been filled in an acting capacity since September 2019. At the Board meeting of 13 March 2020, the Board resolved to:

- Consider the proposals from identified executive recruitment firms to recruit for the ILSC CEO position and endorse a preferred recruitment firm.
- Determine the location or a range of locations for the CEO role.
- Determine the Selection Committee.
- Endorse the Chairperson and management engaging and negotiating terms with the preferred executive search firm.

The selection committee was to comprise the Chairperson, Deputy Chairperson and Dr Donna Odegaard.

Ms Crossin advised that:

*Since the 13 March, neither the Board nor the Selection Committee has been involved in any other aspect of this recruitment, despite the fact that as a Director I had asked for this to be on the agenda a number of times.*

Other Board members said that they would have expected to have received updates and have been consulted about the position documentation and have had further discussions about the location of the role. Ms Crossin wrote that her preference would be have these discussions in-camera as a Board to then provide our view and direction to the Executive. She was concerned about Mr Fry's insistence that the Executive be included on all discussions on the CEO recruitment.

Mr Martin described the CEO as the 'key connector in the organisation' and it was his view that the Board needed to be involved in the recruitment process. He said that the Board was not involved 'in any way, shape or form' and said that the Recruitment Committee that was set up never met. He was concerned that he found out that the recruitment was proceeding when the advert appeared in the press.

Ms Odegaard said that even though she is on the Selection Committee she had not seen any documentation or attended any meeting. She was concerned that they had now shortlisted six applicants and was concerned by Mr Fry's expressed view that they wanted 'people of pedigree'. Dr Odegaard said that she had not seen the shortlist.

Mr Fry responded that:

*The recruitment was ongoing work, I was in correspondence with the Minister to question his refusal to accept the Board decision of Oct 19 when the Board unanimously appointed Mr Leo Bator as GCEO to Nov 21. This is a Board decision and not a Ministerial decision as per our governing ACT. Until this was resolved there is nothing to discuss with the Board. If the Minister conceded, the Board decision stands and the work, cost and effort of recruiting a new CEO could be avoided. It is vital to maintain our governance according to the Acts. Our agenda is always full, and we have to defer items in constant reprioritizing. There is no discussion to be had with a Board on a unanimous decision.*

*...The CEO recruitment chronology that all Directors have outlines the events and push for the Minister to acknowledge the Board decision regarding Mr Leo Bator. In my respect for the Minister, I did not wish to reveal that he was making decisions in conflict with our governing Act.*

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Mr Fry also advised that that:

*The role of the Selection Committee is to review and interview the short-listed candidates. As of 30 July, we are awaiting this list of short-listed candidates for the Selection Committee to meet and set to work. It would be appreciated if Dir Odegaard and Ah See would respond to meeting requests and find the time to meet with the recruitment firm. I assume by her comments, Dir Odegaard is happy to recruit a CEO that is sub-standard. A Groupwide ILSC CEO that is going to preside over circa \$3bn of direct and indirect investment into assets under management needs to be someone with some skills. Yes, 'people of pedigree' in the business world and any other who can manage the transformation of the ILSC Group and the future success of the Indigenous Estate. Is this not the attributes a mature Board would want to see?*

While the administrative processes of the CEO recruitment are being progressed, a number of Board members have expressed a lack of trust and confidence in the process. While it will be hard to resolve this, the Board as a whole is responsible for the outcome. For the Board as a whole to have confidence in the process, all Directors need visibility of and some level of involvement in the process.

**Recommendation 5**

**The ILSC Board should progress the recruitment of the CEO as a matter of urgency. The recruitment should be a standing item on the ILSC Board's agenda until the process is complete.**

#### Approving and reviewing the ILSC's budget and performance measures

At the time of writing this report, in mid-August 2020, the Board had not yet approved the 2020-21 full budget. At the meeting on 25 June 2020 the Board approved an interim budget.

Mr Fry took leave of absence from that meeting but made the following comments in his statement to the review:

*'...the other Board members clearly did not understand the budget and still do not realize the pandemic situation and its impact on the ILSC Group. [Mr Fry] noted that from the discussion, it was apparent Board Directors are prepared to make trade-offs to pass the budget and insistent on keeping Yamanah and PP alive. He noted that decisions had been made about these entities, but that COVID-19 had changed the landscape. He questioned how refusing to revisit these matters merely because an earlier decision had been made, was this a strategic decision in this environment? Director Tucker advised he was against waiting until the August meeting and that these issues require decisions much earlier than August.*

Mr Fry also expressed concern about what he described as the 'waste of time and resources resulting in an interim budget has caused more delays and workload to the ILSC as well as these four Directors seeking to control the expenditure of the ILSC.'

It appears that the difference in views on the Board, particularly relating to the funding of subsidiaries, mean that a consensus decision on this by the full Board remains unlikely without considerable compromise which might not achieve the best outcome.

#### Determining policies

The Board is responsible for setting policies including the policy principles for establishing, directing and monitoring Board committees, ILSC subsidiaries and policy relating to workplace health and safety and staff terms and conditions. There are clearly differing views in the Board about priorities for determining policies which could detract for its ability to fulfil this function.

## SENSITIVE: Personal

The following examples were cited by Directors as examples of matters that they considered to be of strategic importance that were not being considered by the Board:

- updating the ILSC Board Charter
- a request to consider an additional Director for Primary Partners
- water policy and strategy
- an updated carbon policy
- an indigenous-made label policy.

Mr Fry responded that:

- He considered the review of the Board Charter to be an operational matter and that as it was still functional, and the revision was not currently an organisational priority. Mr Fry expressed concern that the amendment requested was to allow any Director to call a meeting.
- There was no need for an additional Director for Primary Partners.
- The Board had been advised that the executive had been working with the Federal Government on a water policy, but this had been delayed.
- In October 2019 the Board endorsed the ILSC to work with the SRU to assess and recommend the internal and external resourcing required to deliver on an updated carbon policy. Mr Fry said that directors did not seem to 'understand the complexities associated with this strategic initiative'.
- tentatively tested an indigenous-made label concept only to be faced with indignant Indigenous organizations claiming IP. Mr Fry said that the ILSC is better placed to fund Indigenous producers to develop their own brand for their products and marketing.

It is not appropriate for this review to categorise each of these matters as 'operational' or 'strategic' or to make any finding as to what priority should be given to any individual matter or how they should be progressed. It is relevant to note; however, that the number and range of the matters raised indicates frustration by a number of Directors, a lack of trust, and an inability to reach a consensus about how these perceived strategic matters should be progressed.

### Monitoring and reviewing performance

The Board is responsible for monitoring and reviewing the performance of the ILSC including the performance of subsidiaries against objectives, ensuring ILSC performance strives for continuous improvement, and reviewing of Board and Board committee performance.

It is difficult to contemplate how the Board will monitor and review the performance of the ILSC and subsidiaries against objectives without a common view of the strategic objectives.

The Board is also responsible for monitoring and reviewing its own performance. Clause 6.6 of the Charter requires that 'on an annual basis the performance of the LSC Board, its subsidiaries and ILSC committees will be formally reviewed through a self-assessment process. The assessment is to cover relevant administrative arrangements and performance against the agreed role of the Board'.

In early 2019 the ILSC Board engaged consultants Blackhall and Pearl to review the performance of the Board. The report was delivered on 17 April 2019 and made a number of recommendations. These recommendations had not been followed up by the Board. Mr Fry advised that at the April Board meeting the report had been the subject of a 45 minute in-camera discussion but that no follow up had been requested by Directors.

Two areas identified for development by the Blackhall and Pearl report are 'team participation' and 'trust and respect'. Key priorities were identified as:

- Broaden and deepen the Board's skills.
- Clarify and engage with strategy.

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- Optimise the governance design and focus areas.
- Develop the board's culture and dynamics.
- Enhance board effectiveness.

Recommended strategies were set out for each priority. While it is not within the scope of this review to assess whether each of these recommendations and strategies is still relevant, the strategies would seem to be addressing similar concerns to those expressed by Directors in this review. It would be useful for the Board to formally consider these strategies rather than conducting another review of performance at this stage.

**Recommendation 6**

**The ILSC Board should review the priorities and strategies identified by the Board review conducted in April 2019 and formally decide whether to accept the recommendations of that review. If the board does decide to accept recommendations it should also commit to an implementation timetable and allocate appropriate resources.**

In respect of individual Director assessment, the Guidelines state at clause 10.1 that:

*The ILC Board should from time to time assess the skills and competencies of its Directors and offer such training and courses as may be appropriate from time to time, at the cost of the ILC, to ensure all Directors can effectively perform their duties and obligations effectively as set out in the Code and the attached Protocol regarding Conflict of Interest. Directors are expected to undertake such courses and training.*

In the current environment of a low level of trust it is difficult to see how the ILSC Board can fulfil this function. It might be useful for the ILSC Board to consider engaging an independent external Board coach to observe Board meetings and provide confidential feedback and appraisal to individual Board members. It would be important that any person engaged for this purpose was acceptable to all Board members and that there was clarity and agreement about how any information about the skills and competencies about individual Directors would be used.

**Recommendation 7**

**The ILSC Board should consider engaging an independent external Board coach to observe Board meetings and provide confidential feedback and appraisal to individual Board members. Any person engaged for this purpose must be acceptable to all Board members and there should be clarity and agreement about how any information about the skills and competencies about individual Directors will be used.**

**Corporate governance: conclusions**

When asked about the current operation of the Board, Directors described it as 'dysfunctional'.

Mr Tucker said that there appeared to be a split in the Board. He said that it was 'not being really effective and we're not being really efficient in what we're doing because there's mistrust'. He also expressed concern that the Board should recognise that the world had changed and the ILSC had to change with it. He wanted the Board to 'stop spending on things we don't really need to spend money on' including pilot programs and Directors on subsidiary Boards'.

Mr Martin said that:

*... we are a dysfunctional Board in the sense that formal resolutions are made and then whether it's happening at the Chair level or the former Acting Group CEO level, changes are made either that those resolutions are interpreted differently and interpreted not in the intent that those resolutions were put forward by the full Board of the ILSC, or indeed, resolutions just aren't enacted upon. In some instances, the exact opposite occurs.*



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Ms Crossin also said that she believed there was a rift between the Board and some senior staff.

Dr Odegaard said that there was a division in the Board, and it was not able to function. She described the current situation as ‘untenable’.

Mr Fry responded that the current situation would not be untenable if ‘these four Directors could attend a meeting with a full understanding of the Board items, function as independent skilled professionals, challenge in a quiet ,respectful and considerate manner and understand the importance of financial matters that are to be addressed’. He said that ‘four Directors apparently controlling Board decisions by majority rather than competency is dysfunctional.’

It can be concluded that there is a high risk that the Board cannot currently fulfil the functions as set out in the ATSI Act and its Charter. Unless urgent action is taken this will also place at risk the proper and efficient performance of the functions of the ILSC as well as potentially its longer-term viability.

The current level of conflict in the Board also carries with it significant risks in terms of the morale, wellbeing and ultimately retention of ILSC management and staff.

### Nomination and appointment of Board members

The Minister for Indigenous Australians is responsible for appointing Directors following consultation with the Finance Minister. Appointments must also follow the process prescribed by of the Cabinet Handbook. The ATSI Act requires that the ILSC Chairperson and at least four other Directors must be Aboriginal persons or Torres Strait Islanders. The ATSI Act also specifies experience requirements for Directors. The usual period of appointment is up to four years but incumbent Directors are automatically reappointed pending the appointment of a replacement Director (s 191Y of the ASTSI Act). As at the date of this report there is one vacancy on the Board (Deputy Chairperson) and three Directors whose terms are complete but who remain Directors by operation of s 191Y. The ILSC Board had previously recommended reappointment of all of these Directors.

Attachment 3 to the Board Charter sets out the Board Appointment Process. It states that the Chairperson, after consideration with the Remuneration and Nominations Committee (RANC) and other Directors may advise the Minister of the Boards’ nominations for appointments. The RANC comprises the Chairperson and one other Director who is not appointed to a Board of an ILSC subsidiary – this currently excludes four Board members. This limitation, and the unavailability of one further ILSC Board member to serve on the RANC, means that the second position is not filled. In the current Board environment, the activities of the RANC will be necessarily curtailed.

The future of the ILSC will to a large extent depend upon the quality and performance of its Board. The skills and experience of individual Directors will be critical as well as their ability to contribute collaboratively in a Board environment. Further essential personal attributes are resilience and the ability to test the status quo.

In addition to the consideration of new candidates identified by the Board, and existing Directors seeking re-appointment, additional processes for identifying board candidates such as public advertising or the use of executive search processes independently of the ILSC Board should help ensure appointments are drawn from the best possible field of candidates.

#### **Recommendation 8**

**The Minister could consider using processes including public advertising or the use of executive search processes independently of the ILSC Board to help ensure appointments are drawn from the best possible field of candidates.**

## SENSITIVE: Personal

### Complaints about the conduct of the Chairperson

In letters to the Minister and in interviews conducted in the course of this review, some Directors raised a number of concerns relating to the conduct of the Chairperson, Mr Fry. A number of these concerns relate to the corporate governance arrangements of the ILSC Board and have been discussed in the previous section of this report.

This section looks at the personal conduct of Mr Fry, particularly as exhibited at the meeting of 7 May 2020, and whether his conduct is likely to have breached any of the standards set out in the ATSI Act, the PGPA Act or the ILSC Code of Conduct.

#### Details of the complaints and Mr Fry's response

In her letter to the Minister of 7 May 2020, Dr Odegaard complained that Mr Crossin was subjected to 'a lengthy excessive berating and bullying by Mr Fry for questioning and for not endorsing his recommendation'. She said that when Mr Martin questioned the paper Mr Fry became 'angry and unprofessional citing how bigger companies handle these matters' and was 'completely denigrating' towards him and ignored Mr Martin's attempts to 'bring calm and cultural respect to the discussion'. Dr Odegaard said that she had asked for it to be noted that she was not happy with the way that Mr Fry had berated other Directors.

In the course of the interview conducted for this review, Dr Odegaard commented that Mr Fry was acting in a 'dictatorial manner' not allowing Directors to express valid relevant views. She said that 'Not only was it against what I understand to be Directors' roles and responsibilities but also cultural protocols and ethics.' Dr Odegaard said that 'it was this constant berating, but it was belittling of members of the Board, that really I found quite disturbing simply because I'd seen this sort of increase, heighten over the period of particularly the last year.' She said that Mr Fry showed disrespect to Mr Martin, Ms Crossin and Mr Ah-See. She said that she personally felt very confronted and culturally unsafe because of the lack of respect. She also said that Mr Fry would say 'I demand that Directors do...' and 'I'm warning Directors who don't...'. Dr Odegaard said this was 'pretty much bullying us into agreeing to some motions that are being put through that are very suspect because that's just not the way we do things as Directors, not in my 35 years'.

In Mr Martin's letter to the Minister dated 11 May 2020, he wrote that he agreed with the everything in Dr Odegaard's letter. He said often the conduct of Mr Fry was unacceptable to a point where he had to voice his concerns during the meeting and request Mr Fry move on from aggressively badgering a fellow director on the way in which that director decided to vote on a matter. Mr Martin said that he suggested on two occasions that the executives should depart the meeting and it be held in-camera but that did not occur.

In Mr Ah-See's letter to the Minister of 13 May 2020, he wrote that Mr Fry 'aggressively opposes any directors who hold a different opinion to his own and, in my view, attempts to bully these directors into acting according to his wishes. He said that the role of chair should not be used to intimidate and make other feel less because they have a differing view. In his interview, Mr Ah-See said that Mr Fry raised his voice and berated Ms Crossin and Dr Odegaard.

Ms Crossin described Mr Fry's conduct as 'Yelling. Yelling, screaming, belligerent.' She said that Mr Fry 'got very, very angry, very angry and demanded that the Board endorse this paper at that meeting'.

These concerns about Mr Fry's conduct are not unanimous. Mr Tucker described the meeting as 'a really robust, heated, loud sort of meeting' and 'quite fiery' but he believed the Chairperson conducted himself 'appropriately in the context of these challenging times' and 'did a good job'. Mr Tucker said that people were trying talk over the Chairperson and he was trying to talk over them. He

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described the meeting as ‘unruly’. He said he would not describe the Chairperson’s conduct as ‘bullying’ and did not believe that he was ‘yelling’.

Dr Odegaard agreed that Mr Martin and Ms Crossin did use raised voices but said that was to try to get the Chairperson to allow them to speak.

On 8 May Mr Fry emailed all Directors. He wrote:

*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.*

*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;*

- *It is expected without exception that every member when commenting or discussing matters would do so in a considerate timely manner;*
- *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;*
- *It’s my role as chair to intervene to keep discussions on track and moving forward;*
- *It is expected without exception that we as a Board adhere to the Code of Conduct for all board meetings; and*
- *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.*

When advised about the complaints about his conduct, Mr Fry responded that it was ‘exceedingly difficult to progress the meetings with the frequent, loud, disrespectful outbursts by Dir Crossin’. He wrote that the Directors were constantly restating the same objections trying to persuade the entire Board. He alleged that Ms Crossin ‘does not allow fair time for each Director to speak and dramatically increases her volume and veracity and interrupts in an apparent attempt to sway Directors to her point of view at each meeting’.

Mr Fry also wrote that:

*I trust that four Directors are not confusing the necessity to change following Governance reviews, the structural and efficiency review, the need for continual improvement and the critical economic environment we are in, with disrespect.*

Mr Fry wrote that he had to repeatedly remind Directors to consider conflicts of interest and sound governance and economics. He did not agree that he bullied anyone in that he did not seek to harm or intimidate anyone either inside or outside of a board meeting. In his letter to the Minister of 22 June 2020 Mr Fry also outlined his concerns about the conduct of other Directors at the 7 May 2020 meeting. He described his own actions as ‘robust interjection in a firm, but respectful manner’.

Mr Fry also expressed particular concern about Dr Odegaard’s use of the words ‘culturally unsafe’. He said:

*Please explain what she means by culturally unsafe and what was said to make her feel this? Dir Odegaard was enabled to speak, express her views and supported other Dir points of view. I find this statement by Dir Odegaard to be insidious. The notion of ‘culturally unsafe’ derives from work related to medical patients and their treatment. As you would expect, I have sought female Indigenous opinions on this (without disclosure of this accusation). Needless to say, this accusation is baseless, and it*

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*misrepresents and greatly demeans those for whom this is intended to protect and have peace of mind at a time when they most need it. This is an appalling behaviour by Dir Odegaard that needs to be said for what it is.*

Dr Odegaard also raised a concern that Mr Fry had asked that those Directors who refused to endorse the paper be individually named, with their reasons, for the record. It is claimed that Directors complained at the meeting that this was not good governance. Mr Martin also said that this was not the usual practice, and, in his view, it could be a way of intimidating people into agreeing.

Mr Fry advised the review that in his view this is common Board practice and helpful as opposing Directors can be approached by Executives to discuss issues and work towards a better way forward in the effort to represent an amended item and that this had been done previously and recorded in the minutes.

### Analysis of the complaints

The meeting of 7 May 2020 was held by teleconference. All Directors agreed that the subject matter was controversial and that discussion was heated. Four Directors said that Mr Fry raised his voice and spoke in a disrespectful way. Even Mr Tucker, who said that Mr Fry did not act inappropriately, said the meeting was 'fiery' and that Mr Fry spoke over others. Mr Fry himself admitted to 'frustration'.

Mr Fry suggested that the review may also wish to consider the opinion of any of the executives, secretariat or invited guests to that meeting. He wrote that these individuals might dispute who raised their voice; however, even if these other individuals did support Mr Fry's assertion that other Directors also raised their voices, this would not detract from the weight of the evidence from the other Directors that supports the allegation that Mr Fry raised his voice at the meeting and spoke in a disrespectful way.

It was also suggested that Mr Fry's apparent insistence that dissenting Directors be named in the minutes amounted to bullying. Mr Fry responded that this was common practice and consistent with normal procedure.

The Australian Institute of Company Directors and Governance Institute of Australia *Joint statement on Board Minutes* (2019) states:

*While minutes can help to establish that directors turned their minds sufficiently to the matters under consideration, minutes record the resolutions of the board as a whole. The board acts as a collective, not as a group of individuals. For this reason, the details of any robust discussion that takes place along the way ideally should not be attributed in minutes.*

The ILSC Board Charter in *Attachment 5: Meeting guidelines* states that:

*It is expected that Directors who participate in a Board discussion (i.e. who have not absented themselves because of a potential or actual conflict of interest) will either vote for or oppose the proposal under discussion. A Director who decides to abstain should provide his or her reasons for doing so, and these should be included in the minutes.*

*... Minutes will contain the official resolutions adopted by Board members as a group. All decisions will be recorded in the minutes by means of a formal resolution. If a Director(s) dissents regarding a resolution, they may ask to have their dissent noted in the minutes and should not be prevented from doing so.*

The outcome for this agenda item was that it was resolved *not* to adopt the resolution as put. It would seem that this was agreed by the four Directors with Mr Fry, Mr Elu and Mr Tucker dissenting. In this case it could have been appropriate for the three dissenting Directors to have their dissent noted in

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the minutes if they so requested. It would not be common practice to name the majority Directors – particular in the absence of a request by them to do so.

Mr Fry's response that the naming of Directors was common practice does not seem to be supported by the ILSC Board Charter and there does not seem to be any other sound reason for it, particularly as the paper was to be redrafted in conjunction with Mr Seatree who was present for that agenda item and who would have been aware of their concerns. Mr Fry's proposal does seem to have heightened an already heated situation, and it might have been prudent for him to have not persisted with it.

Directors were also concerned about Mr Fry's seemingly directive language and whether it amounted to bullying conduct. When asked, Mr Fry said that he did not demand that Directors took certain actions but reminded them of the demands of the Indigenous Estate. He said he often uses the term 'demand book' of their clients. Mr Fry also said:

*I have used the word 'must'. I don't use the word 'must' as an instruction. I use this word to highlight that it's not about us as directors. We must consider; we must realise; we must work towards; we must watch our expenditure; we must think of the future.*

Mr Fry also said that he did not 'warn' Directors but he did remind Directors about the consequences for the organisation of certain actions. Mr Fry's explanation is plausible. While it could be questioned whether his communication style with fellow Directors is appropriate or productive, the evidence is not sufficient to support an allegation of bullying.

**Recommendation 9**

**The evidence considered by this review supports the allegation that, on the balance of probabilities, Mr Fry did raise his voice and speak in a disrespectful way to other Directors at the Board meeting on 7 May 2020.**

### Did the Chairperson's conduct breach relevant standards?

#### 'Misbehaviour' under the ATSI Act

Under s 192H of the ATSI Act the Minister may terminate the appointment of a Director for reasons including misbehaviour.

Guidance on the meaning of 'misbehaviour' is given by the judgment of the Full Court of the Federal Court in *Vanstone v Clark* [2005] FCAFC 189. In that case the Court held that it was necessary to consider whether misbehaviour affected the capacity of a person to hold the particular office.

The threshold for 'misbehaviour' is high. While the four Directors might have expressed serious concerns about Mr Fry's conduct, it cannot be concluded that his conduct would have affected his capacity to hold the office of Chairperson in the context of the ATSI Act.

The evidence does not support a finding on the balance of probabilities that Mr Fry's conduct amounted to misbehaviour under s 192H of the ATSI Act.

#### General duties of officials under the PGPA Act

The appointment of Directors may also be terminated under s 30 of the PGPA Act for contravening general duties of an official of a Commonwealth entity as set out in Division 3 of Part 2-2 of the PGPA Act. These duties include a duty of care and diligence; a duty to act honestly, in good faith and for a proper purpose; a duty in relation to use of position; and a duty to disclose interests.

The complaints about Mr Fry's conduct do not relate to his general duties as an official under the PGPA Act.

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The evidence does not support a finding on the balance of probabilities that Mr Fry's conduct amounted to a breach of the general duties of officials under the PGPA Act.

### The ILSC Board Code of Conduct

Attachment 6 of the ILC Charter sets out the Board of Directors Code of Conduct (the Code) which provides guidance to Directors to assist them in carrying out their duties and responsibilities, as well as defining the expected standards of ethical and professional conduct.

The following standard of the Code are relevant to the complaints about Mr Fry's conduct:

*5. Directors will strive to promote and uphold the ILC values attached to this Code of Conduct and acknowledge their responsibility to adopt, maintain and display those values in their everyday dealings.*

The ILSC values which are most relevant to this review are:

<b>Respect</b>	<i>We respect the diversity of ideas, backgrounds and cultures of Indigenous peoples, our staff and other stakeholders. We will provide a workplace that is free from discrimination, harassment and bullying.</i>
<b>Professionalism and Openness</b>	<i>We strive to be professional, responsive, impartial and honest in our dealings with staff and stakeholders. We take suggestions and complaints seriously and learn from them.</i>
<b>Collaboration</b>	<i>We will establish relations that value communication, consultation, cooperation and input from employees on matters that affect their workplace. We are committed to working in collaboration with Indigenous groups and other stakeholders.</i>

Mr Fry's conduct would appear to be in conflict with the values of respect, professionalism and openness, and collaboration.

Based on the information provided to this review, it would be open to a decision-maker to conclude, on the balance of probabilities, that Mr Fry's conduct has breached the ILSC's Code of Conduct. It is not, however, within the power of this review to make such a finding. That is a decision for the ILSC Board.

Clause 11 of the ILSC Charter's *Guideline for the Interpretation of the Principles of the Code of Conduct* sets out a process to be followed when the Board becomes aware that there may have been a breach of the Code of Conduct:

*11.1 The Code of Conduct is the Board's expression of what it considers to be appropriate conduct of its members, is not a legally binding document but it reflects many of the broad requirements of Board Directors outlined in the ATSI Act and the PGPA Act and PGPA Rules. Any breach of the Code of Conduct does not necessarily constitute a breach of the PGPA Act or PGPA Rules or misbehaviour under the ATSI Act.*

*11.2 Where it is consistent with the responsibility of the Board under s 191W of the ATSI Act to ensure the proper and efficient performance of the ILC's functions (as set out in s 191 C of the ATSI Act), the Board can make resolutions concerning the conduct of a member of the Board and in particular can make resolutions as to whether or not a Director of the Board has engaged in any conduct which is in breach of the ILC Board of Directors Code of Conduct.*

*11.3 Where it comes to the Board's attention that there may have been a breach of the Code of Conduct by a Director, it should establish to the best of its ability the facts of the matter and it should provide the*

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*affected Director with a reasonable opportunity to comment and should give genuine consideration to any comments made by the Director. Depending on the circumstance, it might be reasonable for a Director to be given written notice, an opportunity to obtain their own independent legal advice and to provide a written response before any final deliberations and resolution of the Board. Having provided comment to the Board, the affected Director should not then be part of the Board's consideration of proposed action.*

*11.4 If the Board finds that a Director has engaged in any conduct which is not consistent with or is in breach of the Code of Conduct, it is open to, depending on the nature and seriousness of the breach:*

- (a) Censure a Director on the basis of a breach of the Code of Conduct and seek assurances that no such breach will occur into the future*
- (b) Refer the matter to the department of the Minister and the Minister for consideration of whether the matter amounts to misbehaviour for the purposes of s192H(1) of the ATSI Act*
- (c) Refer the matter to the Department of Finance and the Minister for consideration as to whether the behaviour was in breach of Director's duties under the PGPA Act or PGPA Rules*
- (d) Refer the matter to the Australian Federal Police for any issues of possible breaches of the criminal law.*

*11.5 It should be noted that where there are issues of misbehaviour, the Board can raise these issues with the department of the Minister. However, in accordance with Finance Circular 2011/06,<sup>2</sup> the ILC should seek to resolve matters internally in the first instance. Where the Board has unsuccessfully sought to resolve matters internally in the first instance, the Board could where it considers it appropriate, refer the matters to the department for its consideration. The ILC should generally consult with the department about any referral.*

These procedures have not been followed precisely in the handling of this complaint. Dr Odegaard raised the complaint with the Minister in the first instance and sought guidance. The Board did agree to the appointment of an independent reviewer to investigate the complaint.

It would now seem appropriate for the Board to consider whether to apply the procedure set out in clauses 11.3 and 11.4 of the *Guideline for the Interpretation of the Principles of the Code of Conduct* using this report as a basis on which to make findings of fact. According to these guidelines, Mr Fry should be given written notice, an opportunity to obtain his own independent legal advice and to provide a written response before any final deliberations and resolution of the Board.

**Recommendation 10**

**The ILSC Board should consider whether to apply the procedure set out in clause 11.3 and 11.4 of the *Guideline for the Interpretation of the Principles of the Code of Conduct* using this report as a basis on which to make findings of fact. According to these guidelines, Mr Fry should be given written notice, an opportunity to obtain his own independent legal advice and to provide a written response before any final deliberations and resolution of the Board.**

<sup>2</sup> Finance circular 2011/06 is no longer current.

**SENSITIVE: Personal****List of attachments**

**Attachment A:** Letter from the Minister for Indigenous Australians, to Directors of the ILSC Board as the accountable authority, requesting information, 12 June 2020

**Attachment B:** One of the letters from the Minister for Indigenous Australians, to individual Directors of the ILSC Board, requesting details of concerns, 12 June 2020





## MINISTER FOR INDIGENOUS AUSTRALIANS

### Briefing on ILSC Reacquisitions

As requested at your meeting with Eddie Fry and myself on 28 November 2019, I would like to provide these details of the ILSC reacquisition activities.

The reacquisition of a property is undertaken to prevent the loss of properties from the Indigenous Estate, ensuring that land remains in Indigenous ownership for the ongoing access, enjoyment and benefit (social, cultural, economic and environmental) of Indigenous Australians.

Using its rights under a *Deed of Grant of land*<sup>1</sup>, properties are reacquired by the ILSC under specific circumstances. Key reasons include:

1. The landowner's constitution does not continue to demonstrate Indigenous ownership and control (and as such the property is not owned by Indigenous people for the enjoyment and benefit of Indigenous people)
2. The Indigenous landowner becomes insolvent
3. The property is no longer used for the purpose it was granted for or continuing to generate Indigenous benefits
4. The Indigenous landowner is not compliant with its regulatory body

As set out below the ILSC has reacquired 17 properties since its inception in 1995, due to the failings of some 13 Indigenous landowners. These failings were largely due to the group being placed into liquidation or being de-registered.

The ILSC's reacquisition has seen the securing of \$29m in Indigenous assets, at a reacquisition investment of \$1.99m.

The ILSC's total investment of \$20m (below) has seen \$29m in assets, covering 60,645 ha added to and retained in the Indigenous Estate.

\$15.532m initial acquisition investments

\$2.521 invested in the development of properties prior to divestment

\$1.992m invested to reacquire the properties

Of the four properties re-acquired by the ILSC and re-granted, none have required any further intervention by the ILSC.

Therefore no property has been re-acquired twice by the ILSC.

Full details of the 17 properties reacquired is provided in Attachment A, including the name of the Indigenous landowner and reason for reacquisition.

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<sup>1</sup> The ILSC executes Deed of Grant of Land contracts with recipients of ILSC-granted land.

**Table 1: Analysis of ILSC's Reacquisition**

<b>17 (6.6%)</b>	Properties have been reacquired by the ILSC (covering 60,645 hectares)
<b>10</b>	Reacquired properties are currently held by the ILSC, with: 3 managed by the ILSC <sup>2</sup> 7 leased to an Indigenous group (being the future landowner)
<b>3</b>	Reacquired properties sold by the ILSC
<b>4</b>	Reacquired properties re-granted

**Table 2: Analysis of Indigenous Landowners**

<b>13</b>	Indigenous landowners whose failings resulted in 17 properties requiring protection from being lost from the Indigenous Estate
<b>9</b>	Indigenous landowners liquidated
<b>1</b>	Indigenous landowners under Special Administration
<b>6</b>	Indigenous landowners de-registered
<b>1</b>	Indigenous landowners falling into financial difficulty

**Table 3: Return on Investment Analysis of ILSC's Reacquisition**

<b>\$29.27m</b>	Value of 17 properties reacquired by the ILSC
<b>\$117k</b>	Average reacquisition cost per property
<b>\$10.48m</b>	Valuation increase from time of divestment to time of reacquisition across 17 properties
<b>\$1.99m</b>	Invested by the ILSC to reacquire 17 properties
<b>\$26.52m</b>	Net return to the Indigenous Estate (reacquisition value of properties less reacquisition investment only)
<b>\$20.04m</b>	Total ILSC investment in these 17 properties (acquisition, capex, reacquisition)
<b>\$9.65m</b>	Net return to the ILSC (reacquisition value of properties less <u>total</u> ILSC investment)



Leo Bator


A/ ILSC Group CEO


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<sup>2</sup> Mogila, Currawillinghi and Eurool

ILSC Reacquisitions 1995-2019

State	Property	Size (Hectares)	Title Holding Body	Acquisition Cost	Capital Improvement Costs	Value at Divestment/Sale	Re-Acquisition Cost	Re-Acquisition Value	Sale Price - ILSC	Total ILSC Investment	Net Return to ILSC	Net Return to Indigenous Estate	Reason for Re-Acquisition
<b>Reacquired - ILSC Held</b>													
NT	1. Dick Ward Drive	0.37	Larrakia Nation Aboriginal Corporation	\$700,000	\$326,000	\$1,175,000	\$845,000	\$2,600,000		\$1,871,000	\$729,000	\$1,755,000	Placed in special administration and unable to pay its debts.
WA	2. Gibbagunya	631.41	Nyunbuk Moorit Booja Aboriginal Corporation (NMBAC).	\$1,350,000	\$102,728	\$1,450,000	\$88,000	\$2,100,000		\$1,540,728	\$559,272	\$2,012,000	Non-compliance with ORIC and issued an audit compliance notice then placed in liquidation.
WA	3. Kalamunda Road	0.25	Burnna Yurrul Aboriginal Corporation (BYAC)	\$1,740,000	\$44,538	\$1,600,000	\$0	\$1,600,000		\$1,784,538	-\$184,538	\$1,600,000	BYAC's operating arm, BYAC Contracting Pty Ltd, was placed in liquidation and wound up. Subsequently BYAC itself was found to be insolvent.
NSW	4. Weilmoringle and Orana	16,851.00	Weilmoringle Land Holding Company	\$1,210,000	\$796,992	\$2,100,000	\$63,289	\$2,300,000		\$2,070,281	\$229,719	\$2,236,711	Placed into liquidation due to non-payment of rates and tax.
QLD	5. Mindanao	1,379.80	Palmtree Wutaru Aboriginal Corporation for Land & Culture	\$950,000	\$429,031	\$825,000	\$183,100	\$2,280,000		\$1,562,131	\$717,869	\$2,096,900	Deregistered by ORIC, which subsequently agreed to return the properties to the ILSC.
QLD	6. Somerset	1,307.00		\$760,000	\$0	\$950,000	\$0	\$1,400,000		\$760,000	\$640,000	\$1,400,000	
QLD	7. Tiamby	1,721.95		\$1,050,000	\$0	\$1,000,000	\$0	\$2,075,000		\$1,050,000	\$1,025,000	\$2,075,000	
QLD	8. Currawillinghi	6,635.07	Nguraampa Ltd	\$642,170	\$0	\$642,170	\$0	\$1,748,000		\$642,170	\$1,105,830	\$1,748,000	Placed into liquidation due to non-payment of rates and tax.
NSW	9. Mogila	26,760.00		\$3,050,000	\$0	\$3,050,000	\$539,581	\$7,452,000		\$3,589,581	\$3,862,419	\$6,912,419	
NSW	10. Eurool	4,518.00	Eurool Traditional Owners Aboriginal Corporation	\$637,500	\$303,590	\$1,850,000	\$115,030	\$2,050,000		\$1,056,120	\$993,880	\$1,934,970	Placed into liquidation due to non-payment of (ILSC-grant) monies owed to a contractor.
<b>Reacquired and re-granted</b>													
QLD	11. 69 Haggup St	0.10	Goori Original Ltd	\$450,000	\$111,698	\$555,000	\$1,713	\$625,000		\$563,411	\$61,589	\$623,287	Placed into liquidation due to fraudulent use of grant funds. The property has since been granted to Cooee Indigenous Family and Community Resource Centre.
QLD	12. Diamond Valley	144.16	Gubbi Gubbi Dyungungoo Group Incorporated (GGDG)	\$660,000	\$0	\$660,000	\$0	\$620,000		\$660,000	-\$40,000	\$620,000	Deregistered by ORIC due to failure to lodge annual returns and financial statements. Following its re-registration, the ILSC re-granted to GGDG.
NSW	13. Wattleridge	630.69	Banbai Land Enterprises Ltd	\$565,000	\$47,004	\$890,000	\$0	\$890,000		\$612,004	\$277,996	\$890,000	Voluntarily de-registered (to enable incorporation with the Office of Fair Trading rather than ASIC). Title of the property defaulted to ASIC upon de-registration because title had not been transferred to another entity. The ILSC re-acquired title from ASIC re-granted to Banbai Land Enterprises Inc.
WA	14. Doriemus House	0.05	Nooda Ngulegoo Aboriginal Corporation (NNAC)	\$470,000	\$74,092	\$755,000	\$26,174	\$650,000		\$570,266	\$79,734	\$623,826	Requested ORIC appoint a special administrator to assist with corporate governance issues, and then formally placed into liquidation. The property was then granted to Bega Garnbirringu in 2016.

 Held by the ILSC and leased to an Indigenous group (future landowner) as part of a divestment strategy.

 Held by the ILSC and managed by the ILSC. ILSC to determine future landowner to engaged in as part of a divestment strategy.

State	Property	Size (Hectares)	Title Holding Body	Acquisition Cost	Capital Improvement Costs	Value at Divestment/Sale	Re-Acquisition Cost	Re-Acquisition Value	Sale Price - ILSC	Total ILSC Investment	Net Return to ILSC	Net Return to Indigenous Estate	Reason for Re-Acquisition
<b>Reacquired and sold</b>													
QLD	15. 71 Haggup St	0.08	Goori Original Ltd	\$514,000	\$11,616	\$500,000	\$0	\$320,000	\$380,000	\$525,616	-\$145,616	\$0	See comments above related to 69 Haggup St. This property was surplus to the needs of Cooee and sold.
WA	16. Dunkerton Rd	52.00	Nannagup Aboriginal Corporation (NAC)	\$250,000	\$0	\$255,000	\$834	\$185,000	\$550,000	\$250,834	\$299,166	\$0	In November 2009 the Office of the Registrar of Indigenous Corporations (ORIC) a deregistered NAC on 11 November 2009 and subsequently the ILSC took the property back. In 2013 the Board approved the sale of the land to the Western Australian Planning Commission noting that due to planning and conservation requirements the land could only be used for a reserve. It also required the South West Land and Council be involved in the future management of the land.
VIC	17. Tol Tol Rd	13.00	Bampi Mi Aboriginal Corporation	\$533,800	\$274,481	\$533,800	\$130,000	\$375,000	\$380,000	\$938,281	-\$558,281	\$0	Reacquired due to THB in financial difficulty.
	<b>TOTALS</b>	<b>60,644.94</b>		<b>\$15,532,470</b>	<b>\$2,521,770</b>	<b>\$18,790,970</b>	<b>\$1,992,721</b>	<b>\$29,270,000</b>	<b>\$1,310,000</b>	<b>\$20,046,961</b>	<b>\$9,653,039</b>	<b>\$26,528,113</b>	

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

Reference: MC20-003612

Ms Tricia Stroud  
Acting Chief Executive Officer  
Indigenous Land and Sea Corporation  
GPO Box 652  
ADELAIDE SA 5001

BY EMAIL: [tricia.stroud@ilsc.gov.au](mailto:tricia.stroud@ilsc.gov.au)

  
Dear Ms Stroud

Thank you for your correspondence of 25 June 2020 regarding significant decisions made at the Indigenous Land and Sea Corporation (ILSC) extraordinary board meeting on 25 June 2020.

In relation to the board resolution about the appointment of an external investigator, my intention is to appoint Dr Vivienne Thom AM to investigate the various governance issues at the ILSC as indicated in my two letters of 12 June 2020.

Vivienne Thom is an independent consultant who conducts inquiries and reviews and provides advice about governance and integrity matters. Dr Thom has held a number of high profile senior roles in the public service and has valuable experience in public sector governance issues.

A copy of Dr Thom's profile is **enclosed** for your information.

The proposed terms of reference will be forwarded to you when finalised.

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If you have any questions or comments 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](mailto:brendan.jacomb@niaa.gov.au).

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

1 / 7 / 2020

Encl (1) Dr Vivienne Thom's profile

cc:

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



### **Dr Vivienne Thom AM – Principal Reviewer, Canberra**

Vivienne Thom is a consultant in the field of public administration with a focus on integrity and governance. She specialises in highly sensitive and complex inquiries into code of conduct matters concerning senior executives including agency heads.

In her public service career, Vivienne conducted a number of formal inquiries and complex reviews directed at identifying improvements to be made within organisations. In June 2016 she was appointed as a Member of the Order of Australia for significant service to public administration through a range of senior roles, and as a mentor to women in executive positions.

In July 2015 Vivienne completed a five-year term as the Inspector-General of Intelligence and Security—an independent statutory officer agency head position in the Prime Minister’s portfolio responsible for the oversight of Australia’s intelligence agencies. Prior to this, she was Deputy Commonwealth Ombudsman with responsibility for the oversight of law enforcement, immigration, taxation and defence agencies. She was the Chief Executive Officer of the Royal Australian Mint from 2002 to 2006.

Vivienne’s academic background is in chemistry. After post-doctoral research and teaching, she joined the Australian Public Service in 1987 as a patent examiner. She qualified as a patent attorney and in 1999 was appointed as Commissioner of Patents. Vivienne also has a qualification in government investigations.

As a former agency head Vivienne has first-hand experience of a wide range of public sector governance issues. She has chaired agency audit committees and has been an independent member on a range of other governance boards and committees. She is a Fellow of the Australian Institute of Company Directors and has been an ACT Division Councillor since 2009.

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and Related Strategic Advice to the Public Sector and Other Organisations



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26 August 2019

The Hon. Ken Wyatt AM, MP  
Minister for Indigenous Australians  
Parliament House  
Canberra ACT 2600

Dear Minister Wyatt

**Re: Indigenous Land and Sea Corporation & Gunbalanya Meats**

I refer to the email correspondence dated 12 August 2019 from the Gunbalanya Meats Supply Pty Ltd (GMS) Chair, Mr Henry Yates to the ILSC Group CEO Mr John Maher, which was copied to yourself.

On behalf of the ILSC Board, I am disappointed to hear that the GMS Board is dissatisfied with the level of communication from the ILSC in the matter of the appointment of a new manager of Gunbalanya Meats. The ILSC has certainly not intended for this to be the case and it is my understanding that the ILSC Executive Director Agribusiness, Mr Craig North discussed the merits of the preferred candidate with Mr Yates.

Please see attached to this letter a briefing to highlight the background and timeline of the recruitment process. I have also included a copy of the letter of response from Mr John Maher to Mr Yates.

Moving forward, the ILSC feels confident that the new Manager Mr Paul Strong will improve the business performance at the meatworks and ensure there is a renewed focus on safety and achieving training outcomes for the local community.

I hope you find this helpful. If you have any further questions please do not hesitate to contact ILSC Group CEO Mr John Maher via email: [john.maher@ilsc.gov.au](mailto:john.maher@ilsc.gov.au) or mobile: [REDACTED]

Yours sincerely,

Eddie Fry  
ILSC Chair

Attachment A: Briefing paper  
Attachment B: Letter ILSC Group CEO to Mr Yates





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19 August 2020

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

Email [minister.wyatt@ia.pm.gov.au](mailto:minister.wyatt@ia.pm.gov.au)

Dear Minister Wyatt

**Re: ILSC Board meeting 19 August 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 a significant decision taken at the ILSC Board meeting held today.

Considering the serious nature of the matter, I note the need to provide this to you as a matter of urgency.

ILSC Board Meeting number 259 was held today via skype and telephone facilities, with all six Directors in attendance. Please see attached the Agenda.

Following the scheduled in camera session, the following motion was proposed and voted on:

1. To reaffirm the motion of no confidence in the ILSC Chair previously passed at Board Meeting 256, and that this be conveyed again to the Minister (for Indigenous Australians) by close of business today. The motion was carried by 4 votes to 2.

Following this motion, three Directors left the meeting resulting in a lack of a quorum.

As such the meeting ended at 9.05am (ACST) and no resolutions were made concerning any Agenda items.

Yours faithfully

Tricia Stroud

Acting ILSC Group CEO

**CC:**

Chair Eddie Fry  
Director Roy Ah-See  
Director Patricia Crossin

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

Board-in-Confidence

## ILSC BOARD MEETING No 259

Wednesday, 19 August 2020 commencing at 08:30 am (AEST)

To be held by Microsoft Teams

### Board Members:

Edward Fry (Chair)  
 Patricia Crossin  
 Bruce Martin  
 Donna Odegaard, AM  
 Roy Ah-See  
 Daniel Tucker, AM

### AGENDA

<i>Time</i>			<i>Discussion Leader</i>
8:30 am	<b>1.</b>	<b>IN CAMERA SESSION</b>	Chair
8:40 am	<b>2.</b>	<b>STANDING AGENDA ITEMS</b>	
		<b>2.1 Apologies/Approved Leave of Absence</b>	Chair
		<b>2.2 Declarations of Conflict of Interests</b>	Chair
		<b>2.3 Minutes of Previous Meetings</b>	Chair
	*	2.3.1 Meeting No. 256 of 17 June 2020	
	*	2.3.2 Meeting No. 257 of 25 June 2020	
	*	2.3.3 Meeting No. 258 of 15 July 2020	
		<b>2.4 Actions Arising Status Report</b>	Chair
		<b>2.5 Chair's Report</b>	Chair
		<b>2.6 A/GCEO's Report</b>	A/GCEO
9.05 am		<i>10 minute break</i>	
	<b>3.</b>	<b>FINANCE, RISK AND COMPLIANCE</b>	
9.15 am	*	<b>3.1 ILSC Group Budget</b>	GCFO
11.15 am	*	<b>3.2 Land Restoration Fund (Qld) - Funding Agreement</b>	A/GCEO
	<b>4.</b>	<b>STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS</b>	
11.30 am	*	<b>4.1 ILSC Corporate Plan</b>	A/GCEO
		4.1.1 Att A – Corporate Plan Proof	
12.00 pm	*	<b>4.2 PBS Targets and Performance Framework</b>	A/GCEO
12.20 pm		<i>20 minute break</i>	
	<b>5.</b>	<b>GOVERNANCE AND ADMINISTRATION</b>	
12.40 pm		<b>5.1 Funds – Legal Advice - Subject to Legal Professional Privilege (to be presented <i>In Camera</i>)</b>	GGC
		<b>5.2 2021 Proposed ILSC Board Meeting Dates and ILSC Board Work Plan</b>	GGC
		5.2.1 Att A - 2021 Proposed ILSC Board Work Plan	
	*	<b>5.3 Senate Order Entity Contracts 2019-20 Financial Year</b>	GGC
		5.3.1 Att A - Senate Order Listing Entity Contracts 2019-2020 FY	
		<b>5.4 Audit and Risk Committee</b>	Chair, ARC
	*	5.4.1 ILSC Enterprise Risk Management Statement	

Time		Discussion Leader
	* 5.4.2 Report from ARC August 2020 5.4.2.1 ARC Minutes of Meeting No. 96 - 29 July 2020 5.4.2.2 ANAO Performance Statement Audits 5.4.2.3 ARC - Voyages Internal Audit Plan 5.4.2.4 ARC – ILSC – Deloitte Internal Audit Plan	
1.30 pm	<b>6. EXTRAORDINARY STRATEGIC DECISIONS</b> <b>6.1 Strategic Reform Unit</b> * 6.1.1 <b>Att A – Strategic Reform Unit</b> 6.1.1.1 App A - ILSC Transformation BluePrint 6.1.1.2 App B - ILSC SRU Transformation Project Update (1) 6.1.1.3 App C - ILSC Efficiency & Effectiveness Review 6.1.1.4 App D - ILSC Future-state Organisation Design Validation 6.1.1.5 App E - ILSC Future State Cost-Benefit analysis & ER implications 6.1.1.6 App F - ILSC Transformation & Implementation Roadmap 6.1.1.7 App G - Second Memorandum of Advice CCK 6.1.1.8 App H - Initial E.A Legal Memo of Advice (EMA Legal) 6.1.1.9 App H2 Major Change and Consultation Process Guide 6.1.2 <b>Att B - Strategic Reform Unit Budget</b>	A/GCEO
3.30 pm	<i>10 minute break</i>	
N/A	<b>7. MANDATE AND INVESTMENTS</b> <b>7.1 Land Acquisitions - Nil</b> <b>7.2 Land Management Investments - Nil</b> <b>7.3 Divestments - Nil</b>	N/A
3.40 pm	<b>8. SUBSIDIARY UPDATES</b> <b>8.1 Yamanah Investments Pty Ltd (verbal)</b> <b>8.2 Primary Partners Pty Ltd (verbal)</b>	Dir Martin Dir Martin
4.00 pm	<b>9. OTHER BUSINESS</b>	Chair
	<b>10. IN CAMERA (IF REQUIRED)</b>	Chair
	<b>11. SUPPLEMENTARY READING</b> <b>11.1 ILSC Subsidiaries Management Reports</b> 11.1.1 Voyages Indigenous Tourism Australia Pty Ltd 11.1.2 National Centre of Indigenous Excellence Ltd 11.1.3 Primary Partners Pty Ltd 11.1.4 Yamanah Investments Pty Ltd <b>11.2 Reports for Information</b> 11.2.1 Power of Attorney Register 11.2.2 Common Seal Register 11.2.3 Media Clips	
	<b>12. NEXT MEETING – WEDNESDAY, 9 SEPTEMBER, 2020</b>	Chair

**\* Decision required**

**A/GCEO** – Acting Group Chief Executive Officer (Tricia Stroud)

**GCFO** - Group Chief Financial Officer (David Silcock)

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

**GGC** - Group General Counsel (Trevor Edmond)

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

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](mailto:minister.wyatt@ia.pm.gov.au)

Dear Minister Wyatt

### **ILSC DIRECTORSHIP**

I write to you noting my tenure as a Director of the Indigenous Land and Sea Corporation expired on 14 June 2020 and that I have not heard anything further, assume I have been reappointed under s192Y of the Aboriginal and Torres Strait Islander Act pending and further decision.

However, considering the recent events at the ILSC and my having served on Boards dealing with Indigenous matters from over 25 years, I write to tender my resignation as an ILSC Director in accordance with s192G of the Aboriginal and Torres Strait Islander Act effective from the date of this letter.

I note the ILSC was established to administer the funds provided following the Mabo decision and I see that as a legacy to all Australian Indigenous persons given by those of the Torres Strait.

Yours Faithfully



Dr. Joseph Elu AO



Australian Government  
Indigenous Land and Sea Corporation



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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](mailto: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 decisions taken at the ILSC Board meeting held today.

Considering the serious nature of the matter I note the need to provide this to you as a matter of urgency.

ILSC Board Meeting number 256 was held today via skype and telephone facilities, with all seven Directors in attendance. Please see attached the Agenda.

Following Agenda item 1.4 (Actions Arising), a number of motions were proposed and discussed:

1. A motion of no confidence in the ILSC Chairman. This motion was carried by 4 Directors and opposed by 3.
2. A motion of: (i) no confidence in the Acting ILSC Group CEO; (ii) that the Acting ILSC Group CEO be stood down; (ii) that the Deputy CEO be appointed Acting GCEO; and (iii) that the process of appointing the ILSC GCEO be actioned. This motion was carried by 4 Directors and opposed by 3.

The ILSC Board directed that you be advised by COB today of these matters.

Following these motions, four Directors left the meeting resulting in a lack of a quorum. As such the meeting ended and no resolutions were made concerning the remainder of the Agenda items.

While the first motion will be a matter for yourself, I can advise that the second motion has resulted in Mr Bator, by mutual agreement, reverting to his role heading up the Structural Reform Unit, charged with developing (for the Board's future consideration) future ILSC modelling and structures.

The ILSC Chair will write to you separately with regard to your endorsement of the Acting ILSC Group arrangements pending finalisation of a recruitment process.

Yours faithfully



Tricia Stroud  
Acting ILSC Group CEO



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>
	<b>1. STANDING AGENDA ITEMS</b>	
	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
	<b>2. GOVERNANCE AND ADMINISTRATION</b>	
	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	
	<b>3. FINANCE, RISK AND COMPLIANCE</b>	
*	3.1 COVID-19 Budget Response 2020/2021 Financial Year Budget	GCFO
	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	GCFO
	<b>4. MANDATE AND INVESTMENTS</b>	
	4.1 Land Acquisitions	
*	4.1.1 Baldivis Farm Property Acquisition	DCEO
	4.2 Land Management Investments – No report	
	4.3 Divestments – No report	

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**5. OTHER BUSINESS**

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**6. IN CAMERA SESSION**

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**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

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

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**\* 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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6 August 2020

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

Dear Minister Wyatt

**Re: ILSC Significant Decision**

On behalf of the Indigenous Land and Sea Corporation (ILSC) and in accordance with section 19 of the *Public Governance, Performance and Accountability Act 2014*, I am writing to inform you of a significant decision recently taken at the ILSC.

As you may be aware, in or about 2016, the ILSC took back ownership of two previously divested properties; Mogila Station (**Mogila**) in New South Wales and Currawillinghi Station (**Currawillinghi**) in Queensland following the liquidation of the Aboriginal and Torres Strait Islander Corporation originally granted both properties.

At the time, the ILSC provided the liquidator with funds to meet the liquidator's expenses and to meet the outstanding rates on both properties. However, what was not guaranteed by the liquidator nor sought by the ILSC was vacant possession. This was due to the ongoing usage of the properties by Indigenous person associated with the properties and the desire of the ILSC to negotiate with the broader Indigenous community with connection to both as to how best to divest and deal with usage.

For some time, the ILSC has been attempting to negotiate with the former principle of the Aboriginal Corporation and occupier of the properties, Mr Michael Anderson, to have he and his family vacate the properties. These discussions have however not led to any agreement.

Following discussions with other Indigenous persons and communities associated with the properties, the ILSC has taken the decision that it needs to formally obtain vacant possession and has engaged Mr Anderson, through external lawyers, to do so. Mr Anderson has been advised that the ILSC requires possession but will assist he and his family relocating off the properties. The ILSC has also asked for details of any other occupier known to Mr Anderson. The ILSC has also made it clear that it will seek removal through the Courts if needs be.

Considering Mr Anderson's prior actions, I write as he may seek to engage with your office, NIAA or the broader community concerning our requirement.

The ILSC fully understands the seriousness of the steps it is taking and of the possible optics of removal of an Indigenous individual from land they have a connection with. However, it must be noted there are considerably more members of that Indigenous community who have been excluded that ability as a result of Mr Anderson's activities, and the ILSC is committed to ensuring both Mogila and Currawillinghi are made available to the community as a whole.

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**Office of the Chief Executive Officer**  
Level 7, 70 Franklin Street, Adelaide, SA, 5000  
GPO Box 652, Adelaide, SA, 5001  
**Telephone** 08 8100 7100 | **ABN** 59 912 679 254

[www.ilsc.gov.au](http://www.ilsc.gov.au)

Throughout the process the ILSC has engaged fully with the Traditional Owners, some of whom were the original proponents to the ILSC's acquisition of these properties. The ILSC is firm in its view that it would be inappropriate, for it to allow former Directors of a liquidated corporation to continue the occupation, benefit and enjoyment of properties, which the ILSC has had to, at significant cost, prevent from being lost from the Indigenous Estate.

The ILSC remains committed to protecting these two properties and working with Traditional Owners on a divestment strategy.

The ILSC will, of course, keep your office and NIAA apprised of future developments.

Yours faithfully



Tricia Stroud

Acting ILSC Group CEO



Australian Government  
Indigenous Land and Sea Corporation



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25 June 2020

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

Email [minister.wyatt@ia.pm.gov.au](mailto:minister.wyatt@ia.pm.gov.au)

Dear Minister Wyatt

**Re: ILSC Board Matters**

I write in reference to correspondence from yourself on 12 June 2020 (Ref: MS20-00371), and 18 June 2020 (Ref:MDB20-000180) and to inform you of the significant decisions at today's Indigenous Land and Sea Corporation (ILSC) Board meeting. This is provided in accordance with section 19 of the *Public Governance, Performance and Accountability Act 2013*.

The ILSC Board held an extraordinary meeting today to attend to several matters in your correspondences, as well as agenda items deferred from its meeting of 17 June 2020. An Agenda is provided at attachment A.

Following this Extraordinary ILSC Board meeting, I have been instructed to write on behalf of the Board and advise you of the outcomes. In doing so, I can advise that all Directors were in attendance, with the exception of Chair Eddie Fry who took a leave of absence. Deputy Chair Joseph Elu chaired the Meeting.

I can advise that the ILSC Board:

1. Resolved to request that as the Minister for Indigenous Australians, you nominate and appoint an external investigator, of your selection, to look into matters referred to in your letter of 12 June.
2. Approved the ILSC entering into a funding agreement with NIAA pertaining to the *ILSC Subsidiaries COVID-19 Support Package*. The Board also resolved to formalise the ILSC Board's gratitude for your efforts on this front and will do so immediately. This contract has now been executed by both parties.
3. Received an update on the current Group CEO recruitment process, noting that applications have now closed. A Selection Committee of ILSC Directors will now meet with the External Recruiter as soon as possible to continue the process. To note the Group General Counsel and Executive Director of People and Culture were the only ILSC staff in attendance for this discussion.
4. Approved an interim 2020/21 Budget which was based on a commitment to ensure business continuity for clients, while exercising a prudent approach to spend. A revised 2020/21 Budget will be brought back to the ILSC August meeting for consideration. This will include detailed budget modelling ensuring that the ILSC achieves a responsible cash reserve and cashflow buffer until the end of June 2021. This allows the ILSC to ensure continuity of budget while giving further attention to post COVID-19 budget considerations.

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**Office of the Chief Executive Officer**  
Level 7, 70 Franklin Street, Adelaide, SA, 5000  
GPO Box 652, Adelaide, SA, 5001  
**Telephone** 08 8100 7100 | **ABN** 59 912 679 254

[www.ilsc.gov.au](http://www.ilsc.gov.au)

5. Received in its pack an update from its subsidiary Voyages with regard to its: recent appointment of a new CEO; recent restructure; and COVID Reactivation Plan. The ILSC Board did not consider a capital expenditure request from Voyages but provided direction that ILSC management seek further information from Voyages on this request to inform a future Board decision.
6. Approved Subsidiary End of Financial Year Letters of Comfort.
7. Received a report from the ILSC Audit and Risk Committee but did not make any formal resolutions.
8. Noted the ILSC's recent approval of the acquisition of Baldives Farm on behalf of the South West Land and Sea Council (SWALSC) and approved a 10-year lease of Baldives to Abundance Fresh Farms Pty Ltd (of which SWALSC will hold an equity in).

In addition to providing advice on these outcomes, the ILSC Board instructed that I seek clarification on your intention when requesting that the ILSC Chair temporarily step aside.

The Board respectfully seeks from you, clarification on whether this temporary standing aside was only for the meeting held today; or whether it was while the investigation be undertaken.

It is hoped that outcomes of this meeting both addresses your correspondence of 18 June; and provides assurances that matters not dealt with at last week's meeting have now been considered.

Please do not hesitate to advise if further information is required.

Yours faithfully



Tricia Stroud

Acting ILSC Group CEO

**CC:**

Chair Eddie Fry

Deputy Chair Joseph Elu, AO

Director Roy Ah-See

Director Patricia Crossin

Director Bruce Martin

Director Dr Donna Odegaard, AM

Director Daniel Tucker, AM

Board-in-Confidence

**ILSC BOARD MEETING No 257****Thursday 25 June 2020****Commencing 9.00am AEST****Teams and Teleconference details in invite****Board Members:**

Mr Edward Fry (Chair) – Leave of Absence

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>
	<b>1.</b>	<b>STANDING AGENDA ITEMS</b>	
9.00am	<b>1.1</b>	<b>Apologies/Approved Leave of Absence</b>	Deputy Chair
9.05am	<b>1.2</b>	<b>Declaration of Conflicts of Interest</b>	Deputy Chair
9.10am	<b>1.3</b>	<b>Actions Arising</b>	Deputy Chair
	<b>2.</b>	<b>GOVERNANCE AND ADMINISTRATION</b>	
9.15am	*	<b>2.1 External Investigation</b>	Deputy Chair
9.30am	*	<b>2.2 Key Communications – Draft Holding Statements</b>	A/GCEO
9.45am	*	<b>2.3 Group CEO Recruitment Process</b>	A/ED People & Culture
10.15am	*	<b>2.4 Appointment of Ms T Stroud, Director, Voyages and NCIE</b>	Deputy Chair
		2.4.1 Att A Appointment of Ms T Stroud, Director, Voyages & NCIE	
10.20am	*	<b>2.5 Remuneration of A/GCEO, Ms T Stroud</b>	Deputy Chair
		2.5.1 Att A Remuneration of A/GCEO Ms T Stroud	
10:25am		<b>2.6 Director D Tucker – Resignation from Voyages Board</b>	A/GCEO
		2.6.1 Att A Dir Tucker Letter - Resignation from Voyages Board	
10.30am		<b>10 minute break</b>	
	<b>3.</b>	<b>FINANCE, RISK AND COMPLIANCE</b>	
10.40am	*	<b>3.1 COVID-19 ILSC Subsidiary Support Package</b>	A/GCEO
		3.1.1 Att A COVID-19 ILSC Subsidiary Support Package	
10.50am	*	<b>3.2 2020/2021 Financial Year Budget Preparation</b>	GCFO
		3.2.1 Att A 20/21 Financial Year Budget	
11.30am	*	<b>3.3 Subsidiary End of Financial Year Letters of Comfort</b>	GCFO
		3.3.1 Att A Subsidiary End of Financial Year Letters of Comfort	
11.40am		<b>3.4 Report from Audit and Risk Committee</b>	Chair, ARC

<i>Time</i>		<i>Discussion Leader</i>
12.10pm	<b>10 minute break</b>	
	<b>4. SUBSIDIARIES</b>	
12.20pm	<b>4.1 Voyages CEO, Restructure and COVID-19 Recovery Update</b>	A/GCEO
	4.1.1 Att A Voyages PowerPoint Update	
	4.1.2 Att B Voyages Update - Capital Expenditure Request	
	<b>5. MANDATE INVESTMENT</b>	
12.45pm	<b>* 5.1 Baldivis Farm Property Lease</b>	A/GCEO
	5.1.1 Att A Baldivis Farm Acquisition	
1.00pm	<b>6. OTHER BUSINESS AND MEETING CLOSE – Confirmation of Next Meeting</b>	Deputy Chair

**\* Decision required**

**Chair** – Chair, ILSC (Edward Fry)

**A/GCEO** – Acting Group Chief Executive Officer (Tricia Stroud)

**GGC** - Group General Counsel (Trevor Edmond)

**GCIO** - Group Chief Information Officer (Tim Price)

**Deputy Chair** – Deputy Chair, ILSC (Joseph Elu)

**GCFO** - Group Chief Financial Officer (David Silcock)

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

**RANC** – Deputy Chair, Remuneration and Nomination Committee (Joseph Elu)

The Hon. Ken Wyatt  
Minister for Indigenous Australians  
Canberra, ACT

17 June 2020

Dear Minister Wyatt

I write to you inform you, that as a Director of the Indigenous Land and Sea Corporation (ILSC), an ILSC Board Meeting No.256 was held this morning and two Motions were presented and voted by the full board, including the Chairperson, that resulted in the following:

1. Vote of No Confidence in the ILSC Chairperson Eddie Fry in his role of the Chairperson of the ILSC, and secondly
2. Vote of No Confidence in the ILSC Acting Group CEO, Leo Bator in his role as the ILSC Acting Group CEO

As a Director, within my capacity as a director of a board under Directors Responsibilities governing the ILSC, I put forward a Motion of 'Vote of No Confidence' in the Chairperson.

Director Bruce Martin within his capacity as a director of a board under Director's Responsibilities governing the ILSC put forward a Motion of 'Vote of No Confidence' in the ILSC Acting Group CEO, Leo Bator as the ILSC Group CEO.

All board Directors including the Chairperson were given the opportunity to speak for both the Motions and against both the Motions.

All Directors, including the Chairperson were invited to vote and cast their votes on both Motions.

A count was taken of the votes of both Motions and resulted in the same count:

1. Four Votes for Motion 1. and Three Votes against Motion 1.
2. Four Votes for Motion 2. and Three Votes against Motion 2.

The board requested the Motions and Results be factually minuted and that you, as the Minister for Indigenous Australians and the Indigenous Land and Sea Corporation, be notified by close of business today.

The actions that led to this situation are a culmination of the Chairperson's failure for over twelve months and across the broader ILSC to provide leadership, not respecting

the Board of Directors, not providing reports and updates to the board and instead working with the Strategic Reform Unit and Executives on Board Director decisions, controlling and interfering with the operations and work of the subsidiaries, suspending funding to subsidiaries without reason, discussion or consultation of the ILSC board and subsidiary boards making them unable to perform effectively and efficiently, attempting to shut down the subsidiaries without Board Director discussion and consultation and input, failing to list relevant agenda items requested by Directors for details and process of the Recruitment of a Full Time Group CEO, continually refusing to respect Board Directions request for in-camera session at the commencement of Board Meetings, continually asserting the Chair controls the Board and dismissing Directors requests for greater clarity, due diligence on matters of significance to the ILSC and good governance, disrespecting the office of the Minister for Indigenous Australians, NIAA, suggesting they have no money and ILSC will get it elsewhere.

Minister there are many other instances that I will forward to you in a letter of response in relation to the conduct of the Chairperson, Eddie Fry and the ILSC Acting Group CEO, Leo Bator.

The Motion of No Confidence in the Acting Group CEO, Leo Bator is based on the relationship with the Chairperson and significant actions that he has taken as a result of that relationship and that are in direct breach and disregard of Board Director's directions. This will be detailed in a further letter to you Minister.

In closing, I wish to express my deep regret that I, along with other Board Directors have been placed in this situation and in what has been both personally difficult and harrowing. My trust and loyalty to the Chairperson has been broken by his actions and my hopes for the ILSC and delivering greater benefits for our people compromised if this conduct continues.

This has taken a toll on me in terms of sense of well-being, to be placed in what I see as an escalation of the Chairperson's failure to be a leader of the ILSC and for all Aboriginal and Torres Strait Islander Australians. I am available anytime on [REDACTED] or email [ceo@aboriginalbroadcasting.org](mailto:ceo@aboriginalbroadcasting.org) if you require further information or disclosure.

Your sincerely



Dr Donna Odegaard AM

17/06/2020

Director, Indigenous Land and Sea Corporation



**OFFICIAL: Sensitive Personal privacy**



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

Reference: MS20-000371

Dr Donna Odegaard AM  
 Director  
 Indigenous Land and Sea Corporation  
 GPO Box 652  
 ADELAIDE SA 5001

Dear Dr Odegaard

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.

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 also note that I have sent similar letters to all the members of the Board and have informed the Chairperson of my correspondence.

Parliament House CANBERRA ACT 2600

**OFFICIAL: Sensitive Personal privacy**

Should you wish to discuss this letter, please contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152-3555.

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

12 / 6 / 2020

**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.

Parliament House CANBERRA ACT 2600

**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

## ABORIGINAL BROADCASTING AUSTRALIA

The Hon. Ken Wyatt AM MP  
Minister for Indigenous Australians  
Canberra, ACT

7 May 2020

Dear Minister Wyatt,

It is with regret that I write to you to formally complain about the unacceptable conduct of the Chairperson of the Indigenous Land and Sea Corporation, Mr Eddie Fry, towards ILSC board members. As a director of the board, I am personally and professionally affected by this situation and feel responsible to bring this to your immediate attention.

I raise this as a recurring behaviour that was brought to a head at today's ILSC Board meeting 254, held by teleconference and, as a result of Mr Fry loudly, verbally berating certain board members, shaming board members, and warning directors we are 'treading on fine ground' by refusing to endorse Agenda item 3. 'The Groupwide Core Governance and Operating Principles'.

I do not accept this is proper governance, rather a breach of the chairperson's position, role and responsibilities. I am concerned of the detrimental effect this is having on me and other director's ability to meet our director's roles and responsibilities under a bullying and threatening chairperson.

In particular, I raise the concerning facts of agenda items as follows, as I recall today.

Firstly, Agenda Item 1. 'In Camera Session' was removed by the chairperson immediately at commencement of the meeting and without prior warning to directors. This greatly concerned me as it denied directors the opportunity to raise matters of relevance in confidence to the Chairperson, without executives present.

Secondly, at Item 3. 'The Groupwide Core Governance and Operating Principles', this was unquestionably endorsed by Directors Joseph Elu and Daniel Tucker.

However, when it came to Director Trish Crossin questioning parts of the paper, she was immediately subjected to a lengthy excessive berating and bullying by Mr Fry for questioning and for not endorsing the recommendation.

Next, Director Bruce Martin questioned the paper and Mr Fry became angry and unprofessional citing how bigger companies handle these matters and this is not how business is done. The Chairperson was completely denigrating towards him and ignored Director Martin's attempt to bring calm and cultural respect to the discussion.

When asked to comment next, I gave a succinct, short response in the following; 'Chairman, I wish to have this on the record; I have listened to you and I've heard each of the directors responses and I am not happy with the way that you berated Director Trish Crossin and Director Bruce Martin for not endorsing the paper. I have concerns over all the matters raised, and I do not endorse the Groupwide Core Governance and Operating Principles until all directors are satisfied with the paper. This is my final comment and I want it recorded as such'. Mr Fry accepted my comment without challenge.

However, Mr Fry continued to be hostile towards all directors who refused to endorse the paper and asked it be noted that those directors who refused to endorse the paper be individually named along with their reasons, for the record.

It was shocking that we were shamed this way, particularly since this was not an in camera discussion and executives were present the entire time of the discussion including, Mark Seatree (standing in for ILSC CEO Leo Bator), Trevor Edmunds (Senior Legal Counsel), Maria Sorti and others. Mr Fry aggressively and continually berated directors who did not endorse the paper.

Director Roy AhSee was the last director asked to comment on Item 3. Director AhSee immediately pointed out to the chairperson that this (citing of directors for not endorsing a paper) is not good governance - that no board that he ever sat on did that. Mr Fry continued his bullying and tried to sway Director AhSee after he refused to endorse the recommendation.

The meeting closed with Mr Fry clearly angry at directors. I was left completely shocked and concerned about ILSC and the chairperson's treatment of directors in not respecting, valuing or supporting directors. This has escalated to the point where I feel I have no alternative but to turn to you Minister for guidance in this

Finally, out of concern for director's wellbeing, I individually contacted them and expressed my views and informed them I would make this formal complaint. Although I have their full support, I suggested they individually reach out to you with their version of the situation. I feel we directors have been placed in an untenable position under duress with a hostile chairperson. I am available at any time should you wish to speak to me.

Your sincerely,



Dr Donna Odegaard AM

**OFFICIAL: Sensitive Personal privacy**



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

Reference: MS20-000371

Mr Daniel Tucker AM  
 Director  
 Indigenous Land and Sea Corporation  
 GPO Box 652  
 ADELAIDE SA 5001

Dear Mr Tucker

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.

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 also note that I have sent similar letters to all the members of the Board and have informed the Chairperson of my correspondence.

**OFFICIAL: Sensitive Personal privacy**

Should you wish to discuss this letter, please contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152-3555.

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

12/6 / 2020



**OFFICIAL: Sensitive Personal privacy**



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

Reference: MS20-000371

Mr Roy Ah-See  
Director  
Indigenous Land and Sea Corporation  
GPO Box 652  
ADELAIDE SA 5001

Dear Mr Ah-See

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.

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- 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 also note that I have sent similar letters to all the members of the Board and have informed the Chairperson of my correspondence.

**OFFICIAL: Sensitive Personal privacy**

Should you wish to discuss this letter, please contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152-3555.

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

12 / 6 / 2020

Dear Minister Wyatt,

I am emailing you in relation to some urgent matters relating to my role as a Director of ILSC. I am aware that other directors have also reached out to you with their concerns, which I share. As you are aware, I have had a great deal of experience on boards and was initially extremely excited to use my experience to help the ILSC work towards helping our mob.

However, since joining the ILSC Board I have experienced some serious governance problems which have increased more recently. The Chair aggressively opposes any director who holds a different opinion to his own and, in my view, attempts to bully these directors into acting according to his wishes. I feel that this is poor governance and simply unacceptable. Upon my appointment I formed the view that I was one amongst equals, however the role of chair may have slightly different functions this does not give individuals the right to use the chairs position to intimidate or make others feel less than because we have a differing view. In fact its counter productive and at the end of day extremely poor governance.

There are also some major issues in how the Executive is allowed to interact with the board. An example of this is the Social Impact Measurement Initiative ILSC is launching through the National Centre of Indigenous Excellence (a subsidiary of ILSC on which I also have a board role). The ILSC board made the decision to allocate \$1.5m to build a social impact measurement team which could report back on the positive social outcomes achieved by ILSC investments and help guide future investments to achieve maximum impact. I was recently informed that the Interim CEO, Leo Bator, told NCIE that they could no longer deliver the project and were to return the funds to ILSC. The Interim CEO did not inform the ILSC board let alone seek our approval. Putting aside the fact that this is a non-Indigenous person deciding that they know what's best for our people by overruling a majority-Indigenous board, the fact that a CEO is acting against the direction of a board is extremely poor governance. This is just one example of poor governance and ILSC executives overreaching in the last few months.

Another matter which is of grave concern is the recruitment for a new GCEO. I'm not happy with the process and we have raised this with the Chair and have on several occasions asked for it to be placed on the agenda for discussion, It needs to be advertised asap, it has to be a transparent merit based process that can deliver a capable Indigenous person to take on the role. Unlike the Chair I do believe we have competent, capable skilled Aboriginal people who can easily fulfill the role of GCEO.

I was originally hesitant to raise these issues with you as I know you are extremely busy in these uncertain times. I hope that we can work together to find an agreeable outcome for all involved and go back to working on how best we can help our mob succeed.

Regards,

Roy Ah-See

**Daniel Tucker AM**  
312 Victoria Rd,  
Malaga, WA 6090

17 June 2020

**The Hon Ken Wyatt AM MP**  
Minister for Indigenous Australians  
Parliament House  
Canberra, ACT 2600

Dear Minister

**Re: ILSC Board Meeting 254**

This letter is in response to your email and attached letter correspondence dated 12 June 2020, in relation to the ILSC board meeting 254 which was held on the 7th of May 2020. I am saddened to hear that some of my fellow directors, whom I have the upmost respect have raised some concerns relating to the conduct of our Chairman at that meeting.

As a member of the ILSC board, I strongly believe that our actions should reflect the highest level of leadership that is expected of us, to deliver sustainable outcomes for all Aboriginal and Torres Strait Islanders from the vast Indigenous estate, under the stewardship of ILSC.

The disruption caused by the corona pandemic has been unprecedented requiring equally unprecedented responses from the Commonwealth Government and Private Sector. These responses have helped to mitigate negative impacts on the nation and position businesses for survival and continuation into the future. The weeks leading up to our May board meeting were very challenging, particularly for Aboriginal and Torres Strait Islander communities and businesses. In respect to the ILSC, there has never been a more important time to uphold disciplined governance in its conduct and prudence in the allocation and deployment of all ILSC resources.

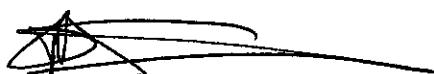
In light of the above context, the focus and tone of discussions at ILSC board meeting 254 were robust around certain agenda items, particularly the discussion and adoption of proposed governance principles, which I voted in favour of. I believe that our Chairman conducted himself appropriately in the context of these challenging times.

Notwithstanding the above, the professional conduct expected of all board members should embrace a respectful, cohesive and constructive framework that allows the board to navigate complex discussion around sensitive matters whilst enabling informed resolutions and decision making on key matters.

Importantly, these board decisions and resultant actions affect the delivery of economic, social, cultural and environmental benefits derived from the ILSC managed Indigenous estate and if not executed properly, may place the ILSC at more risk than necessary.

In closing, I appreciate the Ministerial intervention and I am available to clarify my position above, if required as part of the process.

Yours Sincerely



Daniel Tucker AM  
Board Member  
Indigenous Land and Sea Corporation

**From:** [Trish Crossin](#)  
**To:** [Barry Petty \(ILSC\)](#)  
**Subject:** FOI request 1 of 5  
**Date:** Tuesday, 24 November 2020 11:13:59 AM  
**Attachments:** [MS20-000371 Patricia Crossin.pdf](#)  
[MS20-000371 ILSC Board.pdf](#)

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*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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**From:** Minister Wyatt <Minister.Wyatt@ia.pm.gov.au>  
**Sent:** Friday, June 12, 2020 3:48 PM  
**To:** 'trish@crossinnovate.com.au' <trish@crossinnovate.com.au>  
**Subject:** PERSONAL - to be opened by addressee Ms Patricia Crossin only  
[SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

OFFICIAL:Sensitive  
Personal privacy

Good afternoon

Please see attached letter from Minister Wyatt.

Kind regards

Office of the Hon Ken Wyatt AM, MP  
Minister for Indigenous Australians  
02 6277 7780 | Parliament House CANBERRA ACT 2600

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**IMPORTANT:** This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

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**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 Personal privacy**



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

Reference: MS20-000371

Ms Patricia Crossin  
Director  
Indigenous Land and Sea Corporation  
GPO Box 652  
ADELAIDE SA 5001

Dear Ms Crossin

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.

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 also note that I have sent similar letters to all the members of the Board and have informed the Chairperson of my correspondence.

Parliament House CANBERRA ACT 2600

**OFFICIAL: Sensitive Personal privacy**



Should you wish to discuss this letter, please contact Brendan Jacomb, Chief Lawyer of the National Indigenous Australians Agency, on (02) 6152-3555.

Yours sincerely



The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

12 / 6 / 2020

**From:** [Trish Crossin](#)  
**To:** [Barry Petty \(ILSC\)](#)  
**Subject:** FOI request 2 of 5  
**Date:** Tuesday, 24 November 2020 11:20:42 AM  
**Attachments:** [ILSC Board Meeting No. 256 - Part 1 of 2.pdf](#)

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*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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**From:** Trish <[trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)>  
**Sent:** Wednesday, June 17, 2020 2:20 PM  
**To:** 'Minister Wyatt' <[Minister.Wyatt@ia.pm.gov.au](mailto:Minister.Wyatt@ia.pm.gov.au)>  
**Cc:** 'mike.fordham@network.pmc.gov.au' <[mike.fordham@network.pmc.gov.au](mailto:mike.fordham@network.pmc.gov.au)>  
**Subject:** Outcome of ILSC Board meeting today (17th June 2020)

Dear Minister

As a Board Director on the ILSC, I am notifying you of two resolutions that were carried at the ILSC Board meeting this morning.

I understand that the Group General Counsel or Group CEO will be formally conveying this advice to you but I felt it necessary to ensure that you were made aware of these decisions as soon as possible.

The Board requested that notice be formally sent to you by close of business today.

The Board of the ILSC (4 votes to 3 votes) carried a resolution stating there was no confidence in the Chair given his failure over many months in a number of areas:

- Lack of leadership in implementing the Corporate Plan as provided to you last year,
- Failing to provide regular reports and updates on the outcomes of the Strategic Forum in February that go to the work of the Structural Reform Unit
- Seeking to control the work of the two subsidiaries by requesting that they not meet and that all expenditure be suspended until the Group ILSC budget is endorsed without consultation or providing adequate reasons for this position
- Continually refusing to list items on the agenda that have been requested by Board members
- Failing to, and deliberately working with the Group CEO, to ignore the recommendations of two subsidiaries thereby ensuring that work is not progressed
- And failing to list on the agenda, today the two items of correspondence

received in the last week from the Minister

- And failure to list on the agenda, today, again, the approval of position description and selection criteria and process for the appointment of the CEO of the ILSC, despite this matter being raised in correspondence by yourself, as Minister on two occasions.

These are just a few examples that were cited during the meeting.

There was also a resolution regarding the lack of confidence in the work and performance of the Group CEO, relating to the outcomes, recommendations and work of the Board and subsidiaries.

I have attached for your information a copy of the agenda for today's Board meeting.

You will notice that there is a proposal under Agenda item 2 to replace the ILSC Directors on two subsidiaries with staff of the ILSC. Further there is a proposal under agenda item 3 to suspend all the work of the subsidiary Yamanah Investments. Both of these proposals are contrary to the Corporate Plan, have been proposed without discussion in a broad sense of the best structural and operational design of the ILSC moving forward,

It is this failure to consult, failure to operate within the broader context, lack of interest in the views of all Board members, lack of evidence that this is the best option for the operation, failure to consider alternative options or put forward suggestions to improve the current arrangements and productivity of these subsidiaries and the ILSC in general that need to be considered.

The majority of the Board Directors have asked that further Board meetings not occur until there is some direction and clarification from your office About how to deal with this situation.

I will provide further comments, examples and information in response to my letter of 12 June 2020 from you.

Many thanks  
Kind Regards

*Trish Crossin*

M: [REDACTED]

E: [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

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>
	<b>1. STANDING AGENDA ITEMS</b>	
	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
	<b>2. GOVERNANCE AND ADMINISTRATION</b>	
	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	
	<b>3. FINANCE, RISK AND COMPLIANCE</b>	
*	3.1 COVID-19 Budget Response 2020/2021 Financial Year Budget	GCFO
	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	GCFO
	<b>4. MANDATE AND INVESTMENTS</b>	
	4.1 Land Acquisitions	
*	4.1.1 Baldivis Farm Property Acquisition	DCEO
	4.2 Land Management Investments – No report	
	4.3 Divestments – No report	

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**5. OTHER BUSINESS**

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**6. IN CAMERA SESSION**

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**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](#)

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

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**\* 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)

**From:** [Trish Crossin](#)  
**To:** [Barry Petty \(ILSC\)](#)  
**Subject:** FOI request 3 of 5  
**Date:** Tuesday, 24 November 2020 11:19:50 AM  
**Attachments:** [Min Wyatt response to 000371.docx](#)

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*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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**From:** Trish Crossin <[trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)>  
**Sent:** Wednesday, July 1, 2020 4:07 PM  
**To:** 'Minister Wyatt' <[Minister.Wyatt@ia.pm.gov.au](mailto:Minister.Wyatt@ia.pm.gov.au)>  
**Subject:** response to letter ref: MS20-000371

Dear Minister Wyatt

Please find attached a letter in response to your correspondence reference MB20-000371.

I will also respond to your second letter reference MS20-000371 within the next week

Kind regards

*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

Reference: MS20-000371

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

**Email: [minister.wyatt@ia.pm.gov.au](mailto:minister.wyatt@ia.pm.gov.au)**

Dear Minister Wyatt,

**RE: Response to correspondence reference MS 20-000371**

Thank you for your correspondence dated 12 June addressed to the Indigenous Land and Sea Corporation Board.

This is my response to the items that you sought to be provided with and I have also taken the opportunity to talk to Brendan Jacomb as per your invitation in that letter.

1. I understand that you have received from Mr Eddie Fry a copy of the minutes, agendas, and agenda papers of the Board meetings from 1 April 2020. These meetings have been held on 2 April Meeting No 251, 9 April No 252, 23 April No 253, 7 May No 254, 27 May No 255 and one scheduled for 17 June No 256 (this has now also occurred).

2. As per the requirements of the PGPA Act and in accordance with the Charter of the ILSC Board, Directors are required to complete the conflict of interests register on being appointed and/or whenever their own situation varies. Also before each meeting Directors are required to specify, upon receipt of the draft agenda, if there is a matter that is due for discussion that will prove a conflict of interest for them

As per the Charter and in line with good governance the handling of this declaration of any conflict of interest is in the hands of the Board to determine. This has occurred from time to time, for example, when appointing Directors to subsidiary bodies of the ILSC.

I have read the response to your letter from Chair Mr Eddie Fry and believe that the current and unfortunate debate arises around the appointment of Directors to ILSC Subsidiaries and then the consequences of those appointments when considering matters of substance at ILSC Board meetings.

During my four years on the ILSC, this has never been raised as an issue as it has been seen that your appointment to the ILSC Subsidiary was to represent the ILSC Board and maintain an alignment between the strategy of the ILSC with its subsidiaries.

A briefing paper titled "ILC Board October 2015 Induction Briefing- Subsidiary board membership and terms' was provided to myself on joining the ILSC Board. This paper has never been varied or updated during the last four years and is the terms and conditions under which ILSC Directors have been appointed and discharge their duties on subsidiaries.

It outlines an overview of the then (2015) subsidiary board membership and their terms, background and subsidiary Director remuneration.

It states to promote good corporate governance and the alignment of ILC and subsidiary interests, two ILC Directors have been appointed to each subsidiary board and the chair of each subsidiary is an ILC Director.

It further goes on to state that when the Directors term ends then automatically their term on the subsidiary board ends. That appointing Directors to subsidiaries consideration should be given to their skills set and that RANC would consider these subsidiary board appointments for the ILC Board to consider.

It states that in late 2014 the Board engaged AON Hewitt to undertake a review of subsidiary director remuneration and on 17 December 2014 Meeting No 398, the Board accepted a range of market based rates. There is also a lengthy paragraph that outlines how the Directors at that time would transition from the rate they received to this new market rate.

It says:

*It was also decided that dual ILC and Voyages Directors would now be remunerated at the market rate for their Voyages services, in recognition of additional workload.*

*This decision took into account advice from the Australian Government Solicitor that the Remuneration Tribunal Act would not prevent a subsidiary office holder being remunerated for that office in addition to the remuneration they receive as a Director of the ILC.*

*The decision also provided that, where the chair of a subsidiary is also an ILC Director, the subsidiary chair will receive 150 per cent of the member fee, rather than 2000 percent market rate. This place stronger emphasis on the community service nature of the role.*

Over the last four year, during my time on the ILSC Board, this has been the brief that has guided the interaction between ILSC Directors and subsidiaries.

There has only been one change to this and that was following the end of the Directorship of Ms Alison Page on the ILSC and the Board wanted to have her continue as the Chair of NICE and subsequently following a major review of Voyages, the ILSC Board determined to appoint a chair that had specific broad industry skills relating to tourism and hospitality.

Apart from the change relating to the Chair of subsidiaries, the practise has always continued that two ILSC Directors would be appointed to each subsidiary.

Since 17 June I have asked the Group Legal Counsel at ILSC to research this history and board recommendation at that time. His response follows:

*I see that attachment C (from AGS) specifically addresses the issue of the specific question posed; "Can the ILC pay director fees and related reimbursements to an ILC director who also sits on an ILC subsidiary board consistently with s7(11) of the RT Act" ( RT being a reference to the Remuneration Tribunal Act). The advice concludes there is nothing under*



*that Act that prevents the payment to “part-time” directors of subsidiaries merely because they are also part-time directors of the ILSC. The advice however does not deal with any issues of conflict.*

*Attachment B (from consulting firm AON Hewitt) is the advice as to reasonable fees that should be paid to non-executive directors of the various subsidiaries. Understandably, noting this is not legal advice, it provides no legal position.*

*Attachment A (from King and Wood Mallesons) however, I note expressly relates to the possible conflict issues that arose from the proposed resolution, the payment (and in fact back payment) of directors fees for subsidiary directors, where a number of those directors are also on the ILC Board.*

*I have also spent some time seeking out any resolution in line with the comments concerning “good corporate governance and the alignment of ILC and subsidiary interests”, but to date have not found any specific resolution or papers. I will continue to look.*

During my time on the ILSC Board approval of budgets, annual reports, financial audited statements, letters of comfort, authorisation and backing for loan approval from banks and the federal government plus substantial payments to subsidiaries to compensate for their lack of self-generating income has never been raised as a matter of conflict of interest, as the Board has been operating in accordance with this Brief/document and decision of 17/12/2014.

On 7 May, with less than 48 hours notice, the Board was provided with a paper ILSC Groupwide Core Governance Principles. You will find this paper attached to meeting No 254. It is poorly written and constructed, mixes governance and strategic principles/objectives and required further discussion and redrafting. It was suggested that this be accepted as a draft, further work occur and the paper brought back to the next Board meeting. This proposal was not allowed by the Chair and there was no tolerance for discussion of the paper.

It was at this point that the Chair questioned the ‘conflict of interest’ of four of the seven Directors by virtue of their appointment on subsidiaries because one of the Principles proposed that there should be no ILSC Directors on subsidiaries, other than in an observing capacity.

On 17 June, a further issue relating to the appointment of ILSC Directors was raised when the Chair produced a draft budget that went to freezing the funds of one subsidiary and putting on hold any further work of another until the end of the year.

I believe that this has been a tactic to totally restructure the ILSC without the input, discussion, or consideration of the view of all of the Directors. It has been sought to implement this through imposing ‘principles of operation and governance, structuring the budget and finances so that they do not align with the current strategy and totally by pass the view of Directors.

While it is timely to reconsider the interaction between the appointment of Directors from the ILSC Board to subsidiaries, this can be done within a complete and comprehensive discussion of any possible restructure of the ILSC, including a review of the strategy and corporate plan.

This is a matter that should and can involve a reasoned and balanced discussion by all Directors. Whether subsidiaries have one, two or no ILSC Directors on their boards, in the future, is a matter that needs further exploration and deliberation. Making unilateral changes, under the suggestion that there is a matter of conflict of interest is not and has not been productive. If a problem were seen to exist then when this matter is eventually discussed one solution may be to have an external legal observer to assure that such conflicts were handled appropriately, as must have been the case in 2014/2015.

The main, and most serious, question though is how does the ILSC Board discuss and resolve the issue of its own Directors being appointed to its subsidiaries, if the Chair is always suggesting that this is a matter of conflict of interest.

Until this discussion has been had and resolved then the issue of Directors removing themselves from subsidiaries is in complete contrast with the practise of the last four years and recent recommendations approved by the ILSC Board within the last twelve months.

As recent as last November, there are ILSC Board recommendations relating to the role of Primary Partners and Yamanah Investments and the content of a new S191G Agreement as well as remuneration of Directors yet this concern was never raised at those previous Board meetings.

### 3. Appointment process for new Group CEO

I am aware of the response to this matter that you have received from the Chair Mr Eddie Fry.

At the meeting of 13 March the Board resolved, in relation to the paper recommended from RANC to:

- a. Note the contents of the paper;
- b. 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;
- c. Determine the location or a range of locations for the CEO role;
- d. Determine the Selection Committee; and
- e. Endorse the Chair and Management engaging and negotiating terms with the preferred executive search firm

Since the 13 March, neither the Board nor the Selection Committee has been involved in any other aspect of this recruitment, despite the fact that as a Director I had asked for this to be on the agenda a number of times.

My understanding that point (e) only gave the Chair and Management the authority to engage the recruitment firm and negotiate their terms of engagement which would result in a contract and that other significant aspects would be brought back to the Board or the Selection Committee for approval.

Also the location of the CEO remained unresolved or even discussed by the Board.

On 11 May, I sent an email to the Chair which including a number of requests but one of these was as follows:

Can you also provide me with a timeline and a proposal to begin the recruitment process to replace the current GCEO. My understanding is that this contract expires in November leaving just enough time for the Board to approve a new position description, find a recruiting firm, undertake that process, make a selection and provide that person with enough time to vacate any current position.

This was the response:

Trish thank you for this response.

I look forward to reading this again during the week and responding.

Unfortunately I do not share your views and look forward to ongoing constructive discussions.

Kind regards

Eddie

Again on 22 May, after reading the advertisement for the CEO in the national media, Director Bruce Martin requested an urgent meeting of the Board to discuss this process and this request was again denied by the Chair.

Finally at the Board meeting of 25 June, at which the Chair was not present, the Board received an update on this process. The outcomes of this discussion and recommendations have been conveyed to you. You should be aware that applicants were only asked to provide their CV. The position description and selection criteria were only approved by the Chair and the Acting GCEO three days before the closing date.

**4. Copy of Charter for the Board and Audit and Assurance Committee.**

I understand that you have also been sent a copy of these Charters. The Charter of the ILSC Board has not been updated since 2016, despite a request at previous board meetings to attend to this and again I requested this in my email to the Chair dated 11 May and received no response.

The Charter for the Audit and Assurance Committee is updated and reviewed each year. I am a member of that Committee.

I also rang the Chair of the Audit and Assurance Committee several days following receipt of your letter to discuss a range of matters. She has not received a copy of your letter, which I assumed the Chair would provide, as you had requested so I have forwarded a copy to her.

Yours Sincerely

Patricia Crossin

**From:** [Trish Crossin](#)  
**To:** [Barry Petty \(ILSC\)](#)  
**Subject:** FOI request 4 of 5  
**Date:** Tuesday, 24 November 2020 11:22:36 AM  
**Attachments:** [RE Board matters.msg](#)  
[letter to MIA re Board appt.docx](#)

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*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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**From:** Trish Crossin <[trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)>  
**Sent:** Tuesday, July 14, 2020 3:17 PM  
**To:** 'minister.wyatt@ia.pm.gov.au' <[minister.wyatt@ia.pm.gov.au](mailto:minister.wyatt@ia.pm.gov.au)>  
**Subject:** request for correspondence

Please find attached my request for recent correspondence to the ILSC Chair Mr Fry and related email

Kind regards

*Trish Crossin*

**M:** [REDACTED]  
**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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

**Email: [minister.wyatt@ia.pm.gov.au](mailto:minister.wyatt@ia.pm.gov.au)**

Dear Minister,

I am writing to request a copy of a letter that you had sent to Mr Eddie Fry, ILSC Chair on or about 18 June 2020.

I understand that the correspondence concerned my ongoing availability to continue as an ILSC Director.

My response, to the Chair, was to confirm that I am available to continue and as such I had requested a copy of the correspondence that was referred to.

Please refer to a copy of the email exchange as attached.

My request to the Chair has been denied on the basis that the letter from yourself was marked personal to Mr Fry. Hence my request directly to your office for a copy.

Further I would now also like confirmation from you that Mr Fry has responded to your letter and conveyed to you my availability to continue as Director.

Much appreciated  
Kind Regards

Patricia Crossin  
14 July 2020

**From:** [Sheelagh Loss \(ILSC\)](#)  
**To:** [Trish Crossin](#)  
**Subject:** RE: Board matters  
**Date:** Friday, 19 June 2020 10:31:38 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

Good morning Trish

Thank you for your response to availability.

Unfortunately I cannot send a copy of this correspondence as it was marked personal to Eddie.

Kind regards

Sheelagh

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

**Sent:** Thursday, 18 June 2020 4:36 PM

**To:** Sheelagh Loss (ILSC) <Sheelagh.Loss@ilsc.gov.au>; Joseph Elu <seisia.member@tsra.gov.au>; Donna Odegaard <ceo@aboriginalbroadcasting.org>; Bruce Martin <bruce@rdcorp.com.au>

**Cc:** Eddie Fry (ILSC) <Eddie.Fry@ilsc.gov.au>; daniel <daniel@careymining.com.au>; 'Roy Ah-See' <royahsee67@gmail.com>

**Subject:** RE: Board matters

Dear Sheelagh

Thank you for your correspondence, I confirm I am available to continue in my role as Director of the ILSC. Could you please supply me with a copy of that correspondence

Regards

*Trish Crossin*

**M:** 0418 818 149

**E:** [trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

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**From:** Sheelagh Loss (ILSC) <[Sheelagh.Loss@ilsc.gov.au](mailto:Sheelagh.Loss@ilsc.gov.au)>

**Sent:** Thursday, June 18, 2020 3:26 PM

**To:** Joseph Elu <[seisia.member@tsra.gov.au](mailto:seisia.member@tsra.gov.au)>; Donna Odegaard <[ceo@aboriginalbroadcasting.org](mailto:ceo@aboriginalbroadcasting.org)>; Bruce Martin <[bruce@rdcorp.com.au](mailto:bruce@rdcorp.com.au)>; Trish Crossin <[trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)>

**Cc:** Eddie Fry (ILSC) <[Eddie.Fry@ilsc.gov.au](mailto:Eddie.Fry@ilsc.gov.au)>; daniel <[daniel@careymining.com.au](mailto:daniel@careymining.com.au)>; 'Roy Ah-See' ([royahsee67@gmail.com](mailto:royahsee67@gmail.com))' <[royahsee67@gmail.com](mailto:royahsee67@gmail.com)>

**Subject:** Board matters

Dear Donna, Bruce and Trish

The ILSC Chair has recently received correspondence from Minister Wyatt concerning the composition of the ILSC Board. In particular the Minister has asked the Chair to ascertain your ongoing availability to continue as ILSC Directors until a decision on longer term Board appointments is made.

In the correspondence, the Minister has taken the opportunity to reiterate his expectation that all ILSC Directors should be fully aware of their obligations and duties under the ATSI Act 2005 and PGPA Act 2013 and would like assurance that the ILSC Board can continue to properly function in the interim.

Thank you Joseph for providing your continued availability.

Donna, Bruce and Trish, could you please provide your availability to continue in your role as a Director as soon as possible?

Kind regards

**Sheelagh Loss** | Executive Assistant to the Chairperson | **Indigenous Land and Sea Corporation**

Adelaide Office | [www.ilsc.gov.au](http://www.ilsc.gov.au)

**P:** 08 8100 7147 | **M:** 0427 914 007 | **E:** [Sheelagh.Loss@ilsc.gov.au](mailto:Sheelagh.Loss@ilsc.gov.au) | **Freecall:** 1800 818 490







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

Reference: MC20-003983

Trish Crossin  
Cross Innovate  
[trish@crossinnovate.com.au](mailto:trish@crossinnovate.com.au)

Dear Ms Crossin

Thank you for your correspondence of 14 July 2020 regarding your ongoing availability to continue as an Indigenous Land and Sea Corporation (ILSC) Director and requesting correspondence between me and the ILSC Chair, Mr Eddie Fry.

Mr Fry has confirmed in correspondence to me your availability to continue as an ILSC Director, until a decision on longer term appointments is made by me later in 2020.

I note your request for a copy of my letter dated 15 June 2020 to Mr Fry regarding Directors availability to continue on the ILSC Board. I would expect the Chairperson of the ILSC to share my communications with the ILSC Board. Under the circumstances, I suggest you make a further request to Mr Fry for a copy of that correspondence.

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](mailto:brendan.jacomb@niaa.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ken Wyatt', written over a faint, larger version of the signature.

The Hon KEN WYATT AM MP  
Minister for Indigenous Australians

6 / 8 / 2020