

LEWIS, Ciaran

From: Casey, Dawn <Dawn.Casey@phm.gov.au>
Sent: Monday, 2 July 2012 6:18 PM
To: LAWLESS, Jan
Subject: FW: ~~Confidential~~: Letter to the Minister on ILC matters
Attachments: 020712 Final letter to Minister from Chair in response to Minister letters Oct, Dec and Mar 2012.pdf; 12026174 - D Casey Adv 19 June 12.pdf; 12026174 Attachment - previous AGS advices#2.pdf; JM - CV - Dec11.doc; Item 11c-Governance Review ToR Brief.doc

Hi Jan

For your information and for advice to Felicity, Donna and Finn.

Dawn

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From: Casey, Dawn
Sent: Monday, 2 July 2012 4:36 PM
To: 'BROADBENT, Sarah'
Subject: ~~Confidential~~: Letter to the Minister on ILC matters

Dear Sarah

Please find attached a letter for the Minister advising of a number of significant outcomes from the ILC Board Meeting No 147 on Friday 29 June 2012.

Kind regards

Dawn

Dr Dawn Casey PSM FAHA
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Draft Terms of Reference

REVIEW OF ILC BOARD GOVERNANCE ARRANGEMENTS

s47E(d) - certain operations of agencies

Background

The Indigenous Land Corporation (ILC) is a Commonwealth statutory body established under Part 4A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). The purpose of the ILC is to assist Aboriginal persons and Torres Strait Islanders to both acquire and manage Indigenous-held land, so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders. The ILC operates in a hybrid world of government agency and private enterprise to achieve these ends.

The ILC is governed by the ILC Board of Directors whose responsibility is to ensure the 'proper and efficient performance of the functions of the ILC' and to 'determine the policy of the Corporation in relation to any matter'.

The seven Board members are appointed by the responsible Commonwealth Minister for Families, Community Services and Indigenous Affairs for a maximum term of four years. In October 2012 the current Chair and three incoming Board members were appointed for four years while the Deputy Chair and two other Board members were reappointed for a further two-year term.

The Board is covered by a Code of Conduct, which sets out Board members' legal, financial and conflict of interest responsibilities and helps them discharge their responsibilities in accordance with the *Commonwealth Authorities and Companies Act* (CAC Act).

Under Section 191G of the ATSI Act the ILC is enabled to make an arrangement with a subsidiary of the ILC about the performance by the subsidiary of functions corresponding to one or more of the ILC's functions. These arrangements can include transfer of monies, the making of loans or loan guarantees and provision of ILC staff to the subsidiary.

A full list of ILC committees and wholly-owned subsidiaries and their functions is at Attachment A.

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Services/Outcomes Required

In light of these review findings, the consultants will be required to prepare advice to the Board on what, if any, changes are required in order to maintain or develop governance best practice, corporate and other governance policies, including in relation to appointments, procedures and reporting requirements for both ILC Board Committees and ILC subsidiaries.

This should include consideration of issues such as:

1. Duration of appointments to Board Committees and ILC subsidiaries
2. Prerequisite skills criteria for appointment of external appointees to Board Committees or ILC subsidiaries and how the issue of remuneration for external appointees to subsidiaries should be best addressed
3. Where relevant, what skills criteria ought to apply for Board member appointments to ILC Board Committees
4. Potential conflict of interest issues and guidelines for addressing these
5. Whether any current Board or Board Committee arrangements could be further streamlined or improved consistent with the ILC's statutory responsibilities and improving governance practice within the Board
6. The need for any improvements to the current structure of the agenda for Board meetings (including standing items)
7. Any relevant matters that would assist the ILC Board members in undertaking their statutory responsibilities and delivering effective governance to the ILC.

Other Required Deliverables

8. Production of a written draft *ILC Governance Development Plan* for the ILC Board that sets out a recommended program of appropriate governance training and development (broadly defined) for Board and independent Directors and CEOs that can be implemented over time and used for ongoing Board induction purposes
9. Production of a written draft *ILC Governance Manual* that sets out in one place the governance roles, responsibilities, practices and policies that are specifically relevant to the ILC Board.

Details for Proposals

Proposals, including detailed costs, a company profile, evidence of relevant expertise, references, a methodology for conducting the review and an indicative time frame must be provided by 5.00 pm (CST) ## #### 2012 to:

Jodie Lindsay
Chief Operating Officer
Indigenous Land Corporation
GPO Box 652
ADELAIDE SA 5001

Responses may be emailed to jodie.lindsay@ilc.gov.au.

Inquiries or requests for further information should be directed to Jodie Lindsay on telephone (08) 8100 7103 or via email to jodie.lindsay@ilc.gov.au.

ATTACHMENT A

Internal Committees

The ILC currently operates two Board Committees.

Audit and Risk Management Committee (ARMC)

An audit committee is required under Section 32 of the *Commonwealth Authorities and Companies Act 1997*. The ILC Board established the ARMC with the primary objective of providing advice and assistance in ensuring that the ILC and its subsidiaries meet their objectives and comply with legislative requirements. The ARMC is governed by the Audit and Risk Management Charter.

Acquisition, Business, Employment and Training Committee (ABETC)

The ABETC is responsible for:

- Advising the Board on proposed land acquisitions
- Monitoring the financial performance of ILC-owned agricultural businesses
- Endorsing budgets for ILC-owned agricultural businesses
- Advising the ILC Board on business and land-related matters.

The ABETC is governed by the Acquisitions, Business, Employment and Training Committee Charter.

Consultative Forum on the Investment Policy of the Land Account

The Consultative Forum on the Investment Policy of the Land Account was established consistent with Section 193G of the *Aboriginal and Torres Strait Islander Act 2005*.

ILC Subsidiaries

Consistent with Section 191G of the ATSI Act the ILC may make arrangements with a subsidiary to perform one or more of the ILC's functions. Subsidiaries of the ILC are governed by Part 4A of the ATSI Act and by the *Corporations Law 2001*.

The ILC has established subsidiaries to achieve quite specific ends that might not be able to be achieved through the ILC carrying out a function directly. These ends can be diverse and range from employing people under a private enterprise model, quarantining legal liability issues, attracting tax deductibility status for charitable functions and attracting or engaging expertise not available within the ILC. With each subsidiary it has been necessary for the ILC to determine the amount of active autonomy the subsidiary should have and balance that against appropriate control and reporting requirements to the ILC as the parent company.

The ILC presently has four wholly-owned subsidiary companies.

Voyages Indigenous Tourism Australia Pty Ltd (Voyages)

Voyages was established in September 2010 as a wholly-owned subsidiary of the ILC. The ILC holds 100 issued shares in Voyages. Its purpose is to own and operate the Ayers Rock Resort. It

also undertakes the overall management responsibilities for ILC-funded tourism enterprises at both Mossman Gorge and Home Valley Station via specific individual management agreements with the ILC. Voyages is an active and autonomous subsidiary of the ILC. It has a separate chief executive officer (Managing Director) and provides its own office support functions.

National Centre of Indigenous Excellence Ltd (NCIE Ltd)

NCIE Ltd was established in 2009. It is a company limited by guarantee whose only member is the ILC. It is established as a charitable entity and its purpose is to manage and promote the ILC-owned National Centre of Indigenous Excellence in Redfern. It has a mix of ILC and independent Directors on its Board and a separate CEO. The majority of finance and support functions for NCIE Ltd are undertaken by the ILC.

The Mutitjulu Foundation

The Mutitjulu Foundation was established in 2003 by the then owners of Ayers Rock Resort and was inherited by the ILC on its acquisition of Ayers Rock Resort on 23 May 2011. It is a company limited by guarantee whose sole member is the ILC. It has been established as a charitable entity and administers donations from resort guests for the relief of Aboriginal poverty and the advancement of Aboriginal education and health. It has no staff, but is assisted by staff from the ILC's Central Divisional. It has a mix of ILC and independent Directors on its Board. It is an active subsidiary, but of limited autonomy given the present lack of staff.

National Indigenous Pastoral Enterprises Pty Ltd (NIPE)

NIPE was established in 2004 as a wholly-owned subsidiary of the ILC. The ILC holds the only issued share. NIPE provides the employment vehicle for staff working on ILC-held/operated businesses. This enables such staff to be employed on a private industry basis and in accordance with pastoral industry terms and conditions. NIPE does not perform an active role independent of the ILC. All NIPE Directors are also ILC Directors. The NIPE General Manager is the ILC Chief Executive Officer. All corporate functions of NIPE are undertaken by the ILC.

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