

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: National Indigenous Australians Agency

Topic: Comparative governance arrangements study

Senator: Thorpe

Question reference number: 0001

Type of question: Hansard, 18 November 2021, page 17

Date set by the committee for the return of answer: Monday 22 November 2021

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Question:

Senator THORPE: In the land councils' submission on page 9, there is a reference to a study commissioned by Minister Wyatt, requested by the land councils about governance arrangements for comparative institutions to the proposed new corporation that you've been talking about, including IBA, the Indigenous Land and Sea Corporation and the Torres Strait Regional Authority. This study has not been made publicly available. Could you please tell me: was this a study commissioned by the NIAA with public funds? Secondly, will this study be made publicly available? And if yes, when and where?

Mr Bulman: Sorry, it glitched out in the first bit when you said public funds. Do you mind repeating that question for me?

Senator THORPE: Was this a study commissioned by the NIAA with public funds?

Mr Bulman: Yes, it was.

Senator THORPE: My second question is: is it public? If not, why not? If yes, when and where can we have a look?

Mr Bulman: Yes, it was a piece of research commissioned by the department to look at comparable organisations which were important to draw off the learnings from best practice et cetera as well as make suggestions about best practice for setting up a corporation. Given it was conducted by the department, yes, it is public funds. I'm happy to take on notice the tabling of the report. It's a useful document that was used in the long journey of the six years of designing the bill with communities and councils.

Mr Exell: We just want to check: I think there may have been some commercial-in-confidence aspects to that, so I just want to make sure we get that right in what we can release.

Answer:

In January 2021, the National Indigenous Australians Agency (NIAA) commissioned KPMG to undertake an independent review of initial proposed NTAIC governance and investment arrangements that had been developed by the NIAA, the NT Land Councils and Aboriginals Benefit Account Advisory Committee (ABAAC) representatives in partnership over seven meetings between November 2018 and January 2021.

The KPMG's report is attached and was shared with the NTAIC co-design group for consideration in February 2021.



Aboriginals Benefit Account

Co-designing of the Aboriginal Benefits Account with the National Indigenous Australians Agency and the Northern Territory Land Councils

Section 64(4) of the Aboriginal Land Rights (Northern Territory) Act 1976

11 February 2021

Disclaimer (1/2)

Background

KPMG Australia (**KPMG**) is acting as advisor to the National Indigenous Australians Agency (**NIAA**) for the purposes of assisting the NIAA in relation to its considerations regarding its proposed reforms to the Aboriginals Benefit Account (**ABA**) being co-designed by the NIAA and the Northern Territory Land Councils (**NT Land Councils**) (**NIAA Considerations**).

Purpose of This Report – Exceptions Only Basis

This report (**Report**) sets out our key observations for the purposes of assisting the NIAA with the NIAA Considerations.

Our key findings are set out in the Executive Summary - Key Recommendations section in this Report. However, it is essential that this Report be reviewed in its entirety, including the detailed sections of the report and all appendices and attachments.

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- The Department of the Prime Minister and Cabinet;
- The Department of Finance;
- The Treasury;
- The Department of Infrastructure, Transport, Regional Development and Communications;
- The Northern Land Council;
- The Central Land Council;
- The Tiwi Land Council; and
- The Anindilyakwa Land Council,

(together, the **Disclosed Entities**), in each case, on a non-reliance basis and subject to the Disclosure Restrictions (as set out above).

Benefit

This Report is only for the benefit of the NIAA and its directors and officers.

This Report has been prepared at the request of the NIAA. Other than our responsibility to the NIAA, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party (including without limitation, any of the Disclosed Entities) on this Report. Any reliance placed is that party's sole responsibility.

Report Date

This Report is dated 11 February 2021.

Preparation of Report

Unless a contrary intention is specifically expressed, this Report replaces all reports prepared by KPMG and other advice provided by KPMG in relation to the subject matter of this Report.

Areas of investigation

The scope of our investigations only encompassed those matters referred to in this Report and set out in the "Scope of work" section on pages 11 - 12. We have not conducted any other investigations other than as set out in this Report.

Disclaimer (2/2)

Inherent Limitations

The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

Due to the inherent limitations of any internal control structure, it is possible that fraud, error or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the control procedures that have been subject to the procedures we performed operate, has not been reviewed in its entirety and, therefore, no opinion or view is expressed as to its effectiveness of the greater internal control structure. The procedures performed were not designed to detect all weaknesses in control procedures as they are not performed continuously throughout the period and the tests performed on the control procedures are on a sample basis. Any projection of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, NIAA's management and personnel consulted as part of the process.

KPMG has indicated within this Report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the Report.

KPMG is under no obligation in any circumstance to update this Report, in either oral or written form, for events occurring after the Report has been issued in final form.

The observations in this Report have been formed on the above basis.

No Legal Advice

Our work has not extended to the delivery of legal advice, which should be obtained separately from legal advisers under separate terms and conditions. We are not responsible for facilitating the supply of legal advice to you, nor are we responsible for monitoring or managing the quality or timing of legal or any other advice that you have obtained in connection with matters relevant to the subject of our work.

Facts and Assumptions

Our advice in this document is based upon the facts and assumptions as set out in this Report. If any of the facts or assumptions are not entirely complete or correct, then it is imperative that we are informed immediately as any such inaccuracy or incompleteness could have a material effect on our conclusions.

No Inferences to be Drawn from 'Will' or 'Should'

No inference should be drawn from the use of the words 'will', 'should' etc., as they relate to the relative strengths of a particular position outlined in each document. Each of the positions described in the document entails certain risks. Laws in each country are subject to interpretation and subject to change at any time.

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Background



Background

Aboriginals Benefit Account (ABA) history and overview

The ABA is a statutory special account established under section 62 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**ALRA**). The funds which are available in the ABA are provided by the Commonwealth Government from royalty equivalent payments that are paid either to the Northern Territory or the Commonwealth Government from mining activities taking place on Aboriginal land in the Northern Territory.

Historically, the ABA's predecessor was the 'Aborigines Benefits Trust Fund' (**ABTF**) which was established in 1952 for the purposes of collecting royalty equivalent payments from mining undertaken on Aboriginal reserves. The ABTF was incorporated into the ALRA in 1976 and renamed the 'Aboriginals Benefit Trust Account' and then renamed the ABA. Formerly, the ABA was used as a "clearinghouse" (document titled "Aboriginal Benefit Account entity – Policy background") with all available monies being distributed. However, in recent years, the ABA has accrued a considerable surplus, whereby the ABA's [Financial Statement](#) for the period 1 July 2019 to 30 June 2020 sets out that the net assets of the ABA totalled approximately \$1.27 billion.

The ALRA provides a legislative framework for claims to, and the grant and management of, inalienable Aboriginal freehold land in the Northern Territory. Traditional owners of ALRA land hold decision-making powers over land access and use. Four Northern Territory Land Councils (the Northern Land Council, the Central Land Council, Tiwi Land Council and Anindilyakwa Land Council) (together, the **NT Land Councils**) assist traditional owners to acquire and manage their land. We understand that the "the key allocations of the ABA include funding for the Northern Territory Land Councils under subsection 64(1) (of the ALRA), royalty equivalent payments to traditional owners under subsection 64(3) (of the ALRA), payments for the benefit of Aboriginal people in the Northern Territory under subsection 64(4) (of the ALRA), and funding for the Office of Township leasing and administration of the ABA, under subsections 64(4A) and 64(6) respectively (of the ALRA)" (document titled "Aboriginal Benefit Account entity – Policy background").

Current arrangements

We note the following key observations in respect of the current existing arrangements of the ABA:

- the key allocations of the ABA can be summarised as follows:
 - funding for the NT Land Councils under subsection 64(1) of the ALRA;
 - affected area payments to traditional owners and other Aboriginal people affected by mining under subsection 64(3) of the ALRA;
 - payments for the benefit of Aboriginal people in the Northern Territory under subsection 64(4) of the ALRA; and
 - funding for the Office of Township leasing and administration of the ABA, under subsections 64(4A) and 64(6) respectively of the ALRA.

For completeness, we note that the Minister of Indigenous Australians (**Minister**) also has the legislative power to debit funds from the ABA at his/her discretion (section 64A of the ALRA);

- the responsibility of the administration and use of the ABA ultimately sits with the Minister (i.e. requires the Minister's determination or direction);
- the Aboriginals Benefit Account Advisory Committee (**ABAAC**) is established under section 65 of the ALRA for the purposes of acting in an advisory capacity to the Minister. The ABAAC meet twice yearly to consider applications for beneficial grants and advises the NIAA and the Minister on potential payments. The Minister gives approval for the NIAA to negotiate funding agreements with applicants. The NIAA then negotiates these funding agreements. We understand that it generally takes a minimum of six months for funding to be provided to the approved applicants from the date of application;

Background

Current arrangements (cont.)

- although the ABAAC functions in an advisory capacity to the Minister for the purposes of making payments under section 64(4) of the ALRA, the ALRA does not stipulate any legislative requirements for the Minister to consider the ABAAC’s advice and recommendations;
- ABA grant funding is only available to one-off projects and not available to on-going projects; and
- it is our understanding that, upon establishment of the ABA Entity, the ABAAC will no longer be required, and accordingly will be retired.

Proposed reforms to the ABA

We understand there is a desire to improve the structure and processes for grants from the ABA to allow for greater Aboriginal decision-making and control and more strategic use of the ABA funds. The NT Land Councils released a document titled “Reform of the Aboriginals Benefit Account (ABA)” which identified the following issues specific to the ABA’s current grant process under section 64(4) of the ALRA:

1. “The Advisory Committee has no power to decide grants and nor can it be delegated any power to do so by the Minister.
2. Government administrative changes since ATSIC was dismantled including moving responsibility for the ABA to Canberra have led to much more control by public servants and no effective involvement of Land Council staff in policy or grant making.
3. The ABA was re-established as a special account under the Commonwealth’s mainstream financial management legislation which has meant that the machinery for the financial administration of the ABA is located outside the ALRA controlled by the Government.
4. The Minister is able to appoint the Chairperson and two other expert members without any consultation with Land Councils.
5. The Government is increasingly focused on making the special account balance bigger with the result that grants have been restricted for some years and are likely to remain limited.
6. The current ABA grant guidelines were approved without any consultations with the Land Councils in 2014 and framed as funding under the Government’s controversial Indigenous Advancement Strategy, allowing for the priorities of the Government to be imposed on the ABA.
7. There is minimal transparency around the decision making for grants and no independent evaluation of the impact of grants.
8. There is little support for Aboriginal people wanting to complete the complicated application form, particularly for those in remote communities, and the process is slow and not transparent.”

Background

Guiding principles of reform of the ABA entity

On 1 March 2018, the executive committees of the NT Land Councils met and resolved that the structure and processes for grants from the ABA “do not allow for Aboriginal decision making and control, are not transparent and do not allow for a strategic use of these funds.” In response, the NT Land Councils proposed for reforms to take place and suggested the following principles to guide the reform:

Principle 1

ABA funds come from mining on Aboriginal land, they are Aboriginal monies and Aboriginal people in the Northern Territory should make decisions about the management and allocation of ABA grant funds.

Principle 2

Consistent with Australia’s international and national human rights obligations, traditional owners must provide their informed consent regarding any changes to the ABA.

Principle 3

All members of the ABAAC, or a replacement new structure, should be Aboriginal members living in the Northern Territory and who have been elected by NT Land Councils.

Principle 4

Decisions about all grant (or loan) payments should be made by the elected representatives of the NT Land Councils who are able to seek the advice of their own NT Land Councils.

Principle 5

A comprehensive framework for making ABA grants (and loans) should be enacted in the ALRA after negotiations with the NT Land Councils, rather than continuing to rely on external legislation.

Principle 6

The ABA is not an Indigenous funding program like other government programs. It should remain under the ALRA and its funding arrangements should not be included in any Commonwealth funding strategy such as the Indigenous Advancement Strategy.

Principle 7

A reformed ABA should include a senior position of Director of the ABA that must be responsible for all ABA functions, based in the Northern Territory.

Principle 8

The staff of a reformed ABA should be accountable to the new Board or structure to facilitate greater Aboriginal involvement. This may mean that the staff costs should come from the ABA rather than the Department of Prime Minister and Cabinet.

Principle 9

ABA grant processes must be accessible and accountable to Aboriginal people living out bush.

Principle 10

NT Land Council ABA representatives should have the option to be appropriately supported by senior management attendance at ABAAC meetings.

Principle 11

The ABA is not and should not be treated as an ‘accumulation’ fund (only spending interest) – the utilisation of the fund under section 64(4) of the ALRA is justified on the basis of the benefits that the expenditure shall provide to Northern Territory Aboriginal people and should not be subject to arbitrary limits.

Principle 12

The ABA should remain as separate ‘special account’ and any investments of the fund should be transparent to all stakeholders.

Background

The co-design journey

The NIAA is committed to co-designing this reform with Aboriginal Territorians. In 2018, the NT Land Councils released their joint paper ‘Reform of the Aboriginals Benefit Account.’ The NT Land Councils consider the ABA to be Aboriginal money, and are seeking greater Aboriginal control over the ABA. The NT Land Council also contend that money needs to be expended for the ABA’s statutory purposes, rather than accumulating indefinitely.

In September 2018, NIAA formed the ABA Reform Working Group (**ABARWG**) to discuss potential reforms. Since late 2019, the ABARWG has focussed on the creation of an Aboriginal controlled, Northern Territory-based entity to decide upon and deliver beneficial payments.

An ABA entity has been canvassed as a way to increase Aboriginal control of the ABA and improve economic development in the Northern Territory since the 1980s. A 1984 publication from Dr Jon Altman, *Report on the Review of the Aboriginals Benefit Trust Account (and Related Financial Matters)*, was tabled in the Australian Senate in 1985. The key recommendation of the report was the creation of an Aboriginal-controlled, independent statutory body with responsibility for the administration of beneficial payments and the investment of surplus ABA funds.

The ABARWG have met seven times since 2018 and have co-designed an ABA Entity with the power to decide upon and deliver section 64(4) (of the ALRA) beneficial payments and make large strategic investments in the Northern Territory.



Scope of Work



Scope of work

Our scope of work

Pursuant to paragraphs 1 (Governance), 2 (Treasury and investment) and 3 (Investment strategy and function) under section 2 (Ordered Services) of Schedule 3 Official Order PRC0010554 (**Work Order**) issued and agreed pursuant to and subject to the terms and conditions of a deed between the NIAA and KPMG dated 26 October 2015 (SON3305648), we have set out in this document our key observations to assist the NIAA in relation to the NIAA Considerations.

Specifically, this **covers the following**:

1) Governance:

- a) Review the proposed governance structure of the ABA entity developed by the NIAA and the NT Land Councils against best practice governance principles for Aboriginal controlled organisations. For this purpose, the corporate governance structures of the following Indigenous entities have been reviewed:
 - i. Indigenous Land and Sea Corporation;
 - ii. Australian Institute of Aboriginal and Torres Strait Islander Studies;
 - iii. Indigenous Business Australia;
 - iv. Torres Strait Regional Authority; and
 - v. Yamatji Southern Regional Corporation Limited,
 (together, the **Like Entities**).
- b) Provide advice and recommendations on the Board's role, composition and committee structure that ensures independence in the operation of the entity while balancing accountability and transparency to the entity's key stakeholders – being, the Aboriginal people in the Northern Territory, the NT Land Councils, and the Commonwealth Government.

2) Treasury and investment

- a) Provide advice and recommendations on the optimal management of the entity's capital funds. This should include consideration of best practice principles for managing funds of the quantum proposed for this entity.
- b) Consider options for the treasury function, including both in-house and out-sourced management, the organisational structure and workforce needed to support each option, the advantages and disadvantages of each and a cost-benefit analysis of each option.

Scope of work

3) Investment strategy and function

- a) Provide advice and recommendations on the best practice principles to inform the development of an investment strategy with clearly defined investment parameters and a risk profile suitable for investing in remote communities and Indigenous businesses.
 - i. The investment parameters should inform decisions in relation to investment scale (large or small), scope (direct payments, debt, equity), risk (strategic and operational, risk appetite) and benefit (outcomes for Aboriginal people, return on investment).
 - ii. Consideration should be given to implications for long-term sustainability. For example, a profile weighted toward venture capital type debt or equity investments or a small number of large scale investment may not be as sustainable as a more diverse range of investments that benefit a larger number of Aboriginal Territorians.
- b) Provide advice and recommendations on roles and responsibilities in relation to strategic and operational investment decisions. This should include consideration of the accountability and transparency arrangements necessary to ensure the confidence of the entity's key stakeholders and achievement of outcomes.
 - i. The strategic and operational risks associated with individual grant decisions and the related thresholds requiring elevation to the Board should be a focus of the advice and recommendations in relation to the investment strategy and function.
 - ii. The advice and recommendations should include guidance on best practice for monitoring, evaluating and reporting on outcomes and how this can be implemented.
 - iii. Operational elements should include consideration of the authorisation environment and related management structures to ensure integrity in the assessment and financial decision making processes, including managing conflicts of interest.
- c) Provide high level advice on the impact of the ABA entity investments on the Northern Territory economy, consumption and private investment.



Executive Summary - Key Recommendations

Key Recommendations - Summary

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Executive Summary – Corporate Governance

ABA Entity Board arrangements

Status Quo



Alice Springs Model

Board of Directors of ABA Entity

- 4 NT Land Council Chairpersons
- 4 NT Land Council Deputy Chairs
- 4 Land Council CEOs (non-voting)
- 2 Government-appointed directors (appointed by the Minister for Indigenous Australia)
- 2 Government-appointed directors (appointed by the Minister for Finance)

Note: the Board approves and resolves on the decisions of the ABA Entity.

KPMG Recommended

Board of Directors of ABA Entity

- 4 NT Land Council Chairpersons
- 4 NT Land Council Deputy Chairs
- 2* Independent Director(s) appointed by the Board
- 1 Government-appointed director (appointed by the Minister for Indigenous Australia)
- 1 Government-appointed director (appointed by the Minister for Finance)

Observers to the Board

- 4 Land Council CEOs

Board Sub-Committees

- Audit and Risk Committee
- Investments Committee

**Note: we recommend at least 1 Independent Director be appointed to the Board. However, on the basis 2 Independent Directors are appointed to the Board, then it may suit to reduce by the same number the Government appointed Directors.*

Note: the Board approves and resolves on the decisions of the ABA Entity.

Please see our detailed recommendations and comments on pages 16 and 22 – 33 for more information.

Executive Summary - Corporate Governance

Having regard to the scope of work as set out in the Work Order:

- **Proposed Corporate Governance Arrangements** - we have considered the proposed corporate governance arrangements for the ABA Entity, and in addition supplemented such review by conducting due diligence on the Like Entities in order to undertake a detailed comparison between the proposed governance arrangements for the ABA Entity and the existing corporate governance arrangements of the Like Entities. Accordingly, we support the proposed corporate governance arrangements for the ABA Entity subject to our Recommendations (as we have detailed in this Report). The governance arrangements, as amended and/or supplemented by our Recommendations, align with best practice corporate governance principles and represent a robust approach to managing risk for the ABA entity.
- **Treasury and Investment and Investment Strategy and Function** – in relation to our scope of work concerning the Treasury and Investment and Investment Strategy Function, we have also proposed relevant Recommendations (as we have detailed in this Report) having regard to the purpose of the ABA Entity.

Set out below is a high-level summary of the key recommendations and other recommendations we have made in this Report.

Recommendations: Proposed Corporate Governance Arrangements for the ABA Entity

Key Recommendations

Recommendation 1: ABA Entity to be incorporated as a corporate Commonwealth entity	<p>Due to the purpose and objectives of the ABA Entity, and the strong emphasis on accountability and transparency, as well as the requirement for the involvement of the Minister, our view is that the intentions for the ABA Entity will be best served if the entity was incorporated as a corporate Commonwealth entity (as opposed to a non-corporate Commonwealth entity or an entity incorporated as a company limited by shares under the <i>Corporations Act 2001</i> (Cth) (Corporations Act). This is because, as a corporate Commonwealth entity, the ABA Entity effectively:</p> <ul style="list-style-type: none"> • can carry out its powers and duties as if it was a corporate entity incorporated under the Corporations Act; • however, it will have greater accountability to stakeholders, and just as importantly, to the Commonwealth.
Recommendation 2: The “non-voting directors” should instead be “Observers” on the Board	<p>It is currently proposed that the composition of the ABA Entity Board will include four non-voting NT Land Council directors, being the four CEOs of the NT Land Councils. We recommend that the “non-voting” directors instead be “Observers” to the Board. This is because an Observer does not have any director’s duties and ordinarily does not constitute a quorum. However, an Observer would be able to attend and participate in Board meetings under appropriate terms and conditions.</p>
Recommendation 3: ABA Entity Board to adopt a Board Charter	<p>We recommend that the ABA Entity Board adopt a Board Charter to govern the ABA Entity. The Board Charter should detail the roles and responsibilities of the Board, the membership requirements, including in respect of our Recommendation 2 above in relation to the participation of Observers at Board meetings.</p>
Recommendation 4: Independent Director(s)	<p>We recommend that:</p> <ul style="list-style-type: none"> • Board to include Independent Director(s) • Board to report on “Independence” • Independent Director to form part of the quorum requirements
Recommendation 5: Removal of the reference to “Part-time” in relation to the role of Directors	<p>Under the proposed governance arrangements, one of the conditions proposed to apply to Board members, is that they will be “part-time.” We recommend the removal of the reference to “part-time” in relation to the role of Directors.</p>

Executive Summary - Corporate Governance

Recommendations: Proposed Corporate Governance Arrangements for the ABA Entity (cont.)

Key Recommendations (cont.)

Recommendation 6: Chair not to have a casting vote We recommend that the Chair of the ABA Entity Board does not have a casting vote (in addition to any deliberative vote the Chair may have).

Recommendation 7: ABA Entity Board to establish Board Committees and an Advisory Committee We recommend:

- establish an Investments Committee
- **Investments Committee:** the ABA Entity Board establish an Investments Committee for the purposes of assisting the ABA Entity Board in overseeing the investments strategy / policy and investments portfolio of the ABA Entity.
- establish an Audit and Risk Committee
- **Audit and Risk Committee:** the ABA Entity Board establish an Audit and Risk Committee. Even though the *Public Governance, Performance and Accountability Act 2013 (Cth) (PGPAA)* only requires an Audit Committee to be established, it is best practice to establish a committee that oversees both functions of Audit and Risk.
- supported by an Advisory Committee
- **Advisory Committee:** the Board consider the benefits of forming an Advisory Committee (which will act in an advisory capacity only), specifically to support the Investments Committee.
- each of the Investments Committee and Advisory Committee should be governed by a Charter
- **Committee Charter:** each Committee of the Board should adopt a Charter that sets out its roles and responsibilities and membership requirements.

Recommendation 8: ABA Entity Board to approve the appointment of the CEO, together with the Minister It is currently proposed, that the Chief Executive Officer (**CEO**) "be appointed by the Minister, having consideration of the advice of the Board." We recommend that the Minister, together with the ABA Entity Board should "agree" the appointment of the CEO (so that the CEO appointment could only proceed if the Board consents to that appointment).

Other Recommendations

Recommendation 9: Remuneration of Directors It is proposed that the remuneration of the directors will be determined by the Remuneration Tribunal, however, there is currently no contemplation as to how remuneration of the directors will be determined in the absence of a determination by the Remuneration Tribunal. We recommend that in the absence of a determination from the Remuneration Tribunal, remuneration should be determined by the Minister. This is consistent with the current arrangements for the Like Entities.

Executive Summary - Treasury & Investment & Investment Strategy & Function

Changes to the Aboriginals Benefit Account

Status Quo	ABA Entity
ABA Payments:	ABA Payments:
<ul style="list-style-type: none"> • Beneficial payments + ABAAC 	<ul style="list-style-type: none"> • ABA Entity which administers beneficial payments + strategic investments
<ul style="list-style-type: none"> • Land Council costs 	<ul style="list-style-type: none"> • Land Councils costs
<ul style="list-style-type: none"> • Traditional owners affected by mining (30% of royalty equivalents) 	<ul style="list-style-type: none"> • Traditional Owners affected by mining (30% of royalty equivalents)
<ul style="list-style-type: none"> • EDTL and community entities that hold township leases 	<ul style="list-style-type: none"> • EDTL and community entities that hold township leases
<ul style="list-style-type: none"> • Other payments 	<ul style="list-style-type: none"> • Other payments

Executive Summary - Treasury & Investment & Investment Strategy & Function

ABA Funding for the ABA Entity

\$500m
endowment
(one-off)

- Major strategic investments (eg: Aquaculture Project)
- Surplus invested in financial market portfolio

\$60m
annually

- Beneficial payments
- Minor strategic investments (eg: equity in small Aboriginal business)

~\$10m
annually

- Administration costs

Executive Summary - Treasury & Investment & Investment Strategy & Function

Recommendations: Treasury and Investment and Investment Strategy and Function

Key Recommendations

Recommendation 10: Set a risk appetite and portfolio structure ensuring capital is available when required and aligned with the ABA Entity's business objectives. These will be supported by a suitable cost-effective investment infrastructure

Given the quantum of funds that the ABA Entity is intended to hold (and deploy), the desire is for the ABA Entity to adopt an optimal approach to managing the funds. The approach will ensure the risk appetite established will be met. The risk appetite will both reflect the capital requirements of the ABA Entity, specifically the ensuring capital is available to meet planned grants and minor and major investment, and the custodial responsibilities for managing the funds on behalf of the ABA Entity's stakeholders. Additionally the structure will provide the opportunity for the optimal investment approach to be made in order to generate a return (reflecting the amount of risk which is prepared to be taken). The structure considers the relationship between developing an in-house capability versus access market expertise provided by outsource service providers (e.g. fund managers).

Recommendation 11: Establish a suitable investment function addressing investment, risk and transaction management activities

The investment strategy function for the ABA Entity is required to conform to best commercial practice so to inform the development of an investment strategy with clearly defined investment parameters and a risk profile suitable for investing in financial markets, remote communities and Indigenous businesses. A suitable structure which addresses all the key attributes of an effective treasury operation to achieve this is outlined. Roles and responsibilities and delegations in relation to strategic and operational investment decisions must be clearly outlined so to enhance the transparency and accountability of the ABA Entity as it makes its investment decisions in order to ensure the confidence of the entity's key stakeholders and achievement of outcomes.

Recommendation 12: Set a cost-effective operative model which supports implementation of the investment strategies for each investment portfolio. It will need to be flexible and effective but linked to any economies of scale available

Given the specialist experience required to manage the deployment of strategic investments, this function would be best deployed in-house. The ABA Entity has a choice with how it will manage its financial market investments, using an:

- in-house team; or
- outsource provider/s (i.e. fund manager/s).

In order to determine the optimal approach, both quantitative and qualitative considerations were assessed. The quantitative assessment shows that if the financial market investment portfolio is and expected to continue to be above (for at least a year) \$400 million for a period of at least one year, there is benefit to being in-house. However, if the investment portfolio is lower, as major investments are made, then using outsource providers would be more cost effective.

The qualitative assessment shows the key differences are in the flexibility, timeliness and transparency, the outsource model being more flexible and timely while the in-house model being more transparent.

Recommendation 13: The Entity will need to develop a function which will source, analyse and recommend strategic investments to the Investment Committee for approval based on the financial attributes of the investment and the impact the investment will have on the community

The investment approach will combine:

- an assessment of the return the investment can provide and the likelihood the capital will be returned;
- the benefit the investment can make to community.

The first criteria is determined by modelling. The second criteria is recommended to be assessed using the Indigenous Investment 'Santiago' Principles.



Key Recommendations



Corporate Governance

Matter	Recommendation	Comments
<p>Entity type</p>	<p>Recommendation 1: ABA Entity to be incorporated as a corporate Commonwealth entity</p> <p>Due to the purpose and objectives of the ABA Entity, and the strong emphasis on accountability and transparency, as well as the requirement for the involvement of the Minister, our view is that the intentions for the ABA Entity would be best served if the ABA Entity was incorporated as a corporate Commonwealth entity (as opposed to a non-corporate Commonwealth entity or an entity incorporated under the Corporations Act.</p> <p>This is because, as a corporate Commonwealth entity, the ABA Entity effectively:</p> <ul style="list-style-type: none"> • can carry out its powers and duties as if it was a corporate entity incorporated under the Corporations Act; • however, it will have greater accountability to stakeholders, and just as importantly, to the Commonwealth. 	<p>In order to support our recommendation, we provide some high-level comments below in relation to certain relevant characteristics of a: (i) corporate Commonwealth entity; (ii) a non-corporate Commonwealth entity; and (iii) a company limited by shares, incorporated under the Corporations Act.</p> <p>Company limited by shares, incorporated under the Corporations Act</p> <p><i>Director and reporting requirements</i></p> <p>The Corporations Act stipulates and imposes minimal governance arrangements on companies incorporated under the Corporations Act. For example, the key governance arrangements that are imposed are as follows:</p> <ul style="list-style-type: none"> • for a private company, the requirement to have at least one director (who ordinarily resides in Australia) and the requirement to prepare financial reports (which are lodged with the Australian Securities and Investments Commission (ASIC) if certain requirements are met in that the private company would be considered a “large private company”); and • for a public company, the requirement to have at least three directors (two of whom must ordinarily reside in Australia), with obligatory financial reporting requirements imposed on that public company and which are to be lodged with ASIC. <p>Further, the entity is required to report to ASIC in the event of any change of its capital structure and/or officeholder and certain other administrative requirements. Accordingly, the entity’s primary regulatory accountability is to ASIC.</p> <p><i>Shareholder: governance rights</i></p> <p>A company limited by shares must also have at least one shareholder (that is, the company must have a capital structure), and in this regard, the shareholder would be entitled (subject to the requirements of the Corporations Act and the entity’s constitution) to impose certain controls over the entity. For example, shareholder approval must be obtained in relation to any proposed amendments / replacement of the entity’s constitution, in relation to certain winding up proceedings, and in respect of public companies, the removal of directors from office. For completeness, we note that in relation to private companies, shareholders may remove directors from office only if the constitution affords shareholders with the express authority to do so. Otherwise, this right is reserved for the Board.</p> <p><i>Shareholder: ownership</i></p> <p>If the ABA Entity was to be a company limited by shares, due consideration will need to be given as to who the shareholder(s) of the ABA Entity would be. For example, whether it will be appropriate for the Commonwealth to be a shareholder by way of a corporate entity or particular individual. Or, whether it is appropriate for any member of the NT Land Councils (or all of the NT Land Councils) to be shareholders (and in what percentage of shareholding).</p> <p><i>Shareholder primacy</i></p> <p>In addition, companies limited by shares are governed by the concept of what is known as “shareholder primacy.” In brief, a company is required to serve its shareholders with the view of making profits. In this regard, the board of any company limited by shares owes its duties (both fiduciary and statutory) to the shareholders of the company (as a whole).</p> <p>Therefore, the composition and governance arrangements for a company limited by shares which is incorporated under the Corporations Act would seem to fail to meet the prescriptive requirements intended for the ABA Entity in respect of its intended governance arrangements and emphasis on accountability.</p> <p>Public company limited by guarantee</p> <p>For completeness, we note that we have not examined whether a public company limited by guarantee is a suitable structure for the ABA Entity as public companies limited by guarantee are a common company structure used for not-for-profit and charitable organisations that reinvest any profit towards the organisation’s purposes. In this regard, we understand that the intention is not to restrict the ABA Entity to not-for-profit and/or charitable purposes.</p>

Corporate Governance

Matter	Recommendation	Comments
Entity type	Please see above.	<p>Non-corporate Commonwealth entity</p> <p>A non-corporate Commonwealth entity is legally and financially a part of the Commonwealth, and commonly include:</p> <ul style="list-style-type: none"> • Departments of state; and • Parliamentary departments. <p>Accordingly, as a non-corporate Commonwealth entity does not have a separate legal personality from the Commonwealth, it acts on behalf of the Commonwealth (and is therefore, bound by relevant government policies and procedures that are applicable to it). Effectively, a non-corporate Commonwealth entity acts as an arm of government and the scope of operations it may conduct is restricted or limited to those boundaries determined by the Australian government.</p> <p>Corporate Commonwealth entity</p> <p>By contrast, a corporate Commonwealth entity, although still a part of the Australian government, has a separate legal personality from the Commonwealth and therefore, can enter into contracts and own property separate from the Commonwealth. A corporate Commonwealth entity has the power and authority to operate commercially and entrepreneurially and has a degree of independence from the policies and direction of the Australian government (this is comparative to a non-corporate Commonwealth entity). This level of financial autonomy from the government is suitable for an entity that needs to operate commercially and does not receive a substantial proportion of its funding from the Australian government.</p> <p>As an entity that is still a part of the Australian government, a corporate Commonwealth entity is governed by the PGPA Act which requires certain involvement from the relevant Minister (please see PGPA Act Requirements section of the Report for a summary of the duties that are owed by the accountable authorities and the officials of those accountable authorities). In this regard, it is useful to highlight three immediate key differences in the duties that are owed by the accountable authorities of corporate Commonwealth entities and a company limited by shares incorporated under the Corporations Act, as follows:</p> <ul style="list-style-type: none"> • working towards a common objective: there is an express requirement that the board of the corporate Commonwealth entity must encourage officials of the entity to cooperate with others to achieve common objectives, where practicable; • higher standard of governance requirements: the accountable authority must establish and maintain: <ul style="list-style-type: none"> ○ an appropriate system of risk and oversight and management for the entity; ○ an appropriate system of internal control for the entity, including by implementing measures directed at ensuring that officials of the entity comply with financial laws. By comparison, there are no like prescriptive requirements imposed by the Corporations Act on companies. Instead, the Board is responsible for all risk, and can delegate risk management / oversight (or not) as it deems appropriate; and • accountability: there are significant reporting obligations to the Minister (e.g. keeping the Minister informed of the activities of the entity and any subsidiaries of the entity, notifying the Minister as soon as practicable after the accountable authority makes a significant decision in relation to the entity or any of its subsidiaries etc.). This directly contrasts with a company limited by shares incorporated under the Corporations Act which only submits financial reports to ASIC if it is deemed a “large proprietary company” and then only in limited circumstances as stipulated under the Corporations Act.

Corporate Governance

Matter	Recommendation	Comments
<p>Board – composition: role of non-voting Directors</p>	<p>Recommendation 2: “Non-voting directors” instead be “Observers” on the Board</p> <p>We understand that the ABA entity is currently proposed to have 16 directors with the following composition:</p> <ul style="list-style-type: none"> • eight voting NT Land Council directors (four Chairs and four Deputy Chairs of the NT Land Councils), determined by the relevant NT Land Council election process; • four non-voting NT Land Council directors (four CEOs of the NT Land Councils), determined by the relevant NT Land Council election process; • two voting directors nominated by the Minister; and • two voting directors nominated by the Minister for Finance. <p>Directors appointed by the Minister for Finance or the Minister must have financial, business or land, water or environment management expertise.</p> <p>In relation to the proposed four non-voting members of the Board, we understand the following:</p> <ul style="list-style-type: none"> • the CEOs of the NT Land Councils have a keen and vested interest in the ABA on the basis that a significant portion of its funds are distributed to/expended for the benefit of the NT Land Council membership and other Aboriginal people in the Northern Territory; and • accordingly, the intention of including the “four non-voting Land Council directors (four CEOs of the NT Land Councils)” to comprise part of the ABA Board is for the CEOs of the NT Land Councils to provide relevant context and advice in respect of the NT Land Councils and their respective operations. 	<p>We make the following observations in support of our recommendation:</p> <p>Non-voting Director vs Observer</p> <p>We appreciate the desire to provide for a culturally representative Board, including to ensure that the CEOs of the NT Land Councils (as non-voting Directors on the Board of the ABA Entity) have the opportunity to provide relevant context and advice in respect of the stakeholders they represent. We further appreciate that without a permanent Director position afforded to each of the NT Land Council CEOs, there is concern that such perspectives and insight may not otherwise be provided to the Board.</p> <p>However, we query whether a non-voting Director role would be the most appropriate way to ensure for such representation on the Board. This is because, each Director has director’s duties – these duties are personal to each Director, and require each Director to act, that is, the duties are positive duties. The most direct way that Directors act is to make decisions (that is, vote on a particular matter before the Board). A non-voting Director role would therefore stifle the Director from being able to take positive actions in order to effectively discharge their duties. To be clear, the duties would still be owed by that Director, even though the Director had no power to vote on the matters before the Board. This is a complex dynamic and may have unintended consequences for the individual directors that would carry out this role.</p> <p>As an alternative, you may wish to consider an “Observer” role for each of the NT Land Council CEOs. Observers are literally observers on the Board; they do not have any decision-making authority. However, their input and contributions to the Board discussions are of high-value to the Board. For this reason, an Observer does not have any director’s duties and ordinarily does not constitute a quorum. However, an Observer would be able to attend and participate in Board meetings under appropriate terms and conditions.</p> <p>In order to cement their participation at each Board meeting, the Board Charter (to govern the ABA Entity Board) could include an express requirement for Observers to the Board:</p> <ul style="list-style-type: none"> • to participate in the discussions of the Board; • ensure that Observers had input into each Board meeting Agenda and received all Board papers and minutes of the meetings of the Board; and • could also call a Directors meeting (if this was thought to be important). <p>In this way, an Observer would be provided (to the extent possible) with fulsome participation rights at ABA Entity Board meetings, but without any confusion as to their role.</p> <p>For completeness, we note that as long as the Board Charter governs the Board immediately upon incorporation of the ABA Entity, then there would be no gap in the requirement for the Board to ensure the participation of the Observers. Accordingly, it would not be necessary to legislate for the involvement of the “Observers.”</p> <p>Directors with expertise</p> <p>Generally, the Board of any entity needs to be confident that it has the relevant suite of expertise amongst its members in order to be able to, as a Board, effectively govern the entity. In respect of the ABA Entity Directors that are to be appointed by the Minister and Minister for Finance that require certain expertise (financial, business or land, water or environment management expertise), the focus should be more on the relevant expertise that they bring to the Board.</p>

Corporate Governance

Matter	Recommendation	Comments
Board – composition: role of non-voting Directors (cont.)	In this regard, our view is that it is more appropriate for the NT Land Council CEOs to be an Observer to the Board of the ABA Entity (please see our more detailed comments aside for more information).	Regardless of whether or not those directors are effectively nominee / representatives of the Commonwealth, the focus should be on whether or not their expertise are appropriate to fill the relevant skill gap at the Board. In our view, ensuring that the Board as a collective contains the relevant expertise appropriate to govern the entity, strengthens the Board’s decision-making process. For completeness, we note that this is consistent with a majority of the Like Entities, where they require the Minister-appointed Directors to have certain skill sets or expertise.
Board Charter	<p>Recommendation 3: ABA Entity to have Board Charter</p> <p>We recommend that the ABA Entity have a Board Charter.</p>	<p>The purpose of a Board Charter is to document the Board’s terms of reference, and to articulate the Board’s approach to important governance practices. The charter should contain a statement clarifying the division of responsibilities between the Board and Management. Many Boards define the roles, powers and responsibilities that it specifically reserves for itself, and those which it delegates to Management. The ABA Entity Board Charter should clearly outline the Board’s purpose, functions and key operating mechanisms. For example, a Board Charter will typically cover the following matters:</p> <ul style="list-style-type: none"> • overview of board roles, functions and responsibilities; • board structure and composition; • the chair’s role; • the role of the company secretary; • the board’s policy for assessing independence (if applicable to the composition of the Board); • retained authorities; • board delegations; • board meeting procedures; and • oversight of strategy, financial and risk management, and remuneration frameworks. <p>In addition, typically a Board would review its Board Charter periodically to ensure it remains relevant to the circumstances of the organisation.</p>

Corporate Governance

Matter	Recommendation	Comments
<p>Board – composition: Independent Director(s)</p>	<p>Recommendation 4: Independent Director(s)</p> <p>Board to include Independent Director(s)</p> <p>We recommend that the composition of the Board includes an Independent Director(s).</p>	<p>Independent Director</p> <p>We appreciate that the Boards of the Like Entities examined (in respect of those corporate Commonwealth entities) do not include an independent director, and we understand that this may be a concept not readily adopted by corporate Commonwealth entities more generally. However, given the role and purpose of the ABA Entity, in that it is entrusted to deal with a significant amount of public money, our view is that the ABA Entity’s governance arrangements in particular will be scrutinised and held to the highest standards. In this regard, best practice dictates that Boards comprise a majority of independent directors. While this best practice standard is most immediately applied to ASX-listed entities, there is an expectation that entities entrusted with other people’s money (even if they are private / non-public entities), must also adhere to best practice corporate governance standards so to ensure a positive corporate culture (including one of compliance).</p> <p>A majority independent Board for the ABA Entity will be contrary to the intended culturally representative Board. However, please consider whether there is merit in including at least one or more independent directors in the composition of the Board.</p> <p>The concept of an independent director symbolises what is perceived to be best practice for Board compositions, as an “independent” director is meant to be free of any interest, position, or relationship that might influence, or reasonably be perceived to influence in a material respect their capacity to bring an independent judgement to bear on issues before the Board and act in the best interests of the entity as a whole rather than those of particular stakeholders. In addition, the ASX Corporate Governance Council’s Principles and Recommendations 4th Edition (ASX Principles and Recommendations) provide a comprehensive list of factors relevant to assessing a director’s independence (please refer to Box 2.3 of the ASX Principles and Recommendations). While the ASX Principles and Recommendations apply only to ASX-listed entities (and then on an “if not, why not” reporting basis), they are held as the benchmark of best-practice corporate governance for listed and unlisted entities. Although some of the factors may not be relevant to assessing the independence of a director of a corporate Commonwealth entity, the idea is to provide a framework to assess a director’s ability to truly bring that independent judgement to issues before the Board.</p> <p>For the purposes of the ABA Entity Board, it would be the Board (and not, for example, the Minister) that would appoint the Independent Director(s) to serve in that role on the Board. The Board would then need to have regard as to whether that Director is truly independent and resolve on that independence – such resolution would form part of the Board’s resolutions in respect of the initial appointment of that Director. Should that Director’s independence status change, then that Director would have a positive obligation to immediately notify the Chair / Board and the Board would then resolve on whether or not that Director has maintained their independence.</p>

Corporate Governance

Matter	Recommendation	Comments
Board – composition: reporting on “independence”	Board to report on “Independence”	<p>The importance of reporting on “independence”</p> <p>We understand there is desire to provide greater transparency into the ABA Entity’s decisions and activities, and accordingly report on these matters every six months.</p> <p>Our view is that reporting provides the greatest form of transparency (and as a result, accountability and credibility) into an entity, including in respect of its governance arrangements and accordingly reporting is encouraged.</p> <p>Relevant to the concept of an “independent director,” for an ASX-listed entity we note that it is required to report on which directors are independent and then to update the ASX and the market in respect of any change to the status of that director’s independence. This is because, independent directors are regarded as a crucial part of best practice governance.</p> <p>For the purposes of the ABA Entity, should you consider that an independent director(s) would compliment the composition of the Board and provide for a higher standard of Board governance then you could also consider reporting on that director’s independence and any change to that status of independence as part of providing transparency into the ABA Entity’s corporate governance arrangements.</p>
Board – composition: quorum requirements and Committee membership	Independent Director to form part of the quorum requirements	<p>Further to the discussion on independent directors, please also consider whether an independent director:</p> <ul style="list-style-type: none"> • should be included in the quorum requirements. Frequently, best practice requires this in order to ensure that a Board meeting could not progress without the involvement of that particular independent perspective. This becomes of increasing importance where a Board includes nominee / representative directors; and • should be included in the membership of any of the key Committees of the Board (and potentially Chair any of those Committees), for the various reasons discussed above. Frequently, there is a restriction placed on the Chair of the Board being able to be the Chair of the Audit and Risk Committee. In addition, for the purpose of our recommendation to most immediately establish an Investments Committee (please see page 29 for more information), we would consider that an independent director (and potentially Chair of that Committee) could provide significant benefit to the membership of the Committee. <p>Our view is that this would not place any additional burden on an Independent Director in that they would be expected to attend each and every Board meeting. This is because, each Director is expected to attend all meetings of the Board, and only be absent in exceptional circumstances. Relevantly, when consenting to act as a Director, each Director must be able to commit the necessary time required in order to fulfil that role. In addition, when scheduling Board meetings, real attempt must be made to accommodate each Director’s availability so to provide each Director with every opportunity to attend and participate in meetings of the Board.</p>

Corporate Governance

Matter	Recommendation	Comments
<p>Board members: “part-time”</p>	<p>Recommendation 5: Removal of the reference to “Part-time” in relation to the role of Directors</p> <p>Under the proposed governance arrangements, one of the conditions proposed to apply to Board members, is that they will be “part-time.” We recommend removing this reference of “part-time” in relation to the role of Directors.</p>	<p>We appreciate that the reference to Board members being “part-time” is related to the way the Board members will be remunerated (that is, on the basis of attendance of meetings and related preparatory requirements – effectively, “sitting fees”). However, this may lead to a perception that the Director role is in fact a “part-time” role, which causes concern.</p> <p>A Director is appointed as a director of the relevant board until that director retires (that is, steps down from that role), or is otherwise removed from that role. To be clear, the person holds that title of Director uninterrupted until the occurrence of such event. Regardless of whether or not Board meetings are frequent or limited every year (or period) (and even in the case where a Board does not meet at all), the Directors of that body are still the appointed directors, and accordingly, have and owe their director’s duties in accordance with the law.</p> <p>Relevant to the above, we note the concept of a “sitting fee” in corporates is more relevant to, for example, an Advisory Committee. This is because, Advisory Committee members can be remunerated in either one of two ways: (i) “sitting fees” – i.e. for each meeting they attend and any preparatory requirements for that meeting, or otherwise as and when called upon by the Board and Management; or (ii) annual fees whereby there is expectation that the Advisory Committee will be in greater demand by the Board and Management, and accordingly is required to be more readily accessible.</p> <p>For non-executive Directors of corporates, remuneration is commonly by way of annual director fees. Such fees are wide ranging depending on the market capitalisation of the company, the time commitment requirements of the Director and so on. The fees can even be nominal, and in the case of not-for-profits, non-executive Directors do not get paid director fees (for reasons that such roles are held in order to further a particular social purpose etc.). Please note, this discussion applies to non-executive Directors only (and not also executive Directors who are executives of the organisation, and accordingly are commonly employed (or otherwise fulfil a management role) by the organisation, and accordingly, receive a salary).</p>
<p>Chair – casting vote</p>	<p>Recommendation 6: Chair not to have a casting vote</p> <p>The governance arrangements proposed that the Chair is to have a casting vote, in addition to any deliberative vote the Chair may have.</p> <p>Our view is that it is better governance for the Chair not to have a casting vote.</p>	<p>We appreciate that a Chair holding a casting vote (in addition to any deliberative vote the Chair may have) is common amongst the Like Entities we have examined. However, best practice dictates that the Chair should not have a casting vote.</p> <p>This is because, in a situation where there is an equal vote for and against, the Chair can ultimately decide on the matter as they individually see fit. By contrast, best practice requires that where there is a deadlock at the Board (that is, the Board is unable to pass a resolution), then further information should be put to the Board and the Board discuss that issue further. In the event the resolution is still unable to be passed (that is, there is still an equal vote for and against) then that resolution simply does not get passed.</p> <p>Particularly in the case of a representative Board, affording the Chair a casting vote may provide for an unnecessary power dynamic that is at odds with a Board composition that is intended to encourage representation, inclusiveness and participation. Our view, is that affording the Chair a casting vote would not serve well these intentions.</p> <p>From a practical level, we also query whether in a large Board (such as the intended ABA Entity Board) a casting vote is ever required to be deployed by the Chair.</p>

Corporate Governance

Matter	Recommendation	Comments
Board Committees	<p>Recommendation 7: ABA Entity Board to establish Board Committees and an Advisory Committee</p> <p>The governance arrangements proposed that the Board will be able to form committees and delegate its power accordingly.</p> <p>We recommend, that:</p> <p>Investments Committee: the ABA Entity Board establish an Investments Committee;</p> <p>Audit and Risk Committee: the ABA Entity Board establish an Audit and Risk Committee;</p> <p>Advisory Committee: the Board establish an Advisory Committee (which will act in an advisory capacity only), specifically to support the Investments Committee;</p> <p>Committee Charter: each Committee of the Board have a Charter that sets out its roles and responsibilities and membership requirements.</p>	<p>It is important to consider the committees that will be of most immediate need for the Board to assist the Board in discharging its duties.</p> <p>Board Committees</p> <p>We appreciate that whilst the PGPAA only stipulates the need for an Audit Committee, best practice corporate governance dictates that a Board establish an Audit and Risk Committee (i.e. a committee that oversees both of these functions which are related). Relevantly, we note that the majority of the Like Entities have an Audit and Risk Committee in place, except for the Torres Strait Regional Authority (TSRA) which has an Audit Committee in place.</p> <p>In addition, we consider that an Investments Committee will be beneficial to assist the Board in overseeing the investments strategy / policy and investments portfolio of the ABA Entity.</p> <p>In this regard, each Committee of the Board will have delegated authority to effectively carry out its duties. A Terms of Reference / Charter for each committee should be adopted by the ABA Entity Board which is to set out the roles and responsibilities of each committee and its membership requirements.</p> <p>Please refer to pages 57 - 58 of this Report for our more detailed discussion on the Treasury / Management Framework and Governance, which, among other things, sets out the proposed roles of each of the Audit and Risk Committee and the Investments Committee.</p> <p>For your reference, a Board may establish a committee to assist the Board in discharging certain of its duties. The committee then investigates and reviews matters (within its scope of delegation of authority) in more detail than the full Board's agenda normally may allow for. This committee may then present its findings and recommendations to the Board (or act where the delegation of authority permits). However, we note importantly that the Board remains responsible for its delegated responsibilities. The Board is also able to withdraw or pull-back any such delegated power as it may determine.</p> <p>Advisory Committees</p> <p>We compare the role of a Board Committee to an Advisory Committee. An Advisory Committee acts in an advisory capacity only. Commonly, an Advisory Committee is made up of individuals with key skills or expertise or otherwise significant industry profile, that provide the Board and Management with key insight into the sector or industry or other specific matters of concern and relevance to the Board and the organisation. They can also provide an opportunity for industry networking (depending on the profile of members). Typically, an Advisory Committee is not a Board Committee and accordingly does not carry out a Board function, as the committee and its members do not act on behalf of the Board. For this reason, the members of the Advisory Committee are not attributed with directors duties. Instead, the Advisory Committee makes recommendations to the Board on certain matters, and the Board has regard to those recommendations, and makes the ultimate decision on the relevant matter.</p> <p>Advisory Committees have continued to become more prolific, as corporates in particular, find they are an efficient way to provide the Board and Management with immediate access to relevant expertise and industry insight. Further to our recommendation above in relation to the establishment of an Investments Committee, the Advisory Committee could, in particular, become a key resource to the Investments Committee (and the Board more generally) as it oversees the investment mandate for the ABA Entity.</p>

Corporate Governance

Matter	Recommendation	Comments
<p>CEO Appointment</p>	<p>Recommendation 8: ABA Entity Board approve the appointment of the CEO, together with the Minister</p> <p>It is currently proposed, that the CEO “be appointed by the Minister, having consideration of the advice of the Board.” The Minister could terminate the appointment of the CEO due to:</p> <ul style="list-style-type: none"> • misbehaviour; • mental or physical incapacity; • on bankruptcy related grounds; or • breach of a code of conduct (“the legislation would provide for the government to set a code of conduct via a disallowable legislative instrument and for the Minister to determine breaches and subsequent sanctions”). <p>In this regard, due consideration should be given to whether the Minister, together with the ABA Entity Board should “agree” the appointment of the CEO (so that the CEO appointment could only proceed if the Board consented to that appointment).</p>	<p>Under this proposed arrangement, we note that the Minister will ultimately have full discretion and the decision-making power to appoint the CEO of the ABA Entity, as the Minister must only “consider” the advice of the Board. There is otherwise no requirement for the ABA Entity Board to agree the CEO appointment.</p> <p>Accordingly, please consider whether the Minister, together with the ABA Entity Board should “agree” the appointment of the CEO (so that the CEO appointment could only proceed if the ABA Entity Board consented to that appointment), keeping in mind that the CEO is the highest executive in an organisation and must carry out the delegated authority of the Board and report directly to the Board. Productive interactions between the Board and the CEO are crucial to the success of the CEO function, and accordingly, the organisation more broadly. These interactions can only be enhanced when the Board has confidence in the CEO (the CEO is one of the Board’s choosing) that they will effectively carry out their duties.</p> <p>Relevantly, we note that this is the arrangement currently in place for the TSRA – please see page 42 for more information.</p> <p>However, we appreciate that the appointment and termination of a CEO / senior executive go hand-in-hand. In considering whether it is appropriate for the ABA Entity Board to also agree the CEO appointment, regard must also be had in relation to the role of the ABA Entity Board (if any) in respect of termination of the CEO.</p>

Treasury and Investment

Treasury Management Approach	Recommendation	Comments
<p>Risk Appetite</p>	<p>Recommendation 10: Set a risk appetite and portfolio structure ensuring capital is available when required and alignment with the ABA Entity's business objectives. These will be supported by a suitable cost effective investment infrastructure</p> <p>Given the quantum of funds that the ABA Entity is intended to hold (and deploy), the desire is for the ABA Entity to adopt an optimal approach to managing the funds. This should include considerations for the treasury function, including both in-house and out-sourced management, the organisational structure and workforce needed to support each option, the advantages and disadvantages of each and a cost-benefit analysis of each option.</p> <p>The first step is setting the risk appetite and liquidity needs.</p>	<p>We have recommended an approach for adopting the optimal approach to developing and managing the ABA Entity and how it will manage its capital, by providing two tools:</p> <ul style="list-style-type: none"> • quantitative approach: a quantitative risk appetite approach to investment selection; and • qualitative approach: with a qualitative overlay addressing the stakeholders appetite for risk. <p>In this regard, the purpose of the ABA Entity (including its primary responsibilities to manage the investment portfolio) is outlined and used to define how the overall portfolio will be viewed and how the funds will be distributed.</p> <p>The investments will be divided into two portfolios, being, what we have defined as "Financial Market Investments" and "Strategic Investments" (further categorised into "Minor Investments" and "Major Investments").</p> <p>We have proposed that the Financial Market Investments can have a mix of defensive and growth assets, while the Strategic Investments would be given the likely risk profile of the investments, growth assets.</p> <p>This will require, on an ongoing basis, a thorough assessment of the entity's capital funds profile to understand the cash flow requirements and risk profile of the investment decisions – this is so to ensure the approach adjusts to any changes in the Entity needs driven by time or change in objectives.</p>
<p>Investment strategy function: "Six Pillar" model</p>	<p>Recommendation 11: Establish a suitable Investment function addressing investment, risk and transaction management activities</p> <p>The investment strategy function for the ABA Entity is required to conform to best commercial practice so to inform the development of an investment strategy with clearly defined investment parameters and a risk profile suitable for investing in remote communities and Indigenous businesses. In addition, the roles and responsibilities in relation to strategic and operational investment decisions must be clearly outlined so to enhance the transparency and accountability of the ABA Entity as it makes its investment decisions in order to ensure the confidence of the ABA Entity's key stakeholders and achievement of outcomes.</p>	<p>We have proposed that as part of the qualitative approach to the Treasury and Investment Strategy and Function, the ABA Entity adopt what we have called a 'six pillar' model, which will provide the ABA Entity (its Board and Investments Committee) a template to assist with the establishment of the ABA Entity's approach to capital management enabling it to manage its risks and opportunities in a well-structured and managed environment. In brief, the 'six pillar' (model investment focus) includes the following:</p> <ul style="list-style-type: none"> • Treasury/Funds Management Framework and Governance; • Liquidity & Cash; • Portfolio Management; • Financial Risk; • Operations; and • Reporting. <p>We have suggested that a targeted state is set for each of the pillars listed above. This target is set based on the objectives of the ABA Entity and how it plans to achieve them. The target is considered to be the best commercial practice given the outcomes sought. As it is not envisaged that the ABA Entity will be an active manager of investments, our view is that a more holistic approach (as we have detailed) would provide the most commercially effective approach.</p> <p>Please refer to pages 48 – 54 of this Report for a detailed discussion of each of the six pillars.</p>

Investment Strategy and Function

Investment Approach	Recommendations	Comments
<p>Operating Model</p>	<p>Recommendation 12: Set a cost effective operative model which supports implementation of the investment strategies for each investment portfolio. It will need to be flexible and effective but linked to any economies of scale available</p> <p>The ABA Entity has a choice with how it will manage its investments (across both portfolios), using an;</p> <ul style="list-style-type: none"> • in-house team; or • outsource provider/s (i.e. fund manager/s). <p>In order to determine the optimal approach, both quantitative and qualitative considerations were assessed. The quantitative assessment shows that if the financial market investment portfolio is above \$400 million, there is a benefit to being in-house, however, if the investment portfolio is lower then the outsource provider is preferred.</p> <p>The qualitative assessment shows the key differences are in the flexibility, timeliness and transparency, the outsource model being more flexible and timely while the in-house model being more transparent.</p>	<p>A comparison between developing an in-house team or outsourcing the management of investments (across both portfolios) to fund manager/s was developed using both quantitative and qualitative techniques. The focus is on managing the Financial Market portfolio. The effort required to manage the Strategic Investment portfolio was reviewed, however, there is unlikely to be out-sourced funds managers which can provide the combination of credit investment and Indigenous skills required to effectively manage this part of the portfolio.</p> <p>The quantitative approach approximated the direct costs for establishing an in-house capability (salary, technology and custodial services) compared to the fees charged by fund managers. The key outcome of the analysis shows economies of scale which drive the approach is preferable, the larger the Financial Market portfolio being managed, the more attractive the in-house approach is. Therefore, should the Strategic Investment portfolio become the large portion of the Entity over time, the economise of scale would make the in-house solution look more expensive for managing the Financial Market portfolio.</p> <p>From a qualitative perspective, the key difference between the two alternatives is flexibility, timeliness and transparency. The outsource model allows more flexibility to change the portfolio mix and can be established quickly while the in-house solution has complete transparency and the knowledge/skill are readily accessible, however, can take some time to establish and become an effective investment team.</p>

Investment Strategy and Function

Investment Approach	Recommendations	Comments
<p>Investment Approach: Strategic Investments</p>	<p>Recommendation 13: The Entity will need to develop a function which will source, analyse and recommend strategic investments to the Investment Committee for approval based on the financial attributes of the investment and the impact the investment will have on the community</p> <p>The investment approach will combine:</p> <ul style="list-style-type: none"> • an assessment of the return the investment can provide and the likelihood the capital will be returned; and • support Indigenous communities and commercial enterprises. <p>The first criteria is determined by modeling. The second criteria is recommended to be assessed using the Indigenous Investment 'Santiago' principles.</p>	<p>Strategic Investments will be assessed and rated with consideration of both quantitative and qualitative factors. The quantitative factors include potential return and tenor of investment. Qualitative factors include management capability, impact of the economic environment and reliance on suppliers and customers/markets.</p> <p>The Indigenous Investment 'Santiago' principles are framed by five guiding objectives; cultural heritage, economic independence, capacity building, build respect in markets, and risk management. The Principles provide a framework which can assess the impact on the communities of the major investments, specifically:</p> <ol style="list-style-type: none"> 1. consider their aspirations and priorities for economic development; 2. identify suitable economic and financial information to inform investment and capability requirements; 3. realise value from investments and the risks involved in each option; 4. develop Purpose and Spending Rules for investment based on an understanding of options; 5. create a robust system of governance arrangements, including when to delegate authority to an expert body; and 6. regularly consider, report on and respond to risks. <p>The Principles have three themes, the first theme, Community circumstances and purpose is recommended as part of the major investment assessment process. There are five principles to be used:</p> <ol style="list-style-type: none"> 1. Land, culture, heritage and peoples; 2. Capacity-building and engagement; 3. Economic circumstances; 4. Community needs; and 5. Nature and source of funds.



Corporate Governance - Comparative Table

Comparative Table

Key similarities and differences between ABA Entity's proposed governance arrangements and like Indigenous entities

The below table provides a high-level comparison between the ABA entity's proposed governance arrangements and the corporate governance arrangements of certain existing Indigenous entities, being: (i) Indigenous Land and Sea Corporation (**ILSC**); (ii) Australian Institute of Aboriginal and Torres Strait Islander Studies (**AIATSIS**); (iii) Indigenous Business Australia (**IBA**); (iv) Torres Strait Regional Authority (**TSRA**); and (v) Yamatji Southern Regional Corporation Limited (**YSRC**) (together, the **Like Entities**).

	ABA Entity	ILSC	AIATSIS	IBA	TSRA	YSRC
Organisation type	The ABA Entity is proposed to be a corporate Commonwealth entity.	The ILSC is a corporate Commonwealth entity.	The AIATSIS is a corporate Commonwealth entity.	The IBA is a corporate Commonwealth entity. The IBA is also a not-for-profit entity and is a registered charity with the Australian Charities and Not-for-profits Commission (ACNC).	The TSRA is a corporate Commonwealth entity.	The YSRC is a public company limited by guarantee and is registered as a charity with the ACNC.
Comments: For noting.						
Governing legislation	The ABA Entity will be subject to the following legislation: <ul style="list-style-type: none"> PGPAA (on the basis that it will be a corporate Commonwealth entity); and ALRA (on the basis that it will be established under the ALRA). 	The ILSC is subject to the following legislation: <ul style="list-style-type: none"> PGPAA (as it is a corporate Commonwealth entity); <i>Aboriginal and Torres Strait Islander Act 2005</i> (Cth) (ATSI Act) (as it is established under the ATSI Act). 	The AIATSIS is subject to the following legislation: <ul style="list-style-type: none"> PGPAA (as it is a corporate Commonwealth entity); <i>Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989</i> (Cth) (AIATSIS Act) (as it is established under the AIATSIS Act); and <i>Public Service Act 1999</i> (Cth) (PSA) (as the AIATSIS is a statutory agency under the PSA). 	The IBA is subject to the following legislation: <ul style="list-style-type: none"> PGPAA (as it is a corporate Commonwealth entity); ATSI Act (as it is established under the ATSI Act); and various ACNC-related legislation (please see page 98 more information). 	The TSRA is subject to the following legislation: <ul style="list-style-type: none"> PGPAA (as it is a corporate Commonwealth entity); ATSI Act (as it is established under the ATSI Act); and <i>Native Title Act 1993</i> (Cth) (Native Title Act) (as the TSRA also performs separate functions as the Native Title Representative Body for the Torres Strait region). 	The YSRC is subject to the following legislation: <ul style="list-style-type: none"> Corporations Act (as it is a public company limited by guarantee); and various ACNC-related legislation (please see page 118 for more information).
Comments: For noting.						

Comparative Table

	ABA Entity	ILSC	AIATSI	IBA	TSRA	YSRC
Accountable authority	The accountable authority of the ABA Entity is proposed to be its Board of directors. The ABA Entity's Board of directors will be subject to the relevant duties stipulated under the PGPAA (please see pages 45 - 46 for more information).	The accountable authority of the ILSC is the Board of directors. ILSC's Board of directors are subject to the relevant duties stipulated under the PGPAA (please see pages 45 - 46 for more information).	The accountable authority of the AIATSI is the AIATSI Council. The AIATSI Council is subject to the relevant duties stipulated under the PGPAA (please see pages 45 - 46 for more information).	The accountable authority of the IBA is the Board of directors. The IBA's Board of directors are subject to the relevant duties stipulated under the PGPAA (please see pages 45 - 46 for more information).	The accountable authority of the TSRA is an elected representative body of members (TSRA Members). For completeness, we note that the TSRA Annual Report 2019 - 20 refers to the TSRA Members as the 'Board.' However, the ATSI Act does not refer to the TSRA Members as the 'Board' and refers to the accountable authority as the 'body of members.' The TSRA Members are subject to the relevant duties stipulated under the PGPAA (please see pages 45 - 46 for more information).	The accountable authority of the YSRC is the Board of directors. The YSRC Board are subject to the relevant director's duties stipulated under the Corporations Act; the Governance Standards of the ACNC.
Comments: Although the accountable authorities may vary between the different entities (i.e. the ILSC, IBA and YSRC have Boards of directors, whilst the AIATSI has a Council and the TSRA has a body of members), each of the accountable authorities act to provide the strategic direction and set policies and is responsible for the proper and efficient performance of the functions of each of the respective entities.						
Governing legislation	The Board of the ABA Entity is proposed to have the following powers: <ul style="list-style-type: none"> • all powers necessary or convenient to perform its functions; • make beneficial payments and strategic investments; • enter into contract; • invest entity money; • provide sponsorships; • give loans; • hold and sell property; • enter joint ventures; • form subsidiaries; and 	The ILSC Board has the following specific powers: <ul style="list-style-type: none"> • enter into contracts and agreements; • invest money of the ILSC; • appoint agents and attorneys and act as an agent for other persons; • form, and participate in the formation of, companies; • to subscribe for and purchase shares in and debentures and securities of companies; • enter into partnerships; 	The AIATSI Council have the following specific powers: <ul style="list-style-type: none"> • accept gifts, grants, bequests and devises made to it; and • act as trustee of money and other property vested in it on trust. 	The IBA Board have the following specific powers: <ul style="list-style-type: none"> • enter into contracts (including contracts for the provision of business or housing loans); • make grants for purposes associated with business loans or housing loans; • invest money of Indigenous Business Australia; • appoint agents and attorneys, and act as an agent for other persons; • form, and participate in 	The TSRA Members have the following specific powers: <ul style="list-style-type: none"> • accept gifts, grants, bequests and devises made to it; • act as trustee of money and other property vested in it on trust; • negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies; • enter into an agreement for making a grant or loan 	The YSRC Board has the "powers conferred on it by the Corporations Act to do all things that are necessary incidental or conducive to the attainment of the objects and the exercise of the powers of the Company."

Comparative Table

	ABA Entity	ILSC	AIATSI	IBA	TSRA	YSRC
Powers	Charge for the provision of services.	<ul style="list-style-type: none"> participate in joint ventures and arrangements for the sharing of profits; accept gifts, grants, bequests and devises made to it; act as trustee of money and other property vested in it on trust; and charge for the provision of services by it. 	Please see previous page.	<p>The formation of companies;</p> <ul style="list-style-type: none"> subscribe for and purchase shares in, and debentures and other securities of, companies; enter into partnerships; participate in joint ventures and arrangements for the sharing of profits; accept gifts, grants, bequests and devises made to it; act as trustee of money and other property vested in it on trust; and charge for the provision of services by it. 	<p>Under section 142GA of the ATSI Act to the State of Queensland or an authority of that State (including a local government body);</p> <ul style="list-style-type: none"> enter into an agreement (other than an agreement under section 142GA of the ATSI Act referred to in the preceding paragraph) with a State or a Territory; make a grant of money, grant an interest in land, grant an interest in personal property, or make a loan of money (whether secured or unsecured), to an individual, or a body corporate (other than a Regional Council), or an unincorporated body, for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; and make a loan of money or grant of money to the State of Queensland or an authority of the State of Queensland (including a local government body) for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area. 	Please see previous page.
	Comments:	<p>In addition to the powers noted above, we note that each of the Like Entities are granted with the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions. The powers granted to the ILSC and IBA are most similar to those powers that are proposed to be granted to the ABA Entity. However, some powers that have been granted to the ILSC and the IBA have not been proposed to be granted to the ABA Entity. These are as follows:</p> <ul style="list-style-type: none"> to subscribe for and purchase shares in, and debentures and other securities of, companies (although noting that the ABA Entity's proposed power to 'hold and sell property' may include this power); to enter into partnerships; to participate in arrangements for the sharing of profits (although noting that the ABA Entity is proposed to have the power to participate in joint ventures); to accept gifts, grants, bequests and devises made to it; to act as trustee of money and other property vested in it on trust; and to form, and participate in the formation of, companies (although noting that the ABA Entity is proposed to have the power to form subsidiaries). 				

Comparative Table

	ABA Entity	ILSC	AIATSIS	IBA	TSRA	YSRC
Delegation	<p>The ABA Entity is proposed to be able to appoint a committee or committees to assist the Board in the performance of its functions or the exercise of any of its powers. The ABA Entity will have the power to delegate its functions, in writing under its seal, to committees of the Board</p>	<p>The ILSC Board can delegate any or all of its powers and functions, in writing, to the ILSC Group CEO or to ILSC staff members. Accordingly, decision making within the ILSC is governed by the Instrument of Delegations. Three Board committees operated in 2019 – 20 being, the Audit and Risk Committee, the Remuneration and Nomination Committee and Work Health and Safety Committee. Please also see page 83 for our findings in relation to delegation for related party transactions.</p>	<ul style="list-style-type: none"> The AIATSIS Council may delegate any or all of its powers and functions, in writing, to the AIATSIS CEO or to AIATSIS staff members. Accordingly, decision making within the AIATSIS is governed by the Instrument of Delegations. Three Council committees operated in 2019 – 20 advising the AIATSIS Council, being, the Audit and Risk Committee, the AIATSIS Foundation and the AIATSIS Membership Standing Committees. In addition, 12 CEO committees operated in 2019 – 20 advising the CEO of the business of AIATSIS. Please also see page 92 for our findings in relation to delegation for related party transactions. 	<ul style="list-style-type: none"> The IBA Board may delegate any or all of its powers and functions, in writing, to the IBA CEO or to IBA staff members. Accordingly, decision making within the IBA is governed by the Instrument of Delegations. There are currently three Board committees being, Audit, Risk and Performance Committee, the Finance, Investments and Products Committee and the Remuneration and Nomination Committee. Please also see pages 101 – 103 for our findings in relation to delegation for related party transactions. 	<p>The TSRA Council may delegate any or all of its functions to the TSRA CEO or to a member of staff of the TSRA, except for the following powers:</p> <ul style="list-style-type: none"> its power to give consent to the disposal of interests in land for the purposes of section 142J of the ATSI Act; its power to make declarations under section 143R of the ATSI Act; and its power to reconsider matters under section 195A (i.e. if a delegate of the TSRA refuses a loan under section 142F to an individual or refuses to give a guarantee under section 142G in respect of a loan made or to be made to an individual). <p>If the TSRA delegates a function or power to the CEO, he or she may, by writing, sub-delegate the function or power to a member of the staff of the TSRA. The CEO must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power.</p> <p>Three committees currently operate, being the Audit Committee, the Finfish Quota Management Committee and the Fisheries Regional Ownership Framework Steering Committee.</p> <p>Please also see page 110 for our findings in relation to delegation for related party transactions.</p>	<p>The YSRC Board may delegate any of their powers to any person for any period of time and on any terms, conditions and restrictions they see fit and may revoke, withdraw, alter or vary the delegation of any of those powers.</p>

Comments:

Each of the ILSC, AIATSIS, IBA and TSRA have an Audit / Audit and Risk Committee in place, and ILSC and IBA both have a Remuneration and Nomination Committee in place. Relevantly, we further note that the IBA also has a Finance, Investments and Products Committee in place, which monitors and reviews IBA’s Housing Solutions, Business Solutions and Investments portfolios, reviews IBA’s important financial policies, and provides advice and recommendations to the IBA Board in relation to major new business, products, investments or other financial transactions. As we have discussed in our Executive Summary, Board committees may be utilised to assist the ABA Entity Board in discharging its duties. Specifically, the ABA Entity Board may consider establishing an Investment Committee to assist the Board to oversee and manage its investment strategy and portfolio.

Comparative Table

	ABA Entity	ILSC	AIATSIS	IBA	TSRA	YSRC
Board - composition requirements and appointment	<p>The ABA Entity is currently proposed to have the following composition:</p> <ul style="list-style-type: none"> eight voting NT Land Council directors (four Chairs and four Deputy Chairs of the NT Land Councils), determined by the relevant NT Land Council election process; four non-voting NT Land Council directors (four CEOs of the NT Land Councils), determined by the relevant NT Land Council election process; two voting directors nominated by the Minister; and two voting directors nominated by the Minister for Finance. <p>Directors appointed by the Minister for Finance or the Minister must have financial, business or land, water or environment management expertise.</p>	<p>The ILSC Board is currently comprised of six directors (with one director having resigned as at 30 June 2020).</p> <p>The ILSC Board should be comprised of the following members:</p> <ul style="list-style-type: none"> a Chairperson; a Deputy Chairperson; and five ordinary members. <p>The ILSC Chairperson and at least four other ILSC directors must be Aboriginal persons or Torres Strait Islanders.</p> <p>Each ordinary member of the Board is to be a person who the Minister is satisfied has experience in:</p> <ul style="list-style-type: none"> land, water or environmental management; business or financial management; or Aboriginal community life or Torres Strait Islander community life, <p>and the Minister must ensure that at least two ordinary members of the Board have experience in business or financial management.</p> <p>All directors are to be appointed by the Minister.</p>	<p>The AIATSIS Council is comprised of nine members and must be comprised of:</p> <ul style="list-style-type: none"> a Chairperson; a Deputy Chairperson; and seven ordinary members. <p>In this regard:</p> <ul style="list-style-type: none"> four members are elected from and by AIATSIS members; at least two of the elected members must be Aboriginal or Torres Strait Islander people and two must be women; five members are appointed by the Minister. The Minister's appointments must ensure a majority of Aboriginal and Torres Strait Islander representation and take into account gender balance, skills and experience; all members of the AIATSIS Council are non-executive members; and the Minister appoints a Chairperson and a Deputy Chairperson of the Council from among the Councillors 	<p>The IBA Board is currently comprised of nine directors where:</p> <ul style="list-style-type: none"> the Minister appoints the members of the Board who comprise a Chair, Deputy Chair and seven other members; the Minister consults the IBA about potential Board appointees when there is, or is expected to be, a vacancy; the IBA Chairperson and at least four other IBA directors are to be Aboriginal persons or Torres Strait Islanders; each IBA director is to be a person who the Minister is satisfied has experience in: <ul style="list-style-type: none"> industry, commerce or finance; or Aboriginal or Torres Strait Islander community life or enterprises. 	<p>The Minister may fix the eligible number of members of the TSRA by notice in the Gazette. The number fixed must be at least 20 and not more than 23. Members are elected by way of TSRA elections under Division 5 of Part 3A of the ATSI Act. The election of members is subject to any legislative instrument in force by the Minister that makes provision for and in relation to how the TSRA is to be constituted (including any provision for members elected to be representatives of a specified kind). Generally, each member represents the designated number of wards that form part of the Torres Strait area, which are defined in Part 1 of the <i>Torres Strait Regional Authority Election Rules 2017 (Cth) (Election Rules)</i>.</p>	<p>The YSRC Board is to be comprised of no more than 12 Directors and must be comprised of the following :</p> <ul style="list-style-type: none"> up to six Member Directors; at least one and up to three Expert Trust Directors who shall also be appointed as directors of the Yamatji Nation Trustee Company, provided that up to two must be Members and one must be Independent; and at least one and up to three Expert Economic Directors who shall also be appointed as directors of the Economic Arm, provided that up to two must be Members and one must be Independent. <p>The eligibility of Member Directors is that they must be a member and have demonstrated expertise in a specified area stated in the Constitution, including:</p> <ul style="list-style-type: none"> corporate governance; community development; communication; leadership; negotiation; strategic planning and implementation; heritage; and land management.
	<p>Comments: Each of the Like Entities require the composition of the Board to include certain cultural requirements (e.g. that at least a certain number of directors are of Aboriginal or Torres Strait Islander descent etc.) and expertise requirements (e.g. industry experience, financial management experience etc.). For completeness, we note that the AIATSIS also have a gender requirement (e.g. at least two women).</p> <p>Relevantly, all of the directors of the ILSC and IBA are appointed by the Minister. We assume this may be because of the broader powers that are granted to each of the ILSC and IBA Boards (including investment powers). The individuals that are appointed to comprise the accountable authorities of the AIATSIS and the TSRA are a combination of individuals that have already been elected/appointed to represent their associated organisation (i.e. AIATSIS members and TSRA members) and those individuals that have been appointed by the Minister (similar to what is being proposed for the ABA Entity).</p>					

Comparative Table

	ABA Entity	ILSC	AIATSI	IBA	TSRA	YSRC
Termination	<p>It is proposed that:</p> <ul style="list-style-type: none"> as the NT Land Councils are responsible for appointing the relevant NT Land Council directors, the NT Land Councils are also proposed to be responsible for the termination of these directors; and the Minister and the Minister for Finance are responsible for terminating any directors that they have appointed. <p>A director may be terminated on grounds for:</p> <ul style="list-style-type: none"> misbehaviour; mental or physical incapacity; on bankruptcy related grounds; and for contravening the relevant director duties stipulated under the PGPAA (please see page 45 - 47 for more information); <p>The Chair is proposed to be appointed and terminated by the Board.</p>	<p>The Minister may terminate the appointment of an ILSC director due to misbehaviour or physical or mental incapacity, and the Minister must terminate an ILSC director if they:</p> <ul style="list-style-type: none"> become bankrupt; apply to take the benefit of the law for the relief of bankrupt or insolvent debtors; compounds with his or her creditors; makes an assignment of his or her remuneration for the benefit of his or her creditors; fails, without reasonable excuse, to comply with subsection 192F(3) of the ATSI Act (i.e. fails to disclose all direct and indirect pecuniary interests that the Chairperson has or acquires in any business, or in any body corporate carrying on a business, to the Minister). 	<p>An AIATSI Council member may be terminated due to misbehaviour or physical or mental incapacity. The Minister must terminate a person's membership of the Council if the member is absent, except on leave granted by the Minister, from three consecutive meetings of the Council. An AIATSI Council member's membership may also be terminated under section 30 of the PGPAA (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials). In this regard, the Minister may remove from office an elected member if the member fails to comply with the general duties of officials under the PGPAA.</p>	<p>The Minister may, after consulting IBA, terminate the appointment of an IBA director due to misbehaviour or physical or mental incapacity. The Minister must terminate the appointment of an IBA director if the IBA director is absent, except on leave granted by the Minister, from three consecutive meetings of the IBA Board. The Minister must also terminate the appointment of an IBA director if the IBA director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit. The appointment of an IBA director may also be terminated under section 30 of the PGPAA (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority for contravening general duties of officials).</p>	<p>The Minister may suspend a member of the TSRA from office because of misbehaviour or physical or mental incapacity if the Minister has consulted the TSRA and, by written notice served on the member, given the member seven days within which to show cause why the member should not be suspended (please see page 113 for more information). The Minister must remove a member of the TSRA from office if the member:</p> <ul style="list-style-type: none"> is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for three months or longer; or who is the Chairperson of the TSRA, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or who is a part-time member, has been absent from 3 consecutive meetings of the TSRA without leave of the Minister and without reasonable excuse; or fails, without reasonable excuse, to comply with section 29 of the PGPAA (which deals with the duty to disclose interests) or rules made for the purposes of that section; or becomes bankrupt; or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or compounds with his or her creditors; or makes an assignment of his or her remuneration for the benefit of his or her creditors. <p>A TSRA Member may also be removed if the Minister receives a valid petition that contains more than 66% of the number of persons who would be entitled to vote at an election for a member of the TSRA calling for the removal of that member of the TSRA from office.</p>	<p>The Members may remove any Director from office for any reason and appoint a replacement, subject to compliance with section 203D of the Corporations Act.</p>
	<p>Comments:</p> <p>With the exception of the termination arrangements for the TSRA, the proposed arrangements for the termination of a director of the ABA Entity is largely in line with the existing termination arrangements for the directors/councillors of the Like Entities. For completeness, we note that the AIATSI and IBA have an additional ground for termination which allows the Minister to terminate the appointment of the relevant member or director if that relevant member or director is absent from three consecutive meetings of the Board or Council (as applicable), except on leave granted by the Minister.</p>					

Comparative Table

	ABA Entity	ILSC	AIATSI	IBA	TSRA	YSRC
Voting rights and quorum	<p>Any decisions at a Board meeting is proposed to require a majority of voting members present and the Chair is proposed to have a deliberative and casting vote.</p> <p>The quorum is proposed to be seven voting directors (which includes a minimum of four voting NT Land Council appointed directors and three voting expert directors).</p>	<p>Any decisions at a Board meeting are to be determined by a majority of the votes of the ILSC directors present and voting. The person presiding at a meeting of the ILSC Board has a deliberative vote, and in the event of an equality of votes, also has a casting vote.</p> <p>Four directors constitute a quorum.</p>	<p>Any decisions at a Council meeting are to be determined by a majority of the votes of the councillors present and voting. The person presiding at a meeting has a deliberative vote, and in the event of an equality of votes, also has a casting vote.</p> <p>Five councillors constitute a quorum.</p>	<p>Any decisions at a Board meeting are to be determined by a majority of the votes of the IBA directors present and voting. The person presiding at a meeting of the IBA Board has a deliberative vote, and in the event of an equality of votes, also has a casting vote.</p> <p>Five directors constitute a quorum.</p>	<p>Any decisions at a TSRA meeting must be determined by a majority of the votes of the members of the TSRA present and voting. The person presiding at a meeting of the TSRA has a deliberative vote and, if the votes are equal, also has a casting vote.</p> <p>12 TSRA Members constitute a quorum (subject to section 144E(5) of the ATSI Act in relation to the disclosure of interest requirement, in which case 8 TSRA Members constitute a quorum).</p>	<p>Any decisions at a Board meeting are to be determined by a majority of votes of the directors that are present and voting. In the equality of votes, the chairperson does not have a casting vote.</p> <p>The quorum is four directors (which includes two Member Directors and two Expert Directors, one of whom must be an Independent Director).</p>
<p>Comments:</p> <p>The proposed voting arrangements for the ABA Entity (i.e. decisions at a Board/Council/Members meeting are to be determined by a majority) are aligned with the current existing voting arrangements for the Like Entities. Although on page 24 we discuss that a casting vote is not in line with best practice, for completeness, we note that each of the Like Entities (except for YSRC) provide “the person presiding at the meeting” with a deliberative vote and also a casting vote in the event of an equality of votes.</p>						
Remuneration	<p>The remuneration of the directors of the ABA Entity are proposed to be determined by the Remuneration Tribunal.</p>	<p>The remuneration of the directors of the ILSC are determined by the Remuneration Tribunal. If no determination is made by the Remuneration Tribunal, the Minister makes a determination</p>	<p>The remuneration of the councillors of the AIATSI are determined by the Remuneration Tribunal. If no determination is made by the Remuneration Tribunal, the Minister makes a determination</p>	<p>The remuneration of the directors of the IBA are determined by the Remuneration Tribunal. If no determination is made by the Remuneration Tribunal, the Minister makes a determination.</p>	<p>The remuneration of the members of the TSRA are determined by the Remuneration Tribunal. If no determination is made by the Remuneration Tribunal, the Minister makes a determination.</p>	<p>Each director is entitled to reasonable remuneration to the extent permitted by law under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth) (ACNC Act) and as the Members decide in General Meeting by resolution.</p>
<p>Comments:</p> <p>With the exception of the YSRC, the ABA Entity’s proposed remuneration arrangements for its directors are consistent with the existing remuneration arrangements for the Like Entities (i.e. that the remuneration of the directors will be determined by the Remuneration Tribunal). However, we note that the proposed remuneration arrangement for the ABA Entity does not stipulate how remuneration of the directors will be determined in the absence of a determination by the Remuneration Tribunal. In this regard, please consider whether for the purposes of the ABA Entity, the remuneration should be determined by the Minister in absence of a determination from the Remuneration Tribunal.</p>						

Comparative Table

	ABA Entity	ILSC	AIATSIS	IBA	TSRA	YSRC
CEO	<p>The CEO of the ABA Entity is proposed to “be appointed by the Minister, having consideration of the advice of the Board.” The Minister could terminate the appointment of the CEO due to:</p> <ul style="list-style-type: none"> • misbehaviour; • mental or physical incapacity; • on bankruptcy related grounds; or • breach of a code of conduct (“the legislation would provide for the government to set a code of conduct via a disallowable legislative instrument and for the Minister to determine breaches and subsequent sanctions”). <p>Please also see our relevant comments on page 26.</p>	<p>The ILSC CEO is to be appointed by the ILSC Board on the terms (e.g. term, remuneration etc.) as stipulated by the ILSC Board. The term of appointment of a CEO must not exceed four years.</p>	<p>The AIATSIS CEO is to be appointed by the AIATSIS Council and must act in accordance with any policies determined, and any directions given, by the Council in writing. The term of appointment of a CEO must not exceed five years.</p>	<p>The IBA CEO is to be appointed by the IBA Board to manage the day-to-day administration of IBA and must act in accordance with any policies determined, and any directions given, by the IBA Board in writing. The CEO is entitled to remuneration and allowances as are determined by the IBA Board in writing. The CEO holds office during the IBA Board’s pleasure, although the term of appointment of a CEO must not exceed five years.</p>	<p>The CEO of the TSRA is appointed by the Minister (in agreement with the TSRA) and the appointed person is not to remain in that position for a period longer than five years. The CEO holds office on such terms and conditions (if any) in respect of matters not provided for by the ATSI Act by the Minister (with agreement by the TSRA). The Minister may (with agreement by the TSRA) terminate the appointment of the CEO because of incompetence, misbehaviour or physical or mental capacity. The Minister must terminate the appointment of the CEO if one of the circumstances outlined in the provisions of section 144P(2)(a)-(g) of the ATSI Act occur (please see page 114 for more information).</p>	<p>The YSRC CEO is to be appointed by the YSRC Board on the terms (e.g. term, remuneration etc.) as stipulated by the Constitution. The appointment of a CEO by the Board must be from a list of appropriately qualified and eligible Chief Executive Officer candidates provided by the Nominations Committee.</p>
	<p>Comments:</p> <p>Each of the CEOs of the ILSC, AIATSIS, IBA and YSRC are appointed by their respective Boards. The CEO of the TSRA however, is appointed by the Minister in agreement with the TSRA. Please see our comments on 16 – 17, where we have highlighted that if it is desired that the Minister appoints the ABA Entity CEO, whether that appointment should be with the “agreement” of the ABA Entity Board (as opposed to the Minister having consideration of the advice ABA Entity Board).</p>					
Direction of Minister	<p>The proposed governance arrangements for the ABA Entity do not currently contemplate how the ABA Entity would address directions from the Minister.</p>	<p>The ATSI Act sets out that “except as expressly provided in this Act or in the PGPAA, the Minister is not empowered to direct the Indigenous Land and Sea Corporation in relation to any of its activities.”</p>	<p>Our review of the governance arrangements for the AIATSIS did not identify or contemplate the Minister’s powers to direct the AIATSIS nor the AIATSIS’s compliance with such directions.</p>	<p>The ATSI Act sets out that the Minister is empowered to make general written directions that the IBA must comply with.</p>	<p>The TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.</p>	<p>Our review of the governance arrangements for the YSRC did not identify or contemplate the Minister’s powers to direct the YSRC nor the YSRC’s compliance with such directions.</p>
	<p>Comments:</p> <p>In respect of ministerial directions:</p> <ul style="list-style-type: none"> • the Minister is not empowered to direct the ILSC in relation to any of its activities; • the Minister is empowered to direct the IBA, of which the IBA must comply with; and • the TSRA must perform and exercise its powers in accordance with any general written directions given to it by the Minister. <p>Based on our understanding of the purpose of the ABA Entity (and its governing principles), we have assumed that the proposed governance arrangements deliberately exclude any such ministerial direction.</p>					

Comparative Table

	ABA Entity	ILSC	AIATSIS	IBA	TSRA	YSRC
Strategies	<p>The ABA Entity currently proposes to prepare a Strategic Investment Plan, which would cover the following:</p> <ul style="list-style-type: none"> • set out the ABA Entity’s key priorities and deliverables over 3 – 5 years. It would guide Board decisions and be supported by comprehensive frameworks for reporting and evaluation; • the entity would be required to consult broadly with Aboriginal people living in the Northern Territory on the development of its Strategic Investment Plan to ensure it represents the needs of all Aboriginal Territorians; • the Strategic Investment Plan would be tabled in federal Parliament; • an external review of the effectiveness of achieving outcomes under the Strategic Investment Plan would be undertaken by the Government at the end of each five year period; and • the entity would be required to publish a report setting out its key decisions and activities every six months (in addition to the submission of annual reports). 	<p>The ILSC Board “must prepare, and revise from time to time, a strategy to be known as the “national indigenous land and sea strategy and regional indigenous land and sea strategies.” There are certain legislative requirements these strategies must meet (e.g. must relate to a period of at least three years and not more than five years, must be reviewed regularly etc.) and a copy of the national indigenous land and sea strategy (and any relevant amendments) must be provided to the Minister within two months of the Board agreeing to the strategy (or relevant amendment), and a copy of a regional strategy must be provided to the Minister on request.</p>	<p>Our review of the governance arrangements for the AIATSIS did not identify any strategies that are required to be prepared by the Council.</p>	<p>Our review of the governance arrangements for the IBA did not identify any strategies that are required to be prepared by the Board. However, we did identify that a Significant Project and Product Approval Framework was launched in 2020 to further support and build on IBA’s due diligence, compliance and decision making processes for significant transactions.</p>	<p>The TSRA must formulate, and revise from time to time, the Torres Strait Development Plan (Plan) to improve the economic, social and cultural status of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area. The Plan must outline the strategies and policies that the TSRA intends to adopt in order to implement the Plan, including, but not limited to, a marine strategy for the Torres Strait area. Each Plan must be reviewed regularly and must relate to a period of at least three years and not more than five years. The TSRA must consult with the Minister in relation to the Plan.</p>	<p>Our review of the governance arrangements for the YSRC did not identify any strategies that are required to be prepared by the Board.</p>
	<p>Comments:</p> <p>The ILSC and the TSRA are both required to prepare plans that are appropriate for their purpose. The ILSC’s current arrangement is particularly similar to what is being proposed for the ABA Entity. However, we appreciate that the proposed governance arrangements for the ABA Entity are intended to be more robust and provide greater transparency (given the ABA Entity’s purpose to hold and invest significant amounts of money), and that is the reason for the additional reporting proposed (ie, to publish a report setting out its key decisions and activities every six months).</p>					



PGPA Act Requirements



Public Governance, Performance and Accountability Act 2013 (Cth)

Corporate Commonwealth entities are subject to the PGPAA. The PGPAA sets out a series of duties on the accountable authorities (i.e. the boards, councils etc.) and on the officials of the entity (i.e. the directors, councillors etc.). The wheel below sets out the general duties that apply to accountable authorities.

The accountable authority must govern the entity in a way that:

- promotes the proper use and management of public resources for which the authority is responsible;
- promotes the achievement of the purposes of the entity; and
- promotes the financial sustainability of the entity.

The accountable authority of a Commonwealth entity must encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.



When imposing requirements on others in relation to the use or management of public resources for which the accountable authority is responsible, the accountable authority must take into account:

- the risks associated with that use or management; and
- the effects of imposing those requirements.

The accountable authority must establish and maintain:

- an appropriate system of risk and oversight and management for the entity; and
- an appropriate system of internal control for the entity,

including by implementing measures directed at ensuring officials of the entity comply with finance law.

The accountable authority must:

- keep the Minister informed of the activities of the entity and any subsidiaries of the entity;
- give the Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
- notify the Minister as soon as practicable after the accountable authority makes a significant decision in relation to the entity or any of its subsidiaries;
- give the Minister reasonable notice if the accountable authority becomes aware of any significant issues that may affect the entity or any of its subsidiaries; and
- notify the Minister as soon as practicable after the accountable authority becomes aware of any significant issue that has affected the entity or any of its subsidiaries.

Public Governance, Performance and Accountability Act 2013 (Cth)

Set out below are the general duties that apply to the officials of accountable authorities.

Duty of care and diligence

An official must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
- occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.

Duty to act honestly, in good faith and for a proper purpose

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
- occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.

Duty in relation to use of position

An official must not improperly use his or her position:

- to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person.

Duty in relation to use of information

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information:

- to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- to cause, or seek to cause, detriment to the Commonwealth entity, the Commonwealth or any other person.

Duty to disclose interests

An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.



Detailed Overview of Treasury and Investment Strategy and Function

Focus Two - Treasury and Investment Strategy and Function

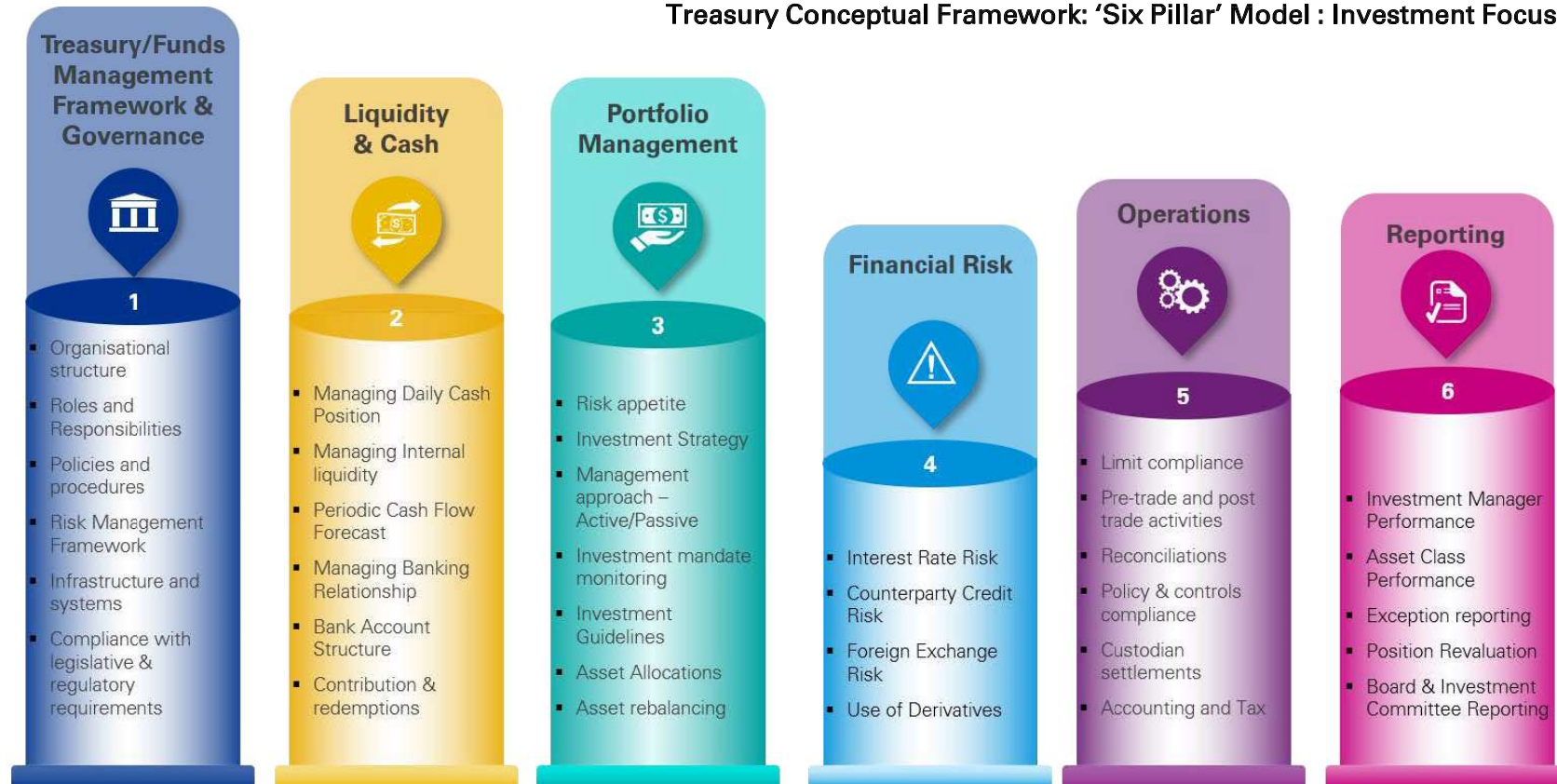
Treasury and investment : Questions to address

- Provide advice and recommendations on the optimal management of the entity's capital funds. This should include consideration of best practice principles for managing funds of the quantum proposed for this entity.
- Consider options for the treasury function, including both in-house and out-sourced management, the organisational structure and workforce needed to support each option, the advantages and disadvantages of each and a cost-benefit analysis of each option.

The recommended approach for adopting the optimal approach to developing and managing the entity and how it will manage its capital is provided using two tools, a quantitative risk appetite approach to investment selection with a qualitative overlay and the investment six pillar model.

Firstly the purpose to the entity is outlined and used to define how the overall portfolio will be viewed and the new entity's primary responsibilities are to manage the investment portfolio and how the funds will be distributed. The investments will be divided into two portfolios; Financial Market Investments and Strategic Investments, which are defined next.

Treasury Conceptual Framework: 'Six Pillar' Model : Investment Focus



Focus Two - Treasury and Investment Strategy and Function

Portfolio Definitions

Financial Market Investments: Investments in capital markets either in cash, fixed income, equities, or alternative asset classes that generate a yield over a holding period. For this analysis, the ABA \$500m injection of capital in 2022 will be deployed in financial market investments and investment activities are carried out by a third party custodian/investment manager (as per model). Capital (principal and/or income) in the investment portfolio will be deployed to fund major strategic investments.

Strategic Investments: Capital investment in strategic initiatives that generate a yield in commercial activities (including real estate (rental income) or dividend payments from equity holdings).

There are two types of strategic investments, normally dictated by the principal amount of capital invested as opposed to the investment class:

Minor Investments of under \$10m per investment, and up to a total of \$11m per year which are generally equivalent to 20% of the annual ABA funding (after running costs). Currently expected to be financed from the annual contribution. up to \$11m.

Major Investments of over \$10m per investment, commencing in 2025 - 26, which are deployed for withdrawal of capital and/or income from the financial market portfolio. Between \$25m - 100m per year is anticipated to be spent on major investments.

The Financial Market Investments are designed to:

- manage the funds being held until they are deployed in the Strategic Investment portfolio; and
- Generate a return to support the provisions of grants and minor investments.

The Strategic Investments are designed to:

- Support the indigenous community; and
- Generate a return to support the provisions of grants and minor investments.

The Financial Market Investments can have a mix of defensive and growth assets while the Strategic Investments would be, given the likely risk profile of the investments, growth assets.

Investment Type	Return Nature	Volatility v Return
Growth Assets		
Equities	Capital gains Dividends	Highest growth potential Subject to a high level of fluctuations in the short term
Alternatives including infrastructure & private equity	Capital gains Income	Potential to earn more than property or fixed interest over a longer term Subject to greater volatility than property or fixed interest
Property	Capital gains Rental income Property management income	Potential to earn more than cash and fixed interest but less than shares over time
Defensive Assets		
Fixed Interest & longer term deposits	Interest income Capital gain from floating rate fluctuations	Tends to provide better returns than cash but values can fluctuate due to underlying floating rates
Floating Rate Notes	Interest Income Capital gains from credit spreads	A stable investment with exposure primarily to credit spreads, value also subject to floating rate movements
Cash & Cash Equivalents	Interest income	Typically a stable investment with exposure primarily to interest rates Limited downside but tends to have the lower returns

Focus Two - Treasury and Investment Strategy and Function

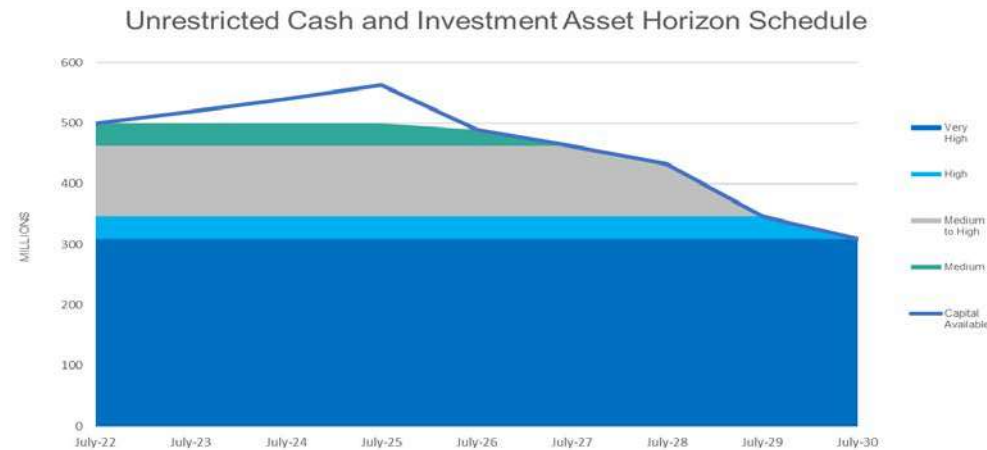
Risk, Reward, Liquidity - Assessment of the entity’s capital funds and requirements

On an ongoing basis a thorough assessment of the entity’s capital funds profile is completed to understand the cash flow requirements and risk profile of the investment decisions. Consideration on appropriate and optimal management of funds will be undertaken with reference to the quantitative approach which assists in identifying asset classes and tenors of investments providing risk and returns.

The example also assumes the key objective of the Entity is to make Strategic Investments, therefore, the Financial Market Portfolio will be structured to meet that objective (should the Entity’s key objective being to generate returns to support the investments in Indigenous community and business development, then the approach would developed combining the two portfolios).

The figures used are for illustrative purposes only (the actual model will use the actual expected capital balances forecasted based on the inflows and outflows expected over time). The example assumes \$500 million of capital is available at inception and there will be two Strategic Investments (in 2025/26 and 2028/29) made thereby reducing the balance of capital held in the Financial Market Portfolio over time.

The Financial Investment portfolio structure is set to meet the liquidity needs and cash outflows, as defined by the ‘Minimum suggested holding period’ column. The capital required for the Strategic Investment in 2025/26 allocates funds to band 4 and 2028/29 allocated funds to band 5. The total investment portfolio will be invested in a range of investments based on the risk profile sought (and the legislative requirements). The potential investments are categorised as being either defensive or growth assets (across both portfolios). For example, the capital which is needed only in 2025 (band 4) will be split evenly between defensive and growth assets.



Risk Band	1	2	3	4	5	6	7	TOTAL
Defensive Assets	0	0	0	19	41	6	15	81
Growth Assets	0	0	0	19	75	32	293	419
TOTAL	0	0	0	38	116	38	309	500

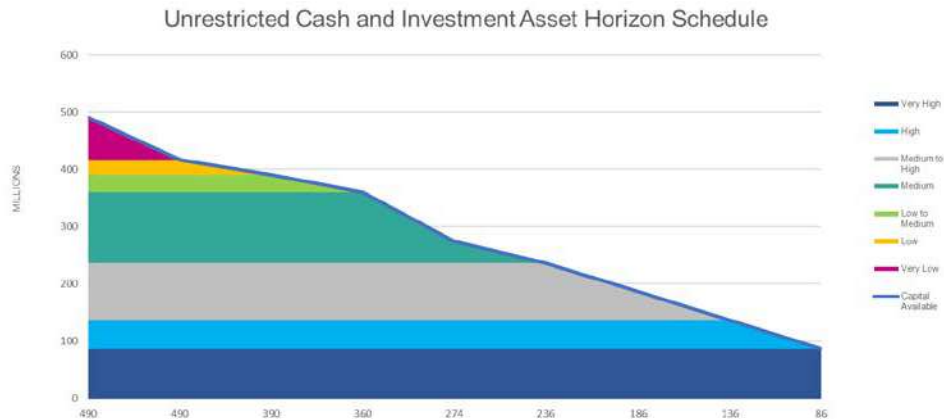
Risk Band	Risk Label	Estimated no. of negative annual returns over any 20 year period	Indicative asset allocation	Investment performance benchmark	Minimum suggested holding period
1	Very low	Less than 0.5	Cash	CPI over rolling 1 year periods	1 year
2	Low	0.5 to less than 1	Secure – growth assets 20%, defensive assets 80%	CPI plus 1% over rolling 3 year periods	2 years
3	Low to medium	1 to less than 2	Capital Stable – growth assets 30%, defensive assets 70%	CPI plus 1.5% over rolling 3 year periods	3 years
4	Medium	2 to less than 3	Conservative Balanced – growth assets 50%, defensive assets 50%	CPI plus 2.5% over rolling 5 year periods	5 years
5	Medium to high	3 to less than 4	Balanced – growth assets 65%, defensive assets 35%	CPI plus 3% over rolling 7 year periods	7 years
6	High	4 to less than 6	Growth – growth assets 85%, defensive assets 15%	CPI plus 4% over rolling 8 year periods	8 years
7	Very high	6 or greater	High Growth – growth assets 95%, defensive assets 5%	CPI plus 4.5% over rolling 10 year periods	10 years

Focus Two - Treasury and Investment Strategy and Function

Risk, Reward, Liquidity - Ongoing adjustment of the Financial Market Investment portfolio based on the changing needs

The assessment is set to be an ongoing process, each year the model will be updated to reflect any changes in the expect capital needs. This example shows the model being rolled forward several years, to July 2025 (hence the change in the Financial Market portfolio), and the expectations a number of Major Investments will be made in the next couple of years (2025 to 2032), the first one within the following year, hence the allocation of funds to risk band 1. This will result in the Financial Market portfolio having a greater allocation to defensive assets which carry less risk to capital and have more liquidity.

It is important to note this investment approach, using the Financial Market capital to support the Strategic Investments, needs to potentially be tempered ensuring the combination of the returns generated by the Financial Market and the Strategic Investments portfolios are sufficient to address the ongoing needs of the Entity. One key concern would managing the timing of Strategic Investments as they may need time to build up to an optimal return, this delay could inhibit the Entity's ability to generate a minimum return to support the ongoing activities (operating expenses, grants and minor investments) therefore needing the funds to be held in the Financial Market portfolio for longer.



Estimated no. of negative annual returns over any 20 year period

Risk Band	Risk Label	Estimated no. of negative annual returns over any 20 year period	Indicative asset allocation	Investment performance benchmark	Minimum suggested holding period
1	Very low	Less than 0.5	Cash	CPI over rolling 1 year periods	1 year
2	Low	0.5 to less than 1	Secure – growth assets 20%, defensive assets 80%	CPI plus 1% over rolling 3 year periods	2 years
3	Low to medium	1 to less than 2	Capital Stable – growth assets 30%, defensive assets 70%	CPI plus 1.5% over rolling 3 year periods	3 years
4	Medium	2 to less than 3	Conservative Balanced – growth assets 50%, defensive assets 50%	CPI plus 2.5% over rolling 5 year periods	5 years
5	Medium to high	3 to less than 4	Balanced – growth assets 65%, defensive assets 35%	CPI plus 3% over rolling 7 year periods	7 years
6	High	4 to less than 6	Growth – growth assets 85%, defensive assets 15%	CPI plus 4% over rolling 8 year periods	8 years
7	Very high	6 or greater	High Growth – growth assets 95%, defensive assets 5%	CPI plus 4.5% over rolling 10 year periods	10 years

Risk Band	1	2	3	4	5	6	7	TOTAL
Defensive Assets	73	22	21	62	30	7	4	219
Growth Assets	0	5	9	62	70	43	82	271
TOTAL	73	27	30	124	100	50	86	490

Focus Two - Treasury and Investment Strategy and Function

Risk, Reward, Liquidity - Qualitative Overall is conducted

The quantitative result then needs to be adjusted by a qualitative assessment of how much risk the Board/Investment committee is willing to take.

The projected use of funds provided a risk appetite profile for the Financial Market investment portfolio, however, given the overall objectives of the entity and the expectations of the stakeholders, both the government and the Indigenous community, this level of risk appetite may need to be adjusted.

The adjustment could be a decrease or increase in the risk appetite. For example, if there is not a desire to hold investments which could generate a loss and/or negative returns for periods of time, then a Capital Stable or Conservative Balanced risk position could be adopted.

Alternatively, if there was a desire to embrace risk to create the opportunity to maximise returns, then a High Growth position could be sought.

This is accomplished by moving the risk appetite created in the quantitative assessment to the level of risk desired. For example, if the entity only wished to have a Conservative Balanced level (band 4), then the ratio between the Defensive and Growth assets will be adjusted as shown for each of the years shown. The initial Financial Market portfolio allocation, 2021, would have the largest adjustment, having defensive assets being approximately 10% of the portfolio to 50% (shown by the arrow).

Investment Allocation based on Quantitative assessment – in 2021 and 2025

2021	Risk Band	1	2	3	4	5	6	7	TOTAL
	Defensive Assets	0	0	0	19	41	6	15	81
Growth Assets	0	0	0	19	75	32	293	419	419
TOTAL	0	0	0	38	116	38	309	500	500

2025	Risk Band	1	2	3	4	5	6	7	TOTAL
	Defensive Assets	73	22	21	62	30	7	4	219
Growth Assets	0	5	9	62	70	43	82	271	271
TOTAL	73	27	30	124	100	50	86	490	490

Investment Allocation based on Quantitative with Qualitative overlay

2021	Risk Band	1	2	3	4	5	6	7	TOTAL
	Defensive Assets	0	0	0	250	0	0	0	250
Growth Assets	0	0	0	250	0	0	0	250	250
TOTAL	0	0	0	600	0	0	0	500	500

2025	Risk Band	1	2	3	4	5	6	7	TOTAL
	Defensive Assets	73	22	21	180	0	0	0	295
Growth Assets	0	5	9	180	0	0	0	194	194
TOTAL	73	27	30	360	0	0	0	490	490

Estimated no. of negative annual returns over any 20 year period

Risk Band	Risk Label	Estimated no. of negative annual returns over any 20 year period	Indicative asset allocation	Investment performance benchmark	Minimum suggested holding period
1	Very low	Less than 0.5	Cash	CPI over rolling 1 year periods	1 year
2	Low	0.5 to less than 1	Secure – growth assets 20%, defensive assets 80%	CPI plus 1% over rolling 3 year periods	2 years
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7	Very high	6 or greater	High Growth – growth assets 95%, defensive assets 5%	CPI plus 4.5% over rolling 10 year periods	10 years







The 'six pillar' Model

The 'six pillar' model provides a template to assist with the establishment of the entity enabling it to manage its risks and opportunities in a well structured and managed environment.



Holistic Assessment of the Entity's approach to Investment Management

A targeted state is set for each pillar. This target is set based on the objectives of the entity and how it plans to achieve them. The target is considered to be the best commercial practice given the outcomes sought. It is not envisaged that the entity will be an active manager of investments and hence a Holistic Approach would provide the most commercially effective approach.

	Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State		
Treasury Maturity Model	Treasury/Funds Management Framework & Governance	Treasury not separate from Finance	Separate Treasury, informal Policies & Procedures	Separate Treasury, formal Policies & Procedures	Advanced teams with enforcement of governance	
	Liquidity & Cash	Reactive – no formal planning	Reactive and rudimentary cash management	Formalised treasury with formal and automatic cash management	IHB approach with minimal external bank a/c's	
	Portfolios Management	Investments decided regardless of existing portfolio or counterparties	Investments decided on a deal by deal approach	Risk profile considered and implemented in investment decisions	Board approved investment model and portfolio actively managed	
	Financial Risk	Virtually no formalised risk management	Reactive approach to financial risk management	Standardised approach to financial risk management	Advanced and proactive approach to financial risk management	
	Operations	Manual reactive approach	Semi automated reactive approach	Automated transactional approach	Straight through approach	
	Reporting	No reporting	Rudimentary approach – manual data extraction with limited analysis	Semi automated with analysis	Highly automated with dashboard reporting	

 Desired Commercial Practice



Detailed Maturity Assessment





1. Treasury/Funds Framework & Governance

Treasury/Funds Management Framework & Governance

		Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
1.1	Organisational Structure	No separate Treasury Structure	Treasury with decentralised organisational structure	Treasury organised on traditional lines	Centralized Treasury structure with strong functionality
1.2	Roles & Responsibilities	Finance function - no separate treasury personnel	Separate Treasury but limited role delineations, differing functional expertise and limited segregation of duties.	Treasury personnel with standard segregation of duties and standard role delineation and adequate functional expertise	Treasury with strong functional expertise, segregation of duties & clear role delineation.
1.3	Policies & Procedures	No Treasury policies and procedures	Informal Treasury policies and procedures	Approved policies and procedures with limited enforcement and limited senior management involvement.	Advanced, approved policies and procedures which are embedded into processes and enforced
1.4	Risk Management Framework	Non Existent	Rudimentary	Standard	Strong
1.5	Infrastructure & Systems	Excel / register based systems	Rudimentary treasury system supported by spreadsheets	Standard non-integrated treasury systems with manual processes	Advanced integrated treasury system with automated processes
1.6	Compliance with legislative & regulatory requirements	Understand all legislative and regulatory requirements	Complete regulatory/legislative on an as needs basis	Policy and procedures set our regulatory/legislative requirements	Regulatory/legislative reporting is systemised. Ongoing interaction with regulatory/legislations occurs

Desired Commercial Practice

Treasury/Fund Management Framework & Governance

The Treasury/Funds Management framework typically describes the structure, roles, responsibilities, policies, and procedures that govern the investment approach. The following components should be considered:

Organisational Structure:

A target state approach will consider a centralised treasury and investment function potentially with a partially outsourced model (investment manager) supporting investment decisions in financial markets, in particular, to invest the Growth asset portion of the Financial Markets portfolio. Management of the Strategic Investment portfolio will be carried out by the entity.

The Board should be supported by an Investment Committee with delegated authority. This Investment Committee could be a sub committee of the Board or a management committee, but will need a direct reporting line to the Board.

The Audit and Risk Committee, a Board sub committee, will need to receive reports directly from the Entity's risk function. An internal audit function will support the committee and have a direct reporting line to it.

The Entity will need to have a clear delineation between the Investment function (front office), the Risk function (middle office) and Operations (back office). The use of outsource service providers will cover some of these functions but not all of them, therefore having clear and separate reporting lines is important.

All transactions will be handled by the central treasury/investment function.

Roles and Responsibilities:

These need to be clearly outlined and documented and include delegations and authorities. The roles need to show how they support the desired organisational structure in particularly supporting strong segregation of duties (aligned to deal execution, deal confirmation, and settlement). Assurance should be in place that outsource providers also complies with the desired segregation of duties. A code of conduct developed and signed off by all individuals involved.

Policies and Procedures:

An Investment Policy should have clear objectives outlining the investment selection process (asset classes) and risk limits and how breaches will be addressed and reported. The Policy needs to be linked to the Entity's Risk Appetite statement, showing that the objectives and directives are aligned with the desired approach to risk. An Entity investment manual should be developed to capture core investment activities and delegations of authority to govern the investment process. Both policies and procedures should be clear and define risk qualitatively and quantitatively and support each other.

Treasury/Fund Management Framework & Governance

These documents need to address the risks and process existing at a point in time but also and assist the Entity manage new transactions and risks going forward, i.e. have a clear approach set for making new investments.

Benchmarks will be established including both for performance and control purposes.

Risk Management Framework:

A strong risk management framework outlines the governance body monitoring and assessing the investment decisions i.e. Investment Committee. The Investment Committee is created by a Terms of Reference outlining the investment parameters and how the entity manages risk. Effective Risk Management will articulate how funds are invested and managed and is based on a comprehensive assessment of expected future investment returns, risks, and projected liabilities. The key outcome of this is the strategic asset allocation of funds.

The Investment Committee will also review periodically investment reports highlighting the entity's risk profile - asset allocation and diversification of investments in line with the entity's risk appetite. A Risk Appetite Statement is set by the Board to ensure risk and reward are guidelines followed by management. Assurance activities are also to be carried out to monitor the effectiveness of the investment controls.

Infrastructure and Systems:

A holistic approach: Deal execution, pricing and management systems, if investment activities are carried in-house, need to be deployed. This system needs to support segregation of duties by ensuring a control environment is embedded in its functionality.

A target state will evaluate the connectivity desired between banking and treasury platforms/systems and accounting/risk systems for settlement and reporting purposes to streamline reporting and avoid manual processes.

Compliance with Regulatory Requirements:

The Policy, procedures and reporting will address the required regulatory requirements, this will include addressing broad regulatory requirements, such as those outlined in the Corporations Act and any specific legislation established to support the establishment and ongoing running of the Entity. Clear responsibility will be set as to how meeting the requirements will be addressed. The Investment Committee will ensure the investment actions are in line with the regulatory requirements while the Audit and Risk Committee will ensure the regulatory requirements are met and reported on.



2. Liquidity & Cash

Liquidity & Cash

		Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
4.1	Managing Daily Cash Position	Managed on an as required basis	Rudimentary cash management processes	Standardised cash management reliant on manual processes	Effective cash management with automated processes
4.2	Managing Internal Liquidity	Business Units operate independently	Manual centralisation of cash on a periodic basis	Centralised Treasury - automated sweeping	IHB Approach (i.e. all cash goes through treasury accounts)
4.3	Periodic Cashflow Forecast	No cashflow forecast	Formulaic but ineffective process	Effective cashflow process but manual with BU contact	Automatic / effective cashflow process
4.4	Managing Bank Relationships	No choice of whom to bank with	Banks in control of bank relationship management	Opportunistic approach to bank relationship management	Systematic approach to management of bank relationships
4.5	Bank Account Structure	Bank accounts opened as required	Rudimentary approach to controlling bank account structure	Systematic management of bank accounts	Major control of management of accounts with minimal external bank accounts
4.6	Contribution & Redemptions	Cash is held to meet redemptions and contributions invested periodically	Liquid assets held to meet anticipated flows and contributions are invested when received	Liquidity portfolio managed to meet forecasted liquidity needs	Portfolio is rebalanced automatically from flows, liquidity is sourced dynamic from portfolios

Desired Commercial Practice

Liquidity & Cash

The entity's liquidity needs include managing the ongoing running costs, ensuring funds are available for beneficial payments and strategic investments, and funds are effectively managed (i.e. not being held idly in bank accounts). Further, the financial market portfolio will also manage a liquidity profile to enter into transactions mandated by the investment strategy selected and generate future cash flows (i.e. some investment like equities will generate semimanual distributions payments).

Managing Daily Cash Position:

A holistic approach managing daily cash position for ongoing operational requirements. Daily reconciliation of bank account statements against cash flow model will provide visibility of the beneficial payments process and minor strategic investments. The portfolio liquidity requirements are managed in the cash pool of defensive assets and are to be reported on an agreed timeframe (monthly) by the Investment Manager.

Managing internal liquidity:

Management of cash and liquidity will be managed by the centralised treasury. The treasury function will receive regular updates from other parts of the business to understand the weekly or monthly cashflows. The repatriation of funds from the financial markets portfolio to fund major strategic investments (2025) is a key driver to the entity's liquidity profile and should be monitored regularly when assessing the mix of defensive and growth assets.

Periodic Cash flow forecast:

A holistic approach using a centralised cashflow forecasting model combining a schedule of the annual (12 months) projected cash flows (inflows and outflows) as well as the actuals from the banking transactional data. The liquidity of the financial markets' portfolio will also be recorded in the forecast model.

Managing Banking relationships:

Banking relationships are to be managed by treasury which will ensure transactional products incorporate payment screening controls given the high-value payment of strategic investments. A focus in the relationship should also be the integration of banking reporting with IT systems. It is recommend engaging with one counterparty and to conduct a periodic pricing comparison of banking services.

Bank account structure:

Bank accounts are to be managed by the treasury who will have visibility of the daily cash position. Financial controls are to be in place to open bank accounts and authorise payments. We recommend minimising the number of accounts established to manage ongoing agency costs, beneficial payments, and strategic investments. Income and or capital in the financial markets' portfolio will be transferred from the Trustee or Investment Manager bank account into a nominated account.

Contributions and redemptions:

Clear processes need to be established for how and when contributions are received to ensure an effective investment of these monies is achieved. In addition, a clear process for redemptions to ensure there are no surprise calls on the Entities assets, this will help ensure investments are optimised and not held in cash or short term investments 'in case' there is a sudden need or that investments are not having to be liquidated early and potentially cause a loss in value.



3. Portfolios Management

Portfolios Management

	Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
3.1 Risk Appetite	No allowances made for Group's risk appetite	Risk appetite evaluated and decided by treasury team	Board or executive team provides informal guide on Group risk appetite	Board approved risk appetite policy implemented into investment decisions
3.2 Investment Strategy	No thought given to investment strategy	Risk appetite evaluated and decided by treasury team	Determine which markets/ counterparties/instruments will provide best investment strategy	Financial planning is used to plan investment strategies as well as key metrics for evaluation of returns
3.3 Management Approach – Active/Passive	Investments managed passively – no consideration for existing portfolio	Investment criteria decided at inception and held to maturity	Portfolio actively managed for balanced risk profile	Risk profile calculated and managed on a daily basis
3.4 Investment Mandate Monitoring	No oversight from management on investment decisions	Investment details recorded manually in TMS or Excel and not fully centralised	All investments recorded in a centralised TMS, and tracked periodically for compliance	Centralised records of investments tracked real time, with automated reporting on credit and investment compliance
3.5 Investment guidelines	Investment are made when opportunity presented	Investment opportunities are assess on a transactional basis against guidelines	Investment portfolio is assessed versus Guidelines driving investment activities	Guidelines are dynamically managed and reflect current market and portfolio on a real time basis
3.6 Asset Allocation	Asset allocation is reviewed periodically	Transactions are assessed against Asset allocation objectives	Investment approach is driven by asset allocation sought	Asset allocation is automatically assessed driving regular investment activity
3.7 Asset Rebalancing	Asset are rebalance after a misbalance is reported	New transactions are reviewed to determine if rebalancing is required	Portfolio balance is reviewed as part of ongoing investment activity	Portfolio balance is systematically monitored driving investments in anticipation of rebalancing needs

Portfolio Management

Portfolio management will be how the Entity monitors the financial market and strategic investment activities intending to achieve a profitable return on the investments over the long term horizon. Managing investment activities in line with risk appetite will support the long term financial strength of the organisation to generate capital and revenue in the future.

Risk appetite:

A Risk Appetite Statement will be set supporting the investment activities will be developed and provide a clear linkage with the investment strategy and liquidity needs of the Entity. (The Risk Appetite Statement will also address other key risk the Entity will need to manage). This is a key element when setting the investment strategy as it will identify asset classes and tenors of investment providing risk and returns. The table below and the one presented earlier show how a quantitative and qualitative assessment are combined to determine the risk appetite driving the broad distribution of the portfolio to different asset classes and maturities. In the example provided earlier the qualitative risk level set was for a Conservative Balance being the highest (from a risk perspective) level set, therefore the Entity is to have investments which could create a loss to the capital invested, limited to, on average once in every 5 years (i.e. when there is a downturn in economic activity amidst a normal economic cycle).

Investment Strategy:

The investment Strategy process begins with the articulation of the objectives and the risk tolerance of the entity. This process is about making trade-offs between risk, return, and liquidity needs.

The client portfolio structure is set to meet the liquidity needs and cash outflows of the entity, as defined by the 'Minimum suggested holding period column – this forms part of the planning target state. For example, if capital is required for major strategic Investments in 2025 (3 years, after entity inception), those funds will be allocated to risk band 3 (and will be reset each year as the time the funds are needed approaches).

The investment portfolio will invest in a range of investments based on the risk profile sought (and the legislative requirements). The potential investments are categorised as being either defensive or growth assets. For example, the capital which is needed only in 2025 (band 3) will be split into 70% defensive and 30% growth assets. The investment strategy should also consider the tenor and type of strategic investments and the expected income returns, generally provided through the lifetime of the investment (dividend for equity funding in Joint Ventures).

Management Approach active versus passive:

The investment approach set to be managed by the Entity will need to include an assessment on whether an active or passive approach would be taken. A passive approach would track a market index while an active approach would seek to generate a return greater than the market index (an embrace more risk). The objective of the Entity would drive the decision to select the appropriate approach (or combination of the two approaches) and then either the treasury team will require the appropriate resources to manage the approach elected or a suitable investment manager selected.

Investment Mandate Monitoring:

This will be developed if an outsource provider is used, with clear reporting guidelines set, including portfolio valuation, performance and comparison to benchmark performance.

Investment Guidelines:

Clear investment guidelines will be established which will be followed by either the outsource provider or the treasury team. This goes beyond the limits set in the Policy, specifically addressing the investment approach outlined in the Strategy.

Portfolio Management

Asset Allocation:

The management of investment risk is to be achieved by diversifying investments both across and within asset classes using investments approved in the Investment Policy. Asset Allocation Profiles will have two key elements in relation to each asset:

- Benchmark asset allocation; and
- Investment ranges.

The benchmark asset allocation is the percentage that the entity should aim to have in each asset class where possible. The benchmark is a guideline while the minimum and maximums are, typically, limits. An example an investment based organisation's benchmark and guidelines is shown below:

The investment ranges are designed as absolute minimums and maximums for each asset class. They are designed to allow for market movements between reviews. Maintaining a disciplined asset allocation is a process with regular portfolio reviews and rebalancing.

Rebalancing:

The entity should periodically review its investment objectives against potential investment trade-offs by modelling various exposures. A review of the asset allocation strategy and its appropriateness would be appropriate in light of changing investment environments i.e. COVID 19, which may lead to rebalancing or tactical tilts. We recommend a holistic approach in which the portfolio has the 'flexibility' to take advantage of distressed pricing in other asset classes.

Asset Allocation – Defensive & Growth	Minimum	Benchmark	Maximum
Cash	5 %	7.5 %	10 %
Australian Fixed Interest and Term Deposits	12.5 %	17.5 %	22.5 %
International Fixed Interest	2.5 %	5 %	7.5 %
Property (incl LPTs)	0 %	5 %	10 %
Australian Shares	30 %	50 %	70 %
International Shares	0 %	10 %	20 %
Alternative Assets (incl hedge funds, private equity, mezzanine debt)	0 %	5 %	10 %

4. Financial Risk



Financial Risk

		Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
2.1	Interest Rate Risk Management (IRRM)	Intertwined with funding – no explicit IRRM discussion or policy	Rudimentary policy with IRRM decision made on 'judgment' basis – no real linkage to asset base	Fit for purpose IRRM policy. IRRM is on a systematic basis with linkage to assets/liabilities being managed	Advanced IRRM policy. IRRM is on a systematic basis with BU fully considered and transfer priced to IHB
2.2	Counterparty Credit Risk Management (CCRM)	No credit risk management – deal on best rate	Approved counterparties (brokers/banks) but no tracking of credit exposure	Approved counterparties (bank/brokers) with daily tracking of main credit exposures	Approved counterparties (bank/brokers) with real time tracking of credit exposure to all financial transactions
2.3	Foreign Exchange Risk Management (FXRM)	No formal policy - manage currency risk on a transaction by transaction basis	Rudimentary policy with formulaic or transaction approach to FXRM	Fit for purpose FXRM policy with holistic view of FX exposures with transactional approach to FXRM	Advanced FXRM policy with FX exposures transfer priced between IHB & BU
2.4	Use of Derivatives	Derivatives are used on an ad hoc basis, with no set approach	Derivatives are used on an ad hoc basis, with a clear policy guidelines of their use	Derivatives are used as part of an investment, either incorporated or in conjunction	Derivatives are actively used as part of the investment approach

Desired Commercial Practice

Financial Risk

Financial risk is managed using appropriate financial instruments ensuring all investment and potential hedging activity is clear, prudent, cost-effective, and aligned to the strategic objectives of the Risk Management Policy. This section will set out considerations on how to actively manage/hedge against the entity's exposure to market movements either as a potential threat or opportunity cost.

Interest rate risk:

Interest rate risk will be created from making the Defensive investments in interest bearing securities. There is a risk of a reduction in earnings/or capital loss because of adverse movements in interest rates combined with a need to liquidate investments. The maturity profile set will mitigate interest rate risk by ensuring investments are not having to be terminated prior to their maturity. If a fund manager is used, the desired duration of the investment needs to be communicated as part of the investment mandate. The value of the investments will be reported regularly and should include the impact of interest rate changes on those valuations.

It is not anticipated there will be debt raised, hence no exposure to variable interest expenses.

The interest rate position in the Strategic Investment portfolio will also need to be tracked, as investments could generate a mix of variable and fixed returns.

Counterparty credit risk:

For the Financial Market portfolio defensive investments should only be made in organisations with an investment grade ratings. A counterparty credit limit profile will need to be set with both individual counterpart limits and concentration limits established for the different organisations and credit grades. These limits and their usage will be tracked and reported on using the treasury/investment management system.

Credit risk in the Strategic Portfolio must be part of consideration for each investment made.

Foreign Exchange Risk:

It is not anticipated the Entity will have any Foreign Exchange risk, however, if any is taken (potentially in the Financial Markets Portfolio), it will be hedged.

Use of Derivatives:

Derivatives will be allowed to be used to manage risk or as part of an investment structure. Derivatives will not be transacted for the sole purpose of generating a return.

5. Operations



Operations

		Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
5.1	Limit compliance	Informal treasury policies with no limit assessment	Limit structure documented in treasury policies. Reactive with compliance on manual, detective controls	Monitor and track target limits on regular basis on a semi-automated approach	Actively monitor and track target limits on a daily basis on an automated basis
5.2	Pre trade and Post trade Activities	Uncoordinated, manual process with no documented pre or post trade activities	Check for trade capacity (limits, delegations, etc) manually before trade and periodic post-trade checks are carried out	Pre trade and post trade activities are carried out for each transaction on a semi-automated basis	Trade capacity are updated in real time and post trade checks are undertaken automatically by treasury system
5.3	Reconciliations	Bank reconciliations are part of accounting process (which may be monthly)	Reconciliation undertaken more often than the minimum account requirements	Key reconciliations are undertaken on a daily basis but are semi-automated	Most reconciliations are undertaken on a regular / daily basis on an automated basis
5.4	Policy & Controls Compliance	Informal treasury policies. Procedures not documented. Reactive with reliance on manual, detective controls	High-level policy statement and incomplete guidance or procedures. Identification of risk areas and documentation of controls	Well-documented treasury policy and procedures. Risks and controls documented, put in place and actively monitored	Comprehensive policies/controls. System-enforced governance and compliance reporting.
5.5	Custodian Settlements	Receive Custodian's information and action on it	Use custodian reports as reference and perform simple data integrity checks	Integrate custodian's reports with in-house database on a semi-automated basis	Treasury system integrates custodian's report automatically
5.6	Accounting and Tax	Transactions are undertaken irrespective of accounting and tax consequences	Accounting and tax impact is considered at the time of transaction execution	Accounting and tax impact of transaction is considered prior to executing transactions	Transactions are planned in a manner that optimizes accounting and tax outcomes

Desired Commercial Practice

Operations

This section covers the approach for the effective and efficient application of internal controls to manage investment activities in line with the Investment Policy. The internal control environment will outline the following methods or procedures the entity should adopt and or consider:

Limit compliance:

The investment allocation percentages will outline the overall limits that should not be exceeded when investing in selected financial market investments

Pre-trade and post trade activities:

There needs to be a separation between the pre-trade and post trade activities which is supported by the treasury/investment management system/process deployed.

Pre-trade activities, apart from sourcing suitable investments, need to include processes where limits and delegated authorities are suitable for completing the transactions.

Post-trade activities need to address accurate capture and confirmation of investments.

Policy and controls compliance:

Reporting on the status of the business versus all of the policy limits and controls needs to be provided to the Investment Committee. This reporting needs to be conducted on a regular basis and not just when a limit or control is breached.

Custodian settlements:

The entity, if a custodian is used, will establish a clear set of interactions between the two organisations, addressing deal capture and settlement (upfront and on maturity), ongoing cash requirements for transactions and any margining required, and portfolio reporting and valuation.

This will sought to be done on an electronic basis either by connecting with the Custodian's systems or interacting with those systems.

Accounting and Tax

There needs to be suitable procedures and system in place to generated appropriate accounting and tax records.

Before any new types of investments are made, the accounting and tax treatment for these transactions must be set.

The entity's Operations will ensure the follow eight control elements are as addressed:

- Organisational controls
- Monitoring
- Segregation of duties
- Authorisation
- Execution and Recording
- Protection of Assets & Data
- Reconciliations
- Accounting & Valuation
- Environmental Controls

6. Reporting



Reporting

		Reactive Approach to Financial Risk Management	Transactional Approach to Financial Risk Management	Holistic Approach to Financial Risk Management Approach	In House Bank Target State
6.1	Investment Manager Performance	Individual Investment Manager Performance provided periodically	Periodic reporting on investment manager performance with financial metrics only	Periodic reporting on investment manager performance with list of well-defined metrics	Automated investment manager performance reporting with comprehensive dashboard
6.2	Asset Class Performance	No asset class performance reporting	Manually generated asset class performance reporting	Some system generated asset class performance reporting	Automated asset class performance reporting with comprehensive dashboard
6.3	Exception Reporting	No exception reporting	Exception reporting is manual driving a self reporting regime	Some system generated exception (independent) reporting	Automated exception reporting and strong risk oversight
6.4	Position Revaluation	Investment valued for periodic financial reporting	Investments are valued monthly	Investments are valued and overall position assessed versus guidelines/limits	Online real time position value available
6.5	Board & Investment Committee Reporting	There is no effective Board reporting on Investment	Rudimentary information is provided on Investments	Complete Investment reporting to Board	Online dashboard reporting and Board engagement

Desired Commercial Practice

Reporting

The Investment Committee should receive regular reports on the portfolio performance of both financial and strategic investments. The Committee should monitor investments and advise the Board on investment strategies that are per the Investment Policy and cashflow requirements. The Committee should also manage any decisions that are related to the Investment Managers' performance.

Reports need to address the current portfolio, the risks in the portfolio, the benchmark and control key performance indicators and the status of the portfolio versus the risk limits and guidelines.

Investment Manager Performance:

A comprehensive approach should consider a regular face-to-face presentation by the investment manager to the entity which includes a detailed analysis of the investment portfolio in comparison to relevant performance benchmarking and information regarding future strategies on economic forecasts.

Asset class performance:

A written monthly statement covering the investment activities and performance of the direct and indirect managed investments and/or other products used compared with the target allocation.

Exception Reports:

Reports highlight any significant incident affecting the business, people, or process for any type of investment, all breaches in policy limits and controls, all guidelines being exceed and key performance indicators being breached or not reached. Further notice in writing of any changes which are made to the investment objectives or guidelines established for any assets in which the entity has invested.

Exception reports must be included in the Board and Investment Committee reports.

Position Revaluation:

Ensure independently sourced market rates are used in the portfolio valuation (or receive assurance from a service provider this is taking place).

Address if there are substantial changes in value of investments (as an indicator of excessive risk taking or breaching of limits).

Board & Investment Committee Reporting:

An investment report will be provided to the Investment Committee on a regular basis (potentially monthly). This will address all the investments held, the current value of the portfolio, portfolio performance (versus agreed benchmarks, and any exceptions. This report will be provided to the Board in an abridged dashboard format. There will also be a risk report provided to the Board (directly) and the Investment Committee from the Audit and Risk Committee.



Investment Approach - Operating Model



Investment Approach – Operating Model

All investments and operational related functions and the operating model applied are driven by the entity's Investment Strategy/approach. After setting up the investment objectives and risk tolerances appropriate to manage the capital and liquidity needs, the investment operating model will define the way in which trades are executed – in-house or by external managers. The entity may manage parts of the portfolio internally or place those assets with external managers operating under an Investment Management Agreement (with Product Disclosure Statements). Internally managed portfolios will appoint a custodian for safekeeping of the securities.

There are quantitative and qualitative drivers which will influence the optimal approach. The quantitative drivers are a combination of direct costs for establishing an in-house capability compared to the fees charge by fund managers. One key element differentiating between the two choices is economies of scale, the larger the portfolio being managed the more attractive the in-house approach is as the costs are spread over a larger portfolio and fund manager fees are set as a percent of the size of the portfolio. The analysis shows the difference in cost versus the amount being managed.

Therefore, should the Strategic Investment portfolio become the large portion of the Entity over time, the economise of scale would make the in-house solution look more expensive for managing the Financial Market portfolio.

The investment approach adopted, passive or active, will influence the selection, however, selecting an active approach will require the in-house solution to have a higher direct cost while the fees charged for active funds managers will also be higher, as shown in the table.

Relationship between In-House and Outsourced

Economies of scale, as discussed, are one of the key differentiators between an in-house and outsourced model. The larger the portfolio, the greater the ability to spread fixed internal costs. KPMG completed a high level estimate of the minimum number of team members, their relative experience and financial market technology/information solutions required to invest monies in the manners described i.e. Passive or Active investing in Defensive, Growth or both investment categories.

Using the in-house model costs compared to the potential fees fund managers can charge, the table shows the portfolio balance above which the economies of scale show a preferred cost outcome for using an in-house approach compared to using fund managers.

The decision to use an in-house or outsourced model using this data needs to be mindful that the balances need to reflect where the portfolio will be and not just where the balance is right now. In particular, moving from an outsource approach to an in-house approach will take time, there should not be an expectation this transition could be successfully completed with a year.

	Investment Approach	Fund Manager Fees		Minimum Portfolio Balance for In House Investment Solution	
		Normal	Discounted	Normal Fees	Discounted Fees
Passive	Defensive	0.26%	0.21%	251,207,729	203,921,569
	Growth	0.18%	0.14%	744,755,245	608,571,429
	Combined	0.31%	0.25%	528,340,081	427,868,852
Active	Defensive	0.42%	0.34%	267,164,179	215,662,651
	Growth	0.77%	0.62%	260,975,610	209,803,922
	Combined	0.77%	0.54%	363,551,402	254,248,366
Average Balance				402,665,708	320,012,798

Investment Approach – Operating Model

Financial Markets Passive:

Investments will be made on a hold to maturity basis closely aligning the investment portfolio with the liquidity needs of the Entity. Below a subcategorization of each option.

Defensive: The entity will invest towards asset classes like term deposits, bonds and/or floating rate notes and hold these investments until maturity. This internal managed approach does require expertise to select suitable investments but does not need the expertise to actively monitor the performance or rebalance of the investment holdings, however will require implementation changes and transaction costs to execute trades.

Growth: Strategies are developed internally to invest in market indexes either in, for example, equities and/or Real Estate Investment Trusts. This type of investment usually provides a low cost to gain exposure to the market via Exchange Traded Funds (ETFs). Executing trades in index portfolios will require managers to control and exercise discretion to maximize return on capital as well as rebalancing and managing risk.

Defensive and Growth: The entity manages the financial markets portfolio and the expected risks that will impact the ability to achieving the planned return on capital. Funds are traded by experience resources who model the projected invested returns versus the cash and liquidity needs of the entity. The entity will use systems like Bloomberg to deal, settle and record transactions in equities, property and infrastructure, credit, fixed interest and cash.

Financial Markets Active:

Expertise and tools to actively manage the investment portfolio by an experienced manager. This style will try to “beat the market” in other words outperform index benchmarks.

Defensive: The entity will take an active approach with experience investment managers that will look into buying and selling bonds and/or Floating Rate Notes in both the primary and secondary market.

Growth: The investment strategies will seek aggressive return to outperform indexes (MSCI All-Country World Equity Index (hedged)) and consider for portfolio rebalancing driven by macroeconomic factors such as commodity prices or interest rate movements and focusing on particular market sectors and/or individual investments.

Defensive and Growth: Managing a portfolio of assets that will combine the two broad asset classes providing the more opportunities to outperform the market,

Strategic Investments:

These investments will be made to support the Indigenous community. This service could be managed internally within the entity or outsourced, there are organisations who specialise in running investment funds focused on lending, however, the need to focus on ensuring the investment activity is done in a manner which meets the Indigenous investment ‘Santiago’ principles (described in the following section) would result in an in-house team providing a more balanced solution.

The type of approach appropriate for managing the Market Risk Portfolio; either Passive or Active, is driven by the overall objective of the Entity. We understand the primary objective is either to generate a return or provide capital to make Major Investments.

Generate a return: An active approach to the Financial Market portfolio provides the greatest opportunity to generate a high return.

Support Major Investments: An passive approach would be more appropriate as the purpose of Financial Market portfolio will be to ensure capital is available to make the Major Investments, a passive approach attracts less risk and the entity’s emphasis, therefore resources, is on making these investments.

Quantitative Comparison

This analysis is based on an investment of \$500,000,000 – with a contrast of \$200,000,000 shown for the in-house solution. This shows that as the amount decreases the analysis favours outsourcing as the cost is spread over a lower amount. If Major investment begin to occur, this will be the case.

Alternatives		In-house team and estimated costs				Annual cost Based on \$500,000,000 (cost for \$200,000,000)	Market Fund Manager fees – High Low range	In-house/ Choice/ or Outsource – based on \$500,000,000
Approach	Investment category	Full-time equivalent Staff	Estimated salary cost*	Additional Costs: Technology, Information/ Pricing, Custodian (annual ongoing costs)	Total			
Passive	Defensive	Senior 1 Support 1	\$420,000	\$100,000	\$520,000	.10% (.26%)	.21% to .26%	In-house
	Growth	Senior 1 Experienced 1 Support 2	\$840,000	\$225,000	\$1,605,000	.21% (.53%)	.14% to .18%	Outsource
	Combined	Senior 1 Experienced 1 Support 4	\$1,080,000	\$225,000	\$1,305,000	.26% (.65%)	.25% to .31%	Choice
Active	Defensive	Senior 1 Experienced 1 Support 2	\$720,000	\$225,000	\$895,000	.18% (.45%)	.34% to .42%	In-house
	Growth	Senior 1 Experienced 2 Support 3	\$1,260,000	\$345,000	\$1,605,000	.32% (.80%)	.62% to .77%	In-house
	Combined	Senior 1 Experienced 2 Support 5	\$1,500,000	\$495,000	\$1,945,000	.39% (.97%)	.54% to .77%	In-house
Strategic Investments		Senior 1 Experienced 3 Support 1	\$840,000	\$250,000	\$1,020,000	.25% (.64%)	.19% to .32%	Choice

*Salary cost has been adjusted to reflect market for different roles



Qualitative Comparison

The qualitative analysis shows there is not a clear difference between managing the portfolio using an outsource or in-house basis, when the whole portfolio is examined as one. The outcome of the analysis changes based on the amount of funds being managed as the fund managers' price is based on a percent of the amount being managed and the in-house solutions cost are fixed.

The qualitative assessment, shown below, outlines a number of advantages and disadvantages. The key difference between the two alternatives is flexibility, timeliness and transparency. The outsource model allows more flexible to change the portfolio mix and can be established quickly while the in-house solution has complete transparency and the knowledge/skill are readily accessible however can take some time to establish and become an effective investment team.

	Advantages	Disadvantages
In-house	<ul style="list-style-type: none"> • Easier to monitor • Liquidity position closely managed • Investments tailored to meet needs • Expertise is readily available • Can tailor risk analysis to suit the business 	<ul style="list-style-type: none"> • May not have the breadth of investment choices • Key person risk • Can take some time for an effective in house team to develop • Need to acquire technology, pricing and valuations platforms (the upfront one off cost of this can be considerable). • Need to establish processes and reporting framework • Lack flexibility to change resource team i.e. defensive experts to growth experts, or ability to access the talent necessary
Out-source	<ul style="list-style-type: none"> • Access to broader market expertise • The investment activity can be undertaken quickly as an experience team can be quickly engaged. • Technology platforms established • Reporting/Process established • Risk reporting techniques developed and tested • Able to readily adjusted the investment mix i.e. between defensive and growth • Are able to readily move to a different investment team. 	<ul style="list-style-type: none"> • Not tailored • Liquidity risk may not just with the underlying investment but also with the fund manager, (this can be assessed by looking at the fund manager's terms and conditions in particular if the fund manager can 'freeze' the fund inhibiting or limiting withdrawals in, for instance, a market liquidity crisis) • Potential lack of transparency on portfolio holdings/activities



Investment Principles



Strategic Investment Guidelines

The Entity will need to develop a function which will source, analyse and recommend strategic investments to the Investment Committee for approval.

There will be two overall elements to the assessment:

- The key financial attributes of the investment and the potential return including comment on how this will be achieved.
- The impact the investment will have on the community.

The impact the investment will have on the community will be assessed using Indigenous Investment Principles (outlined on the following pages) based on the 'Santiago Principles.' These principles can be extended and used to measure community impact as part of ongoing reporting requirements.

Ongoing reporting

The Entity will also monitor and report on the ongoing performance, against both of the measures highlighted, of each investment. The report will include specific recommended actions (for instance, write off, terminate, renegotiate, restructure ...) for the Investment Committee's consideration if either or both the current and expected financial performance and the impact on the community are below the levels expected on approval of the investment.

Risk Assessment

The Entity will develop a risk matrix which will support the identification and classification of potential investments thereby supporting the veracity of the investment by setting a series of grades to be applied. A risk grade will be assigned to each potential investment (using an assessment approach similar to what the major banks/rating agencies use) which will drive the maximum amount and tenor allowable for each investment. A process will also be set for how investments which are outside any of the limits set could be considered (if they could be at all). The attributes to be assessed are:

- Maturity;
- Repayment profile;
- Minimum return (versus a set benchmark); and
- Maximum amount of investment.

For specific investments, these levels can be adjusted over time based on the success or lack of success of each investment. To determine this the risk grade applied to each investment will be reviewed at least annually, for example. Should the investment's grade improve the investments attributes could be reset, for example, the investment's maturity could be extended and should the grade decline, the levels will be tightened or some other remediation actions be recommended to the Investment Committee.

Strategic Investment Guidelines

Qualitative assessment

There will need to be a qualitative assessment included for each investment. This assessment will determine if there is sufficient support and capability for the investment to be able to successfully meet the attributes required. This could include consideration of:

- Management capability and experience;
- Economic environment in which the investment will be made;
- The impact of the investment on the organisation's financial position (with particular reference to capital structure);
- Relationship and/or reliance on other organisation/s (i.e. suppliers, clients, other stakeholders); and
- Any other key assumptions required for the investment's success.

Concentration risk

There will also be specific levels (these could be fixed amounts or a proportion of the portfolio) established to address concentration risk in the portfolio. These will include:

- Business types;
- Sector; and
- Related organisations.

Delegation

The Board can delegate to the Investment Committee the authority to approve Grants, Minor Investments and Major Investments which total no more than the amount allocated to each investment type within the approved financial plan. The financial plan will be signed off by the Board on an annual basis. The Board can reset the amount stipulated in the financial plan at any time in the financial year (this could be an increase or decrease).

The Investment Committee can then delegate to management the ability to approve investments which meet specific attributes. Major investment approval will not be delegated, delegations to management will be on grants and minor investments. The Investment Committee could adopt the following approach:

- Individual minor investment up to \$2,000,000; and
- Individual grants up to \$1,000,000.

No more than \$10,000,000 (across all investment made by management) can be approved per quarter (i.e. between investment committee meetings), which represents 2% of the total capital available for investment.

All minor investments and grants made using this delegation must be reported at the Investment Committee meeting following the monies being approved (even if actual transfer of funds is not until a later date).

The Indigenous Investment 'Santiago' Principles

Indigenous Investment Principles

Focus Area

In June 2014, the IBA facilitated a meeting of the Growing with Governance Forum, attended by over 40 representatives including from 22 Indigenous organisations. At this forum, a Working Group was formed to develop a set of investment principles specifically designed to address Indigenous circumstances.

The Principles build upon the generally accepted principles and practices of the 'Santiago Principles', with the purpose of providing guidance to effectively facilitate greater economic resilience for Indigenous Australians, organisations and communities, and to empower groups to be strong, active participants in the Australian economy while maintaining cultural, linguistic and environmental resilience.

Guiding Objectives

Development of the Principles was framed by five guiding objectives (see opposite), given effect through application of the Principles. The Principles provide a framework for communities to:

1. consider their aspirations and priorities for economic development;
2. Identify suitable economic and financial information to inform investment and capability requirements;
3. realise value from investments and the risks involved in each option;
4. develop Purpose and Spending Rules for investment based on an understanding of options;
5. create a robust system of governance arrangements, including when to delegate authority to an expert body; and
6. regularly consider, report on and respond to risks.

The Principle's core intent is to enable Communities with varying levels of financial knowledge, different levels of social and financial infrastructure, and specific decision-making methods to assess their particular circumstances and decide how best to move forward with an investment for the benefit of their people.

Guiding Objectives of the Principles

- 1. Cultural heritage:** Protect and preserve the cultural heritage of Indigenous Australians through successful investment of Indigenous communities' assets.
- 2. Economic independence:** Improve, protect and foster the best interests of Indigenous Australians by successfully achieving their investment objectives. This will ensure the economic independence and social development of Indigenous communities.
- 3. Capacity building:** Develop financial and commercial skills in Indigenous communities to contribute to sustainable and successful investment practices, and commercial activity generally.
- 4. Build respect in markets:** Build confidence and respect with commercial counterparts in financial and other markets, promoting and encouraging confidence and investment in Indigenous communities.
- 5. Risk management:** Demonstrate a transparent and sound governance structure that provides for adequate implementation resourcing, communication strategy, operational controls, risk management and accountability.

The Indigenous Investment 'Santiago' Principles

Indigenous Investment Principles

Background

The Principles cover practices and principles across three themes:

- community circumstances and purpose;
- mandate, governance and legal form; and
- investment and risk management framework.

The focus in this section is on theme one (see opposite), which puts the needs and aspirations of Communities at the centre of the investment identification and decision-making process. Principles have been adapted by KPMG where appropriate.

Issues and principles around particular governance arrangements and decision-making processes, including the assessment of investment risk and an appropriate risk management framework are considered elsewhere in this document.

Focus Area: Community Circumstances and Purpose

- 1. Land, culture, heritage and peoples [IIP A.1]:** Ensuring investment options are consistent with cultural and environmental values.
- 2. Capacity-building and engagement [IIP A.3]:** Provision of opportunities for the Community to develop and enhance skills.
- 3. Economic circumstances [IIP A.4]:** Analysis of potential investment opportunities in the context of the community's and region's economic circumstances.
- 4. Community needs [IIP A.5]:** Consideration of the short, medium and long-term needs, priorities and aspirations of the community and region.
- 5. Nature and source of funds [IIP A.6]:** Consideration by the Governing Group of the nature and source and any additional funds.

The Indigenous Investment 'Santiago' Principles

Community Circumstances and Purpose

Principle 1: Land, culture, heritage and peoples

Investment purposes should be consistent with the cultural and environmental values of the affected community or region.

Where identified investment opportunities leverage rights and interests in land and sea resources investment decisions must be made with a full consideration of potential impacts on cultural heritage and environmental values. Investments should reflect the community's prevailing cultural values, and should minimise detrimental impacts in accordance with these values.

Principle 2: Capacity-building and Engagement

Investment opportunities should provide opportunities for the broad-based development and enhancement of knowledge and skills and provide opportunities for human capital development.

Investment opportunities should seek to maximise the opportunities for human capital development through an analysis of workforce needs, opportunities for employment-based training and development, and engagement with education and training providers where appropriate. This includes undertaking a comprehensive assessment of the proponent's capabilities to understand any gaps in their ability to participate and the resources available to respond.

Principle 3: Economic circumstances

Investment opportunities should be assessed in the context of the economic circumstances of the community and its region.

A comprehensive assessment of the local and regional economy is essential for population driven and localised economic development opportunities. An environmental scan would take stock of the strengths and weaknesses of the local economy (including any existing industry linkages) to ensure business strategies have regard to factors that influence viability. Larger scale opportunities that are influenced by economic factors beyond the community must similarly be assessed in the context of a comprehensive analysis of economic factors, particularly in relation to demand.

The extent to which the opportunity addresses gaps or deficiencies in the local or regional economy, for example, through greater income and employment, must be considered.

Principle 4: Community needs

The Governing Group should consider the needs, priorities and aspirations of the relevant communities and regions it encompasses. The Governing Group should review short-, medium- and long-term needs, priorities and aspirations periodically, or when community or organisational conditions change.

The Governing Group needs to be responsive to its members to provide the best investment strategies on their behalf. The process should include mechanisms to assess and describe the community's present and future circumstances, and to identify unmet social or infrastructure needs that may contribute to broader social development goals.

Principle 5: Nature and source of funds

The Governing Group should consider the nature and source of any additional funds or capital to be leveraged.

The nature and source of any third-party funds to be used in leveraging the opportunity must be considered to ensure these funds are consistent with community-driven needs and priorities identified in preceding principles.



Appendix A: Corporate Governance Detailed Observations - Like Entities

Detailed observations – Like Entities

To understand the corporate governance structure of the ILSC, we have reviewed the following sources:

- the ILSC Annual Report 2019 – 20 (<https://www.ilsc.gov.au/wp-content/uploads/2020/12/ILSC-Annual-Report-2019%E2%80%932020.pdf>); and
- the ATSI Act (the legislation under which the ILSC is established).

The following pages set out the relevant governance arrangements we have identified for the ILSC.

Governance arrangement	Commentary	Source
Organisation type	The ILSC is established under the ATSI Act, which sets out the ILSC’s functions, powers and governance framework. The ILSC is a corporate Commonwealth entity under the PGPAA.	Annual Report 2019 – 20
Board - objectives and governance	<p>We note the following key information in respect of the ILSC Board’s objectives and governance:</p> <ul style="list-style-type: none"> • (role and key objectives) the Board determines the policies and strategic directions of the ILSC and is responsible for the proper and efficient performance of the ILSC’s functions. <p>Key objectives of the Board include:</p> <ul style="list-style-type: none"> ▪ achieving the ILSC purpose set out in the ATSI Act; ▪ providing accountable, effective, measurable and strategic leadership; ▪ exercising control over the ILSC and subsidiary operations, including consideration and adoption of appropriate risk-management strategies; and ▪ reviewing and enhancing Board governance arrangements. <ul style="list-style-type: none"> • (Charter) the Board is governed by a Board Charter which sets out Directors’ legal, financial and conflict-of-interest responsibilities so they can discharge their obligations to the highest standards in accordance with the PGPAA; • (purpose) the purposes of the ILSC is as follows: <ul style="list-style-type: none"> ○ “to assist Aboriginal persons and Torres Strait Islanders to acquire land and water-related rights; and ○ to assist Aboriginal persons and Torres Strait islanders to manage indigenous-held land and indigenous waters, so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders; 	<p>Annual Report 2019 – 20</p> <p>Section 191B of the ATSI Act</p>

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Board - objectives and governance (cont.)	<ul style="list-style-type: none"> • (functions) the ILSC has the following functions: <ul style="list-style-type: none"> ○ “the acquisition functions referred to in section 191D; ○ the management functions referred to in section 191E; ○ such other functions as are conferred on the ILSC by this Act or any other law of the Commonwealth; and ○ to do anything incidental to or conducive to the performance of any of the preceding functions.” 	Section 191C of the ATSI Act
Board - powers	<p>The ILSC have the “power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions,” which include but are not limited:</p> <ul style="list-style-type: none"> • to enter into contracts and agreements; • to invest money of the ILSC; • to appoint agents and attorneys and act as an agent for other persons; • to form, and participate in the formation of, companies; • to subscribe for and purchase shares in and debentures and securities of companies; • to enter into partnerships; • to participate in joint ventures and arrangements for the sharing of profits; • to accept gifts, grants, bequests and devises made to it; • to act as trustee of money and other property vested in it on trust; and • to charge for the provision of services by it. 	Section 191H of the ATSI Act
Board - delegation	<p>We note the following key information in respect of the delegation of authorities of the ILSC Board:</p> <ul style="list-style-type: none"> • (delegation) the Board may delegate any or all of its powers and functions, in writing, to the ILSC Group CEO or to ILSC staff members. Accordingly, decision making within the ILSC is governed by the Instrument of Delegations. This includes where the decision is to approve the ILSC’s payment for a good or service from another Commonwealth entity or company, or to provide a grant to another Commonwealth entity or company; • (related party transactions) the ILSC has a system of delegated powers that enables decisions to be made on a range of transactions at the appropriate organisational level. The Board Governance Charter adopts better practices as contained in the Australian National Audit Office Better Practice Guide on Governance and the Australian Stock Exchange Corporate Governance Guidelines; 	<p>Section 193T of the ATSI Act</p> <p>Annual Report 2019 – 20</p>

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Board – delegation (cont.)	<p>The Charter requires the disclosure of any conflict of interests including all related party transactions, and this matter is reported on at each ILSC Board meeting. The Executive Management Team is required to provide an Annual Declaration of Interest. In 2019 – 20, the ILSC has reported a series of transactions with two related parties, one of which is another Commonwealth related entity;</p> <ul style="list-style-type: none"> • (Board Committees) three Board Committees operated in 2019 – 20, being: <ul style="list-style-type: none"> ○ (Audit and Risk Committee) the Audit and Risk Committee (ARC) provide independent assurance and advice to the Board on the ILSC Group’s systems for managing risk, control and compliance, financial statements and performance reporting responsibilities as required by subsection 45(1) of the PGPAA. <p>ARC has two non-executive directors and is chaired by Ms Maria Storti who was reappointed in February 2020 as the independent member for a further two years:</p> <ul style="list-style-type: none"> ○ (Remuneration and Nomination Committee) the Remuneration and Nomination Committee (RNC) assists the Board to select the ILSC CEO and monitor their performance; consider and make recommendations about appointments to Board committees and subsidiary boards; and overseas and makes recommendations on ILSC Group remuneration policy; and ○ (Work Health and Safety Committee) the Work Health and Safety Committee (WHSC) was established in March 2015 and provides for assurance and advice to the Board on work, health and safety matters across the ILSC Group. <p>Following positive improvements in performance across the Group, the Committee met in November 2019 to review its Charter and governance structure. It recommended that the Sub-Board Committee transition to a Management Committee; that the Management Committee consist of all WHS personnel employed within Group entities and an independent member; and that the appointed Committee Chairperson is the present ILSC Group WHS Manager.</p> 	<p>Annual Report 2019 – 20</p>
Board - appointment	<p>The following requirements (in addition to the cultural and expertise requirements noted below) apply in respect of the appointment of the directors:</p> <ul style="list-style-type: none"> • an ILSC director is to be appointed by the Minister by written instrument; and • before appointing a person as a director, the Minister must consult the Finance Minister about the appointment. <p>An ILSC director holds office for such period as is specific in the instrument of appointment and that period must not exceed four years.</p>	<p>Section 191X of the ATSI Act</p> <p>Section 191Z of the ATSI Act</p>

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Board - composition, cultural requirements and expertise requirements	<p>The ILSC Board is comprised of seven Directors and is ILSC’s primary decision-making body. Five members including the Chairperson must be Indigenous Australians with all Directors appointed by the Minister. Currently, all of the directors are non-executive directors, and all except Director Crossin are Indigenous Australians. For completeness, we note that, as at 30 June 2020, the ILSC Board only has six Directors as a Director (Director Elu) resigned on 26 June 2020.</p> <p>The ILSC Board should be comprised of the following members:</p> <ul style="list-style-type: none"> • a Chairperson; • a Deputy Chairperson; and • five ordinary members. <p>The ILSC Chairperson and at least four other ILSC directors must be Aboriginal persons or Torres Strait Islanders.</p> <p>Each ordinary member of the Board is to be a person who the Minister is satisfied has experience in:</p> <ul style="list-style-type: none"> • land, water or environmental management; • business or financial management; or • Aboriginal community life or Torres Strait Islander community life, <p>and the Minister must ensure that at least two ordinary members of the Board have experience business or financial management.</p>	<p>Annual Report 2019 – 20</p> <p>Section 191V(2) of the ATSI Act</p> <p>Section 191X of the ATSI Act</p> <p>Section 191X of the ATSI Act</p>
Board - voting	<p>Questions arising at a meeting of the ILSC Board are to be determined by a majority of the votes of the ILSC directors present and voting. The person presiding at a meeting of the ILSC Board has a deliberative vote, and in the event of an equality of votes, also has a casting vote.</p>	<p>Section 192J of the ATSI Act</p>
Board - quorum	<p>The quorum for an ILSC Board meeting is four.</p>	<p>Section 192J of the ATSI Act</p>
Board - termination	<p>The Minister may terminate the appointment of an ILSC director due to misbehaviour or physical or mental incapacity, and the Minister must terminate an ILSC director if they:</p> <ul style="list-style-type: none"> • become bankrupt; • apply to take the benefit of the law for the relief of bankrupt or insolvent debtors; • compounds with his or her creditors; • makes an assignment of his or her remuneration for the benefit of his or her creditors; or • fails, without reasonable excuse, to comply with subsection 192F(3). 	<p>Section 192H of the ATSI Act</p>

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Board - meetings	The ILSC Chairperson must convene meetings of the ILSC Board as they deem are necessary for the efficient performance of the Board's responsibilities.	Section 192J of the ATSI Act
Board - remuneration	The ILSC directors are entitled to remuneration and allowances in accordance with the following: <ul style="list-style-type: none"> the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal; if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined by the Minister by legislative instrument; and the holder of the office shall be paid such allowances as are determined by the Minister by legislative instrument. 	Sections 192N and 194 of the ATSI Act
CEO	The ILSC CEO is to be appointment by the ILSC Board on the terms (e.g. term, remuneration etc.) as stipulated by the ILSC Board. The term of appointment of a CEO must not exceed four years.	Division 8 of the ATSI Act
Staff	The ILSC CEO may, on behalf of the ILSC, engage such employees as are necessary for the performance of the Corporation's functions under the ATSI Act. The terms and conditions of employment are to be determined by the ILSC Board in writing. The ILSC CEO may, on behalf of the ILSC, make arrangements for the services of officers or employees of: <ul style="list-style-type: none"> the Public Service of the Commonwealth or of a State or Territory; an authority of the Commonwealth or of a State or Territory; or any other organisation or body. <p>The ILSC CEO may also, on behalf of the ILSC, engage as consultants to the Corporation persons having suitable qualifications and experience.</p>	Division 9 of the ATSI Act
Other	We further note the following key information we have identified in respect of the ILSC while conducting our due diligence: <ul style="list-style-type: none"> (ILSC to make money available to IBA) the ILSC may make payments to the IBA to assist IBA to carry out its function; (powers of the Minister) the ATSI Act sets out that "except as expressly providing in this Act or in the PGPA, the Minister is not empowered to direct the Indigenous Land and Sea Corporation in relation to any of its activities;" (national and regional strategies) the ILSC Board "must prepare, and revise from time to time, a strategy to be known as the" national indigenous land and sea strategy and regional indigenous land and sea strategies. There are certain legislative requirements these strategies must meet (e.g. period, review etc.) and a copy of the national indigenous land and sea strategy (and any relevant amendments) must be provided to the Minister within two months of the Board agreeing to the strategy (or relevant amendment), and a copy of a regional strategy must be provided to the Minister on request; 	Section 191EA of the ATSI Act Section 191L of the ATSI Act Division 3 of the ATSI Act

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Other	<ul style="list-style-type: none"> • (responsibilities) the ILSC Board is to ensure the proper and efficient performance of the functions of the ILSC and to determine the policy of the ILSC with respect to any matter; • (other terms and conditions) an ILSC director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the Gazette; • (Annual report) the annual report prepared by the ILSC Board and given to the Minister under section 46 of the PGPAA must include such additional information (if any) as is specified in the regulations under this Act; • (reviews) the regulations must provide for independent reviews of the operation of Part 4 of the ATSI Act (i.e. the provisions in respect of the ILSC) to be conducted, and a report of each review must be provided to the Minister; • (responsible minister) during 2019 – 20 the ILSC had one responsible Minister, being the Hon. Ken Wyatt AM MP. The PGPAA requires that the ILSC keep the MIA informed of its operations, including any events of significance, and provide both the MIA and the Minister for Finance with reports, documents and information that they may request. The ILSC Board is also required to notify the MIA of any significant non-compliance with finance law; • (general policies of the Australian government) the ILSC must comply with any Australian Government Policy Order to the extent that it applies to the ILSC; • (subsidiary governance) the ILSC subsidiaries each have their own Board of directors. The activities of subsidiaries are managed by agreements with the ILSC under section 191G of the ATSI Act. The ILSC Board issues a Statement of Expectation to each subsidiary setting out the ILSC’s expectations including outcomes to be achieved by subsidiaries. The ILSC Board appoints directors to subsidiary boards, they include some ILSC directors as well as independent members. Subsidiary boards establish committees, where appropriate; • (strategic and operational planning) the ILSC Board under Chairperson Fry continues reviewing and reforming ILSC’s strategic direction and operational structures to maximise delivery of outcomes for the Indigenous Estate. The ILSC have established an internal Strategic Reform Unit, “charged with the delivery of a structural and efficiency review and the development of recommendations for alternate business structures and operating models to deliver on the Board’s objective of unlocking the value of the Indigenous Estate.” Early recommendations for the Strategic Reform Unit identify opportunities to address operational inefficiencies across the ILSC Group and streamline organisational structures to reduce costs of service delivery. The ILSC Board have considered a number of interim reports by the Strategic Reform Unit over the 2019 – 20 period and a final report recommending a reformed organisational structure was due to be delivered to the ILSC Board in August 2020. The implementation of these reforms is expected to be a core strategic focus of the ILSC Board in 2020 – 21; • (service standards) “the ILSC Service Charter sets out the standards of service the ILSC strives to provide its clients through program delivery, policy development, communication and consultation.” There is also a Complaints Handling Procedure which “encourages resolution of complaints at the Divisional Office level, but provide for their referral to the Deputy CEO, where necessary;” 	<p>Section 191W of the ATSI Act</p> <p>Section 192I of the ATSI Act</p> <p>Section 193K(2) of the ATSI Act</p> <p>Section 193U of the ATSI Act</p> <p>Annual Report 2019 – 20</p>

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Other	<ul style="list-style-type: none"> • (assurance and risk management) the ILSC Group’s Risk Management Framework “takes a whole-of-enterprise approach, is integrated into all operations and promotes the identification and management of risk at every level of each entity. The Group Risk Management framework aligns with the Commonwealth Risk Management Policy 2014, Better Practice Guides and relevant Australian and international good-practice guides and standards... The Group Risk Framework is reviewed annually. Across the ILSC Group, each entity’s Executive and Audit Committee review and test the systems of risk, internal control and compliance frameworks through the Group’s Internal Audit Program;” <ul style="list-style-type: none"> ○ (audit) “the ILSC Group’s external auditor is the Auditor General. Audit strategies are agreed by the Auditor-General, the ILSC and each subsidiary for the conduct of the audit of the financial statements. The Audit and Risk Committee oversees the group’s Internal Audit Program. The Annual program is outsourced and is designed to provide assurance that key risks and compliance requirements are managed appropriately and in a timely manner;” ○ (insurance and indemnities) “Comcover, the Australian Government’s self-managed fund, provides cover, including Directors’ and Officers’ liability, for the ILSC Group’s insurable risks. <p>Limited indemnities are provided by way of deed of access to each of the Board’s Directors, the ILSC Group CEO and the Group General Counsel. These arrangements largely mirror those implied at common law; generally, they indemnify Directors and Officers against personal liabilities they might incur while properly performing their roles as office holders. The indemnities do not cover liabilities arising from particular statutory breaches, breaches of the criminal law or actions involving a lack of good faith;”</p> ○ (fraud control and awareness) “the ILSC maintains a rigorous Fraud Control and Awareness Program to minimise the risks of fraud and deal with any allegations of fraud that arise. The ILSC Board certifies that the ILSC complies with the Commonwealth Fraud Control Policy. The ILSC has taken all reasonable measures to minimise the incidence of fraud and to investigate and recover the proceeds of any fraud against the ILSC. It has in place fraud risk assessment and fraud control plans, as well as fraud prevention, detection, investigation, reporting, and data collection procedures to meet the specific needs of the ILSC Group and comply with relevant guidelines;” ○ (ethical standards) the ILSC has a Code of Conduct that employees are required to uphold and promote in their day-to-day work; <p>(biosecurity and animal welfare) the ILSC complies with Australia’s voluntary Livestock Production Assurance program, which covers stock feed safety, animal welfare and biosecurity. The ILSC is also in partnership with Animal Health Australia, which has been engaged to assist with the development of comprehensive biosecurity plans for a number of the ILSC’s agribusiness properties; and</p> ○ (consultants) the ILSC engages consultants to provide specialist professional services and where the ILSC requires independent advice, review or evaluation. 	Annual Report 2019 - 20

Indigenous Land and Sea Corporation

Governance arrangement	Commentary	Source
Other	<ul style="list-style-type: none"> • (procurement) “the ILSC’s Purchasing Policy is based on principles set out in the Commonwealth Procurement Rules: value for money; encouraging competition; efficient, effective, economical and ethical procurement; accountability and transparency. The policy guides the purchase of goods and services in relation to all ILSC activity The ILSC also have a legislative requirement to maximise the use of goods and services from Indigenous-owned businesses. In line with the Australian Government’s commitment to Indigenous procurement, the ILSC established an ILSC Group Indigenous Procurement Policy in 2016 - 17 with a view to maximising procurement of Indigenous goods and services and supporting Indigenous businesses to grow and employ more Indigenous people;” • (external scrutiny) the ILSC is subject to the following external scrutiny: <ul style="list-style-type: none"> ○ (freedom of information) the ILSC is subject to the <i>Freedom of Information Act 1982</i> (Cth) and displays on its website a plan showing the information it publishes under that Act; ○ (parliamentary committees) the ILSC Group CEO, supported by Senior Executives, appeared before the Senate Estimates Committee (Finance and Public Administration) for Cross Portfolio Indigenous Matters; ○ (Native Title) under its Native Title Policy the ILSC reports on any approaches to assist in the full and final resolution of native title claims through alternative settlements – that is, settlements negotiated out of court under an alternative framework, such as the <i>Traditional Owner Settlement Act 2010</i> (Vic) as opposed to the Native Title Act; and ○ (environmental considerations) in 2019 – 20, the ILSC pursued sound land and environmental practices and appropriate management of cultural and sacred site matters across its programs and operations in accordance with the ATSI Act and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). The EPBC Act requires that the ILSC, as a corporate Commonwealth entity that owns or controls land with Commonwealth entity that owns or controls land with Commonwealth heritage values, prepare a Heritage Strategy. Heritage and Environment Plans (HEMPs) outline specific environmental and heritage characteristics of properties and include responsible consideration of environmental risks and opportunities. HEMPs are in place on most rural and urban properties either held or directly managed by the ILSC, including those properties where ILSC subsidiaries conduct business operations. 	Annual Report 2019 - 20

Australian Institute of Aboriginal and Torres Strait Islander Studies

Governance Arrangement	Commentary	Source
Council - objectives and governance (cont.)	<ul style="list-style-type: none"> ○ use that national collection to strengthen and promote knowledge and understanding of Aboriginal and Torres Strait Islander culture and heritage; ○ provide leadership in the fields of: <ul style="list-style-type: none"> ▪ Aboriginal and Torres Strait Islander research; and ▪ ethics and protocols for research and other activities relating to collections related to Aboriginal and Torres Strait Islander culture and heritage; and ▪ use (including use for research) of the national collection and other collections containing Aboriginal and Torres Strait Islander culture and heritage; ○ lead and promote collaborations and partnerships among the academic, research, non-government, business and government sectors and Aboriginal and Torres Strait Islander peoples in support of other functions of the Institute; and ○ provide advice to the Commonwealth on the situation and status of Aboriginal and Torres Strait Islander culture and heritage.” • (strategic priorities) the Council sets the medium term strategic priorities for the AIATSIS through the development of a four year Corporate Plan as required by the PGPA. The AIATSIS Council’s strategies are as follows: <ul style="list-style-type: none"> ○ build and preserve a national collection and make it accessible; ○ promote better understanding of Indigenous people’s cultures and heritage; ○ lead and influence on Aboriginal and Torres Strait Islander research, ethics, protocols and collections; ○ partner and collaborate with our communities, partners and governments; and ○ advise on Aboriginal and Torres Strait Islander culture and heritage. 	<p>See above.</p> <p>Clause 5.6.5 of the Council Charter</p> <p>Annual Report 2019 – 20</p>
Council - powers	<p>The AIATSIS has “power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions,” which include but are not limited:</p> <ul style="list-style-type: none"> • to accept gifts, grants, bequests and devises made to it; and • to act as trustee of money and other property vested in it on trust. <p>Further, despite anything contained in the AIATSIS Act, any money or other property held by the Institute on trust shall be dealt with in accordance with the powers and duties of the AIATSIS as trustee.</p>	<p>Section 6 of the AIATSIS Act</p>

Australian Institute of Aboriginal and Torres Strait Islander Studies

Governance Arrangement	Commentary	Source
Council - delegation	<p>We note the following key information in respect of the delegation of authorities of the Council:</p> <ul style="list-style-type: none"> • (delegation) the Council may delegate any or all of its powers and functions, in writing, to the AIATSIS CEO or to AIATSIS staff members. Accordingly, decision making within the AIATSIS is governed by the Instrument of Delegations; • (related party transactions) in 2019 – 20, the AIATSIS reported it did not make any related entity transactions or issue any indemnities to the AIATSIS council, to its members or to any officers of AIATSIS; • (Council Committees) three committees operated in 2019 – 20 advising the AIATSIS Council, being: <ul style="list-style-type: none"> ○ (Audit and Risk Committee) the Audit and Risk Committee (ARC) provide independent assurance and advice to the Board on the AIATSIS Council to assist management to meet their duties and obligations under the PGPAA and the <i>Public Governance, Performance and Accountability Rule 2014</i> (Cth) in the areas of financial reporting, performance reporting, risk oversight and management and internal controls. The charter for the Audit and Risk Committee can be found at: www.aiatsis.gov.au. The committee is comprised of at least three independent members. Two of the members must be AIATSIS Council members; ○ (AIATSIS Foundation) the AIATSIS Foundation works to raise funds to secure the future of the world’s largest and most significant collection of Aboriginal and Torres Strait Islander Australian culture, history and heritage; and ○ (AIATSIS Membership Standing Committee) the AIATSIS Membership Standing Committee provides advice to the AIATSIS Council on membership applications and engagement. At 30 June 2020, AIATSIS had 652 total members, including 18 new members during the year. • (CEO Committees) twelve committees operated in 2019 – 20 advising the CEO and the business of AIATSIS, being: <ul style="list-style-type: none"> ○ (Senior Executive Board) the Senior Executive Board supports the CEO in the leadership and strategic management of AIATSIS’ operations; ○ (Research Ethics Committee) the AIATSIS Research Ethics Committee is a registered Human Research Ethics Committee that provides independent review of the ethical aspects of research projects, against the National Statement on Human Research Ethics and the AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies; ○ (Collections Advisory Committee) the Collections Advisory Committee (CAC) was established to provide advice to the AIATSIS CEO and the Executive Director, Collections on matters in relation to collection development, management and access. This includes providing advice on proposals for major donations or deposits, policy development, risks to the collections, major projects and strategic issues. The CAC is currently in recess while the Collections Transformation Strategy is undertaken. This will inform new terms of reference, a work program and membership composition to better reflect contemporary issues impacting the AIATSIS collection; 	<p>Section 44 of the AIATSIS Act</p> <p>Annual Report 2019 – 20</p>

Australian Institute of Aboriginal and Torres Strait Islander Studies

Governance Arrangement	Commentary	Source
Council – delegation (cont.)	<ul style="list-style-type: none"> ○ (Native Title Research Advisory Committee) the Native Title Research Advisory Committee (NTRAC) provides advice to the CEO on AIATSIS native title activities; ○ (Publishing Advisory Committee) the Publishing Advisory Committee (PAC) is an independent advisory group that reports to the AIATSIS CEO, who is also the PAC Chairperson. The PAC evaluates all manuscripts submitted and assessed and makes publishing recommendations to the PAC Chairperson; ○ (Research Advisory Committee) the Research Advisory Committee provides advice to the CEO on strategic research matters and research priorities; ○ (Indigenous Research Exchange Advisory Board) the Indigenous Research Exchange was established to build the evidence base to support policy and practice that improves outcomes for Aboriginal and Torres Strait Islander peoples; ○ (Indigenous Caucus) the Indigenous Caucus consists of a voluntary membership of Aboriginal and Torres Strait Islander staff members. It is an energetic, supportive and cohesive network supporting AIATSIS; ○ (Consultative Committee) the AIATSIS Consultative Committee is a joint employee, management and union committee established under the AIATSIS Enterprise Agreement (EA). The purpose of the committee is to discuss matters affecting employment. They work within the framework of the EA and the committee’s charter to progress employment matters for AIATSIS employees, exercise functions under the EA, and address such matters as are agreed to at the request of the CEO; ○ (National Resting Place Project Indigenous Advisory Committee) AIATSIS established the National Resting Place team in October 2019. At the same time, the CEO of AIATSIS invited key experts to be included on a new Indigenous Advisory Committee (IAC). The IAC was established to provide guidance to AIATSIS on the National Resting Place project; ○ (COVID-19 Taskforce) an AIATSIS COVID-19 Taskforce was established on 23 March 2020 at the request of the CEO; and ○ (Health and Safety Committee) the role of the Health and Safety Committee (HSC) is to facilitate co-operation and consultation between the institute and workers in instigating, developing and carrying out measures designed to ensure the health and safety of workers at work. 	See above.
Council – composition and appointment	<p>The AIATSIS Council is comprised of nine members and is AIATSIS’s primary decision-making body. The following requirements (in addition to the cultural and expertise requirements noted below) apply in respect of the appointment of the nine members of the AIATSIS Council:</p> <ul style="list-style-type: none"> • the AIATSIS Council must be comprised of the following members: 	Section 12 of the AIATSIS Act

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Governance Arrangement	Commentary	Source
Council – composition and appointment (cont.)	<ul style="list-style-type: none"> ○ a Chairperson; ○ a Deputy Chairperson; and ○ seven ordinary members, • four members are elected from and by AIATSIS members; • at least two of the elected members must be Aboriginal or Torres Strait Islander people and two must be women; • five members are appointed by the Minister. The Minister’s appointments must ensure a majority of Aboriginal and Torres Strait Islander representation and take into account gender balance, skills and experience; • council members are appointed or elected for four-year terms and may not serve more than two consecutive terms; • council members are remunerated in accordance with the Remuneration Tribunal determination for part-time statutory office holders; • all members of the AIATSIS Council are non-executive members; and • the Minister appoints a Chairperson and a Deputy Chairperson of the Council from among the councillors. 	<p>See above.</p> <p>Annual Report 2019 – 20</p> <p>Section 14 of the AIATSIS Act</p>
Council - voting	<p>We note the following information in respect of the voting arrangements for the AIATSIS:</p> <ul style="list-style-type: none"> • (majority vote) questions arising at a meeting of the Council are determined by a majority of the votes of AIATSIS councillors present and voting; and • (casting vote) the person presiding at a meeting of the AIATSIS Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote. The Council Chairperson presides at all meetings of the Council at which he or she is present. If the Council Chairperson is not present at a meeting of the Council the Deputy Chairperson of the Council presides at the meeting. Or in any other case the councillors present must elect one of their number to preside at the meeting. 	Section 23 of the AIATSIS Act
Council - quorum	The quorum for an AIATSIS Council meeting is constituted by five councillors.	Section 23(4) of the AIATSIS Act
Council - termination	<p>Termination of AIATSIS Council membership may occur in the following ways:</p> <ul style="list-style-type: none"> • (misbehaviour or physical or mental incapacity) the Minister may terminate a person’s membership of the Council because of misbehaviour or physical or mental incapacity; • (absence) the Minister must terminate a person’s membership of the Council if the member is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Council; or 	Section 21 of the AIATSIS Act

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Governance Arrangement	Commentary	Source
Council – termination (cont.)	<p>(contravening general duties) a Council member’s membership may also be terminated under section 30 of the PGPAA (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials). Section 30 of the PGPAA applies to an election of a member under paragraph 12(1)(a) or (b) of the AIATSIS Act as if the election were an appointment by the Minister. This enables the Minister to remove from office an elected member if the member fails to comply with the general duties of officials under the PGPAA.</p> <p>An elected councillor ceases to be a councillor if he or she ceases to be a member of the AIATSIS.</p>	See above.
Council - meetings	<p>The AIATSIS Council Chairperson is to convene meetings of the AIATSIS Council as they deem are necessary for the efficient performance of the Council’s responsibilities.</p> <p>The AIATSIS Council meets four times each year to consider strategic directions and matters of operational significance.</p>	Section 23 of the AIATSIS Act Annual Report 2019 – 20
Council - remuneration	<p>The AIATSIS councillors and CEO are entitled to remuneration and allowances in accordance with the following:</p> <ul style="list-style-type: none"> the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal; if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined by the Minister by legislative instrument; and the holder of the office shall be paid such allowances as are determined by the Minister by legislative instrument. 	Section 45 of the AIATSIS Act
CEO	<p>The AIATSIS CEO is to be appointed by the AIATSIS Council to manage the day-to-day administration of AIATSIS and must act in accordance with any policies determined, and any directions given, by the Council in writing. The CEO is entitled to remuneration and allowances in accordance with section 45 of the AIATSIS Act (as detailed above) and the term of appointment of a CEO must not exceed five years.</p>	Part 6 of the AIATSIS Act
Members	<p>The Council of the AIATSIS may appoint persons as members for 5 years if that person has applied for membership of the AIATSIS in accordance with the AIATSIS rules and has demonstrated interest in Aboriginal and Torres Strait Islander culture and heritage.</p>	Part 4 of the AIATSIS Act
Staff	<p>The staff required to assist the AIATSIS in the performance of its functions are persons engaged under the PSA. The AIATSIS CEO may also, on behalf of the AIATSIS, engage as consultants to the AIATSIS persons having suitable qualifications and experience.</p> <p>As at 30 June 2020, AIATSIS had 121 ongoing and 14 non-ongoing employees. Of these, 121 employees worked full time and 14 part time; and 40 employees identified as Aboriginal and/ or Torres Strait Islander. Of these, 37 are employed in ongoing arrangements and three are non-ongoing. This was an increase of four Aboriginal and/or Torres Strait Islander ongoing staff members from the previous reporting year.</p>	Part 7 of the AIATSIS Act Annual Report 2019 – 20

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Governance Arrangement	Commentary	Source
Staff (cont.)	During the reporting period ending 30 June 2019, AIATSIS had 13 AIATSIS Council members and six executives who met the definition of Key Management Personnel.	
Other	<p>We further note the following key information we have identified in respect of the AIATSIS while conducting our due diligence:</p> <ul style="list-style-type: none"> • (rules) the AIATSIS Council may make rules; • (responsibilities) it is the responsibility of the AIATSIS Council to ensure the proper and efficient performance of the functions of the AIATSIS and to determine the policy of the AIATSIS with respect to any matter; • (responsible minister) during 2019 – 20 the AIATSIS had one responsible Minister, being the Hon. Ken Wyatt AM MP, Minister for Indigenous Australians. AIATSIS was part of the Prime Minister and Cabinet portfolio; • (NIAA) AIATSIS regularly liaise with the NIAA which was established in May 2019 to influence policy across the Australian Government; • (financial resource management) AIATSIS total financial result in FY2019 – 20 was a deficit of \$0.389 million. This resulted from a timing difference in the recognition of revenue as a result of the introduction of AASB 1058 Income of NFP Entities. In response to PGPA Rule section 17BE(h) – (i), the Minister received no reports relating to significant noncompliance with the finance law involving AIATSIS in 2019 – 2020; • (funding) AIATSIS receives most of its funding from Australian Government appropriation (\$20.445 million in 2019 – 2020). Additional revenue is derived from revenue from contracts with customers, grants and other sources (\$8.030 million in 2019–2020); • (partnerships) AIATSIS works with a number of stable partnerships and networks (approximately 34). These are high-level agreements for mutual benefit, generally formalised in a memorandum of understanding; • (policy orders or ministerial directions) there are no government policy orders in effect that applied to AIATSIS during 2018 – 2019 and AIATSIS were not subject to any ministerial directions made under an Act or instrument during 2019 – 2020; • (external scrutiny) AIATSIS’s operations are scrutinised by external entities such as the Australian National Audit Office (ANAO), the Commonwealth Ombudsman and committees of the Australian Parliament; • (risk management) the Deputy CEO oversees AIATSIS’s risk management framework, which aligns with the principles of the PGPA and the Commonwealth Risk Management Policy. AIATSIS’s Audit and Risk Committee provides independent advice and assurance to the AIATSIS Council on the appropriateness of our accountability and control framework of risk oversight and management. Additionally, AIATSIS’s Internal Audit (IA) function is established under the authority of the AIATSIS Council. The Chief Audit Executive is responsible for managing IA effectively while reporting to the Senior Executive Board and Audit and Risk Committee; 	<p>Section 48 of the AIATSIS Act Section 13 of the AIATSIS Act</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p>

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Governance Arrangement	Commentary	Source
Other	<ul style="list-style-type: none"> • (fraud management) AIATSIS are subject to the Commonwealth Fraud Control Framework 2017. As a corporate Commonwealth entity AIATSIS must also comply with the Fraud Rule and utilise the Resource management guide No 201—Preventing, detecting and dealing with fraud as better practice guidance. The key governance elements of AIATSIS’s Fraud Control Framework include a Fraud Control Policy, Fraud Control Plan, Fraud Risk Assessment and the AIATSIS Code of Conduct. AIATSIS promote fraud prevention and awareness to staff through mandatory fraud awareness training and executive messaging on a regular basis which is overseen by AIATSIS’s Senior Executive Board. AIATSIS reported no instances of fraud for the 2019–2020 year; • (notifiable incidents) in 2019 – 2020 there were no notifiable incidents in relation to a serious injury of a person. No investigations were carried out under part 10 of the <i>Work Health and Safety Act 2011</i> (Cth); • (environmental sustainability) AIATSIS contribute to ecological sustainability through both collection and research programs. AIATSIS’s research activity includes projects related to land and water, culture and heritage and native title that continue to contribute an understanding of social, cultural and economic factors. AIATSIS maintained accreditation under the ACT Government ACTSmart Business Recycling Program in 2019 – 2020; • (advertising and marketing) AIATSIS made no payment in FY2019 – 20 to advertising agencies, market research organisations, media advertising organisations, polling organisations or direct mail organisations that are reportable under section 311A of the <i>Commonwealth Electoral Act 1918</i> (Cth); and • (aboriginal and Torres Strait Islander apprenticeship program) during 2019 – 2020 AIATSIS participated in Services Australia’s 2020 Aboriginal and Torres Strait Islander Apprenticeship Program. The program aims to provide a pathway for Aboriginal and Torres Strait Islander peoples to start their careers in the Australian Public Service and to attain a nationally accredited qualification in government within the first 12 months of commencement. AIATSIS engaged two apprentices on an ongoing basis. Both are studying for a Diploma in Government while learning on the job in their respective roles in publishing and collections management program areas. 	<p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p> <p>Annual Report 2019 – 20</p>

Indigenous Business Australia

To understand the corporate governance structure of IBA, we have reviewed the following sources:

- the IBA Annual Report 2019 – 20 (https://www.iba.gov.au/wp-content/uploads/IBA-AR-2019-20_web.pdf); and
- the ATSI Act (the legislation under which the IBA is established).

The following pages set out the relevant governance arrangements we have identified for the IBA.

Governance Arrangement	Commentary	Source
Organisation type	<p>The IBA is established under the ATSI Act, which sets out the IBA’s purposes, functions, powers and governance framework. The IBA is a corporate Commonwealth entity under the PGPAA. The IBA is also a not-for-profit entity and is a registered charity with the Australian Charities and Not- For-Profit Commission. On this basis, the IBA is subject to the ACNC Act, <i>the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012</i> (Cth) (ACNC Consequential and Transitional Act), <i>the Australian Charities and Not-for-profits Commission Regulation 2013</i> (Cth) (ACNC Regulations), <i>the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Regulation 2016</i> (Cth) and the <i>Charities Act 2013</i> (Cth) (Charities Act).</p>	Annual Report 2019 – 20
Board - objectives and governance	<p>We note the following key information in respect of the IBA Board’s objectives and governance:</p> <ul style="list-style-type: none"> • (Board) the IBA Board is the accountable authority under the PGPAA, and determines the policies and strategic directions of the IBA and is responsible for the proper and efficient performance of the IBA’s functions; • (Charter) the Board is governed by a charter which outlines the responsibilities, reporting and review arrangements of the Board. The Board’s Charter includes a code of conduct for directors, and rules and processes for dealing with conflicts of interest and related party transactions. It is reviewed annually to keep up-to-date with best practices in corporate governance; • (Board review) the Board Charter also provides for reviews to provide a forum for the ongoing development and improvement of the Board’s performance. These reviews include assessment as to the performance of the Board and individual members, and evaluation of the performance of the Board using external frameworks provided by the Australian Institute of Company Directors. These reviews are held on a triennial basis, the most recent review was held in 2018; • (objectives) the IBA Board Charter is required to be continuously updated in response to internal and external reviews and variations in IBA’s operating environment. In 2019, the Charter was updated to ensure consistency with changes to internal policies and practices. It adopted four objectives: <ul style="list-style-type: none"> o to outline the respective roles and responsibilities of the Board and IBA management; 	Annual Report 2019 – 20

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Governance Arrangement	Commentary	Source
Board - objectives and governance (cont.)	<ul style="list-style-type: none"> ○ to enable the efficient and effective exercise of key Board functions including ethical and responsible decision making; ○ to set sound Board governance processes that facilitate achievement of IBA objectives; and ○ to provide a framework for continuous improvement in Board processes. <ul style="list-style-type: none"> • (IBA Board Governance instructions) the standard of best practice corporate governance established in the Board Charter is also included in the IBA Board Governance instructions which are issued to the IBA CEO and IBA employees. IBA employees are required to comply with the Board instructions, and also: <ul style="list-style-type: none"> ○ Board policies; ○ Chief Executive’s instructions; ○ authorisations and delegations, and ○ other lawful and reasonable directions. • (purposes) IBA’s purposes are as follows: <ul style="list-style-type: none"> ○ to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and ○ to advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples. <p>These purposes were included in the 2019 – 20 Corporate Plan and were achieved through IBA’s single portfolio outcome — to improve wealth acquisition and economic independence of Indigenous Australians — via:</p> <ul style="list-style-type: none"> ○ commercial enterprise; ○ asset acquisition; and ○ access to concessional business and home finance. • (functions) IBA’s functions are as follows: <ul style="list-style-type: none"> ○ to engage in commercial activities; ○ to promote and encourage Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and ○ such other functions as are conferred on it by the ATSI Act. <p>Without limiting the meaning of commercial activities above, those activities include the performance of functions that the Minister has authorised IBA to perform as an agent of the Commonwealth or the Minister has delegated to the IBA.</p> 	<p>See above.</p> <p>Section 146 of the ATSI Act</p> <p>Annual Report 2019 – 20</p> <p>Section 147 of the ATSI Act</p>

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Governance Arrangement	Commentary	Source
Board - objectives and governance (cont.)	<ul style="list-style-type: none"> • (performance of functions) in performing its functions, IBA must act in accordance with sound business principles and the IBA Board must have regard to the desirability of certain factors, such as promoting Aboriginal and Torres Strait Islander participation and benefits, as listed in the ATSI Act. • (directions by Minister) IBA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister. <p>The IBA is structured to meet one outcome: improved wealth acquisition to support the economic independence of Aboriginal and Torres Strait Islander peoples through commercial enterprise, asset acquisition, and access to concessional home and business loans.</p>	<p>Section 148 of the ATSI Act</p> <p>Section 151 of the ATSI Act</p> <p>Annual Report 2019 – 20</p>
Board - powers	<p>The IBA has “power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions,” which include but are not limited:</p> <ul style="list-style-type: none"> • to enter into contracts (including contracts for the provision of business or housing loans); • to make grants for purposes associated with business loans or housing loans; • to invest money of Indigenous Business Australia; • to appoint agents and attorneys, and act as an agent for other persons; • to form, and participate in the formation of, companies; • to subscribe for and purchase shares in, and debentures and other securities of, companies; • to enter into partnerships; • to participate in joint ventures and arrangements for the sharing of profits; • to accept gifts, grants, bequests and devises made to it; • to act as trustee of money and other property vested in it on trust; and • to charge for the provision of services by it. <p>In making a housing loan or business loan, or in making a grant, or giving a guarantee in relation to such a loan, IBA must be satisfied that the making of the grant or loan, or the giving of the guarantee, will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders. A grant or loan made by IBA is subject to such terms and conditions as IBA determines and the powers of IBA may be exercised within or outside Australia.</p>	<p>Section 152 of the ATSI Act</p>

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Governance Arrangement	Commentary	Source
Board - powers (cont.)	<p>Further, despite anything contained in the ATSI Act, any money or other property held by IBA on trust shall be dealt with in accordance with the powers and duties of IBA as trustee.</p> <p>IBA may only guarantee the due payment of all money (including interest) payable by the person in accordance with the terms and conditions of the loan if IBA is satisfied that either:</p> <ul style="list-style-type: none"> • money lent or to be lent to any person will be used in a way that furthers the commercial or economic development of Aboriginal persons or Torres Strait Islanders; or • a housing loan or business loan made, or to be made, to any person will further the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders <p>The Finance Minister determines the limits as to the total amount of money (other than interest) the payment of which may at any time be the subject of guarantees.</p>	<p>See above.</p> <p>Section 153 of the ATSI Act</p>
Board - delegation	<p>We note the following key information in respect of the delegation of authorities of the IBA Board:</p> <ul style="list-style-type: none"> • (delegation) the IBA Board may delegate any or all of its powers and functions, in writing, to the IBA CEO or to IBA staff members. Accordingly, decision making within the IBA is governed by the Instrument of Delegations; • (Board Committees) three ongoing committees assist the Board to effectively exercise its functions, being: <ul style="list-style-type: none"> ○ (Audit, Risk and Performance Committee) the Audit, Risk and Performance Committee (ARPC) provides independent assurance and advice to the Board on IBA’s risk, control and compliance framework, financial statements, and performance reporting responsibilities. It also monitors IBA’s performance against budget and key performance indicators. The ARPC Charter is available at www.iba.gov.au/charter; ○ (Finance, Investments and Products Committee) the Finance, Investments and Products Committee (FIPC) monitors and reviews IBA’s Housing Solutions, Business Solutions and Investments portfolios, reviews IBA’s important financial policies, and provides advice and recommendations to the Board in relation to major new business, products, investments or other financial transactions; and ○ (Remuneration and Nomination Committee) the Remuneration and Nomination Committee (RNC) provides advice to the Board on CEO and Board appointments and CEO performance and remuneration as required. • (related party transactions) IBA has a system of delegated powers that enables decisions to be made on a range of transactions at the appropriate organisational level. The Board governance charter sets out the decision-making processes for managing related party transactions and broader conflicts of interest for IBA directors. The charter 	<p>Section 190 of the ATSI Act</p> <p>Annual Report 2019 – 20</p>

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Governance Arrangement	Commentary	Source
Board - delegation (cont.)	<ul style="list-style-type: none"> restricts an IBA director from entering into prohibited related party transactions. Prohibited related party transactions include the provision of loans or business support to IBA directors, their spouses and dependent family members as well as entities where IBA directors hold a significant interest. The Board governance instruction sets out the decision-making processes for key management personnel including the Executive Management Team on management of conflicts of interests and procurements. Board members and the Executive Management Team provide annual declarations of interest; and (2019-20 related party transactions) in 2019 – 20, there was one transaction in which IBA provided a grant to a company which was a related entity, as defined in the Public Governance, Performance and Accountability Rule 2014. The value of the grant provided was \$80,000. That transaction was approved in accordance with IBA’s decision making framework described above. There were three transactions where IBA paid other related entities for goods or services, with a combined value of \$233,000. Those transactions were approved in accordance with IBA’s decision making framework above. 	See above.
Board - appointment	<p>The following requirements apply in respect of the appointment of the directors:</p> <ul style="list-style-type: none"> the Minister appoints the members of the Board who comprise a Chair, Deputy Chair and seven other members; the Minister consults IBA about potential Board appointees when there is, or is expected to be, a vacancy; the IBA Chairperson is to be appointed by the Minister on a full-time basis or a part-time basis; the other IBA Directors are to be appointed by the Minister on a part-time basis; the IBA Chairperson and at least four other IBA Directors are to be Aboriginal persons or Torres Strait Islanders; an IBA Director holds office for such period as is specified in the instrument of appointment which must not be longer than five years; and each IBA Director is to be a person who the Minister is satisfied has experience in: <ul style="list-style-type: none"> industry, commerce or finance; or Aboriginal or Torres Strait Islander community life or enterprises. <p>There were nine serving Board members at the end of the 2019 – 20 financial year. Seven of the nine Board members identified as Aboriginal or Torres Strait Islander and four were female. All members of the IBA Board are non-executive directors.</p>	<p>Section 155 of the ATSI Act Section 158 of the ATSI Act Section 157 of the ATSI Act</p> <p>Section 159 of the ATSI Act</p> <p>Annual Report 2019 – 20</p>
Board - voting	<p>We note the following key information in respect of the voting arrangements for the IBA:</p> <ul style="list-style-type: none"> (majority vote) questions arising at a meeting of the IBA Board are determined by a majority of the votes of IBA Directors present and voting; 	Section 167(6) of the ATSI Act

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Governance Arrangement	Commentary	Source
Board - voting (cont.)	<ul style="list-style-type: none"> • (casting vote) the person presiding at a meeting of the IBA Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote; and • (person presiding) the Council Chairperson presides at all meetings of the Council at which he or she is present. If the Council Chairperson is not present at a meeting of the Council the Deputy Chairperson of the Council presides at the meeting. Or in any other case the Councillors present must elect one of their number to preside at the meeting. 	<p>Section 167(7) of the ATSI Act</p> <p>Section 167(4) and (5) of the ATSI Act</p>
Board - quorum	The quorum for an IBA Board meeting is five IBA directors.	Section 167(2) of the ATSI Act
Board - termination	<p>Termination of appointment of an IBA Board director may occur in the following ways:</p> <ul style="list-style-type: none"> • (misbehaviour or physical or mental incapacity) the Minister may, after consulting IBA, terminate the appointment of an IBA Director because of misbehaviour or physical or mental incapacity; • (absence) the Minister must terminate the appointment of an IBA director if the IBA director is absent, except on leave granted by the Minister, from three consecutive meetings of the IBA Board; • (bankruptcy) the Minister must terminate the appointment of an IBA director if the IBA director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; and • (contravening general duties) the appointment of an IBA director may also be terminated under section 30 of the PGPAA (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority for contravening general duties of officials). 	<p>Section 165 of the ATSI Act</p> <p>Section 30 of the PGPA</p>
Board - meetings	<p>The IBA Chairperson is to convene meetings of the IBA Board as they deem are necessary for the efficient performance of the Council's responsibilities.</p> <p>In 2019–20, the Board held six scheduled meetings and four out-of-session meetings.</p>	<p>Section 167(1) of the ATSI Act</p> <p>Annual Report 2019 – 20</p>
Board - remuneration	<p>The IBA directors are entitled to remuneration and allowances in accordance with the following:</p> <ul style="list-style-type: none"> • the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal; • if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined by the Minister by legislative instrument; and • the holder of the office shall be paid such allowances as are determined by the Minister by legislative instrument. 	Section 194 of the ATSI Act
CEO	The IBA CEO is to be appointed by the IBA Board to manage the day-to-day administration of IBA and must act in accordance with any policies determined, and any directions given, by the IBA Board in writing. The CEO is entitled to remuneration and allowances as are determined by the IBA Board in writing. The CEO holds office during the IBA Board's pleasure, although the term of appointment of a CEO must not exceed five years.	Part 6 of the ATSI Act

Indigenous Business Australia

Governance Arrangement	Commentary	Source
CEO (cont.)	The IBA CEO must give written notice to the Minister and the Chairperson of the IBA Board of all direct or indirect pecuniary interests that the CEO has or acquires in any business or in any body corporate that carries on a business.	See above.
	The CEO is supported by the Executive, internal management committees, IBA employees, and consultants and contractors.	Annual Report 2019 – 20
Staff	The staff required to assist the IBA in the performance of its functions are persons engaged by the IBA CEO, on behalf of IBA, under the ATSI Act. The terms and conditions of employment of persons engaged are as determined by the IBA Board in writing.	Section 175 of the ATSI Act
	IBA is also able to engage consultants who have suitable qualifications and experience. IBA follows guidance issued by the Department of Finance when determining whether an arrangement should be classified as a consultancy.	Section 178 of the ATSI Act
	As at the current 2019 - 20 reporting period, IBA had 168 ongoing and 39 non-ongoing employees. Of these, 88 employees worked full time and 5 part time and 30.4% employees identified as Aboriginal and/ or Torres Strait Islander. Of these, 14 indigenous staff are in senior positions (IBA 6 and above).	Annual Report 2019 – 20
Other	We further note the following key information we have identified in respect of the AIATSIS while conducting our due diligence:	
	<ul style="list-style-type: none"> • (information request) the Minister may from time to time ask the IBA Board for information about IBA's activities and the IBA Board must provide the Minister with the information he or she asks for; 	Section 154 of the ATSI Act
	<ul style="list-style-type: none"> • (responsibilities) it is the responsibility of the IBA Board, subject to any direction from the Minister, to ensure the proper and efficient performance of the functions of the IBA and to determine the policy of the IBA with respect to any matter. This includes keeping the Minister informed of IBA's activities and significant decisions; 	Section 156 of the ATSI Act
	<ul style="list-style-type: none"> • (responsible minister) during 2019 – 20, the IBA had one responsible Minister, being the Hon. Ken Wyatt AM MP, Minister for Indigenous Australians. IBA was part of the Prime Minister and Cabinet portfolio; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (portfolio budget statement and corporate plan) IBA's budget is managed through the annual portfolio budget statements of the Department of the Prime Minister and Cabinet. The PGPA requires Commonwealth entities to prepare a corporate plan. This plan sits alongside the portfolio budget statements as IBA's principal planning document and is a key mechanism for accountability to the Parliament and the public; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (Significant Project and Product Approval Framework) to further support and build on IBA's due diligence, compliance and robust decision making, a Significant Project and Product Approval Framework, providing governance of significant transactions, was successfully launched in 2020; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (policy orders or ministerial directions) under section 151 of the ATSI Act, the responsible Minister is empowered to make general written directions that IBA must comply with. No such directions were made during 2019 - 20. IBA must also comply with applicable government policies. No government policy orders were issued to IBA under the PGPA Act; 	Annual Report 2019 – 20

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Governance Arrangement	Commentary	Source
Other (cont.)	<ul style="list-style-type: none"> • (Enterprise Agreement) IBA's 2016–2019 staff Enterprise Agreement (EA) expired during FY 2018 – 19. After taking account of staff sentiment, the IBA utilised the determinations mechanism to allow the existing Enterprise Agreement to be extended. Staff remuneration was determined in accordance with APS Workplace Bargaining Policy 2018, while the balance of conditions in the previous staff EA were unchanged; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (indemnity and insurance) IBA's insurance cover, including directors and officers' liability insurance, is provided through Comcover, the Australian Government's self-managed fund; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (fraud management) IBA's fraud control plan is established in accordance with section 10 of the Public Governance, Performance and Accountability Rule 2014. In 2019 - 20, IBA's Board, supported by the ARPC, approved a revised Fraud Control Plan and Fraud Control Register. Mandatory awareness training continued throughout 2019 – 20 to further support a zero-tolerance approach to fraud; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (financial results) IBA's total financial result in FY2019 – 20 was a consolidated statutory surplus of \$30.3 million against a previous year's statutory surplus of \$43.0 million. The difference is primarily due to the change in valuation of financial assets, with a valuation decrement of \$10.8 million this year, compared to a valuation increment of \$3.5 million last year, reflecting the impact of COVID-19 on asset valuations; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (funding) the income base of the consolidated IBA group comprises both grant and appropriation revenue from the Commonwealth as well as self-generated revenue. In 2019 – 20, IBA received \$45.5 million in grant receipts, \$9.5 million by way of appropriation, and \$159.8 million in self-generated revenue. Of the \$45.5 million in grant receipts, \$18.0 million is related to the Business Relief Package, which will reportedly be expended during the 2020-21 financial year. IBA also received \$22.9 million by way of equity injection from the Commonwealth for use in providing home loans; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (assets) IBA's total consolidated assets as at 30 June 2020 are \$1.7 billion, an increase of \$114 million over the previous year, primarily due to an increase in the home loan portfolio, land & buildings and value of investment properties held; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (asset valuation at fair value) Australian Accounting Standards require that the financial assets of IBA be recorded at their fair value. Loans in relation to the housing and business loans portfolio are issued at concessional interest rates. A market valuation requires discounting the portfolio value to equate interest earned to market yield for comparable risk including the impact of expected credit loss. The annual incremental discount is a non-cash item, recorded in the Statement of Comprehensive Income under both Finance costs for the discount expenditure at inception, and Unwinding of concessional discount as the loan is repaid during its expected term to discharge. For the investment portfolio, valuation at fair market value results in cyclical movements in property and business valuations being recorded in the Statement of Comprehensive Income; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (New Housing Fund) the Aboriginal and Torres Strait Islander Act requires that funds available under the New Housing Fund including interest earnings, are to be used exclusively for housing loans. Consequently, income earned from the New Housing Fund is not available for operational expenses but rather utilised for new home loans under that Fund; 	Annual Report 2019 – 20

Indigenous Business Australia

Governance Arrangement	Commentary	Source
Other (cont.)	<ul style="list-style-type: none"> • (standards of behaviour) standards of behaviour for IBA employees are specified in IBA’s Code of Conduct, Values and Behaviours Framework which includes guidance on managing conflicts of interest. The EA requires that staff comply with this to be eligible for salary advancement; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (risk management) the ARPC provided oversight, guidance and advice to IBA management in the spirit of continuous improvement in the area of risk management in 2019 – 20. A revised Risk Management Framework, coupled with an increased focus on risk acceptance and mitigation has reportedly resulted in stronger systems, processes and people in the organisation. The Audit, Risk and Performance Committee oversaw the 2019 – 20 Internal Audit Program. The program was conducted by an outsourced provider; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (compliance) IBA has a control framework to ensure compliance with relevant legislation. In 2019 – 20, there were no significant issues reported to the responsible Minister under section 19 of the PGPAA related to noncompliance by IBA with the Act or its Rules or an Appropriation Act; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (complaints handling) IBA has a customer charter which has detailed processes for receiving and handling complaints. The complaint management process ensures that any concerns customers have in relation to IBA’s services or decisions, or IBA funded service providers, are taken seriously and dealt with promptly. IBA maintains a complaints register which is regularly reviewed by management; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (external scrutiny) IBA’s operations are subject to external scrutiny by the Australian National Audit Office (ANAO), the Commonwealth Ombudsman, courts and administrative tribunals, and parliamentary and ministerial oversight. IBA’s external auditor is the Auditor-General through the ANAO. Audits of IBA’s financial statements are conducted in accordance with a strategy mutually agreed to by the Auditor-General and IBA. There were no judicial decisions or decisions of administrative tribunals made during the reporting period that have, or may have, had a significant effect on IBA’s operations this year. The Commonwealth Ombudsman notified IBA of two complaints made against it during 2019–20. Both of those complaints were closed out without findings against IBA; 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (freedom of information) under Part II of the <i>Freedom of Information Act</i>, IBA must publish information for the public as part of the Information Publication Scheme. IBA’s Information Publication Scheme Plan is available on IBA’s website, as is the information IBA has published in accordance with the scheme’s requirements; and 	Annual Report 2019 – 20
	<ul style="list-style-type: none"> • (environmental sustainability) under section 516A of the EPBC Act, IBA is required to describe its environmental performance and contribution to economically sustainable development. The main contribution to IBA’s impact on the natural environment is corporate operations, including administration and property management. Upgrades in hardware contributed to an estimated 30% reduction in power use in targeted offices, and further reductions are expected due to the cloud environment. IBA set up a Sustainability Committee in 2020 to decrease the impact that IBA’s operations have on the environment. The committee put together their capability statement and started to create plans of action including a “Green Recovery Plan”. 	Annual Report 2019 – 20

Torres Strait Regional Authority

To understand the corporate governance structure of the TSRA, we have reviewed the following sources:

- the TSRA Annual Report 2019 – 20 (<http://www.tsra.gov.au/news-and-resources/annual-reports/annual-report-2019-2020>); and
- the ATSI Act (the legislation under which the TSRA is enabled by).

The following pages set out the relevant governance arrangements we have identified for the TSRA.

Governance Arrangement	Commentary	Source
Organisation type	The TSRA is established under section 142 of the ATSI Act. Part 3A of the ATSI Act sets out, among other things, the TSRA's functions, powers and governance framework. The TSRA is a corporate Commonwealth entity under the PGPAA. Additionally, the TSRA performs separate functions under the Native Title Act as the Native Title Representative Body for the Torres Strait region.	Part 3A of the ATSI Act Annual Report 2019 – 20
Body of members - objectives and governance	<p>We note the following key information in respect of the TSRA's objectives and governance:</p> <ul style="list-style-type: none"> • (role and key objectives) the TSRA is an elected representative body of members (TSRA Members). The TSRA Members are officials under the PGPAA and are classified as non-executive directors. The TSRA Members is the accountable authority for the TSRA. For completeness, we note that although the Annual Report 2019 – 20 refers to the TSRA Members as the 'Board' of the TSRA, the ATSI Act does not explicit refer to the TSRA Members as the 'Board of Directors.' However, we understand that the TSRA Members are, for all intents and purposes the Board of TSRA. For completeness, we note that the primary functions of the TSRA Members are to: <ul style="list-style-type: none"> o set out the TSRA's vision for the Torres Strait; o oversee the TSRA's strategic objectives and direction; o approve programme mandates; o review the TSRA's performance, objectives and outcomes; and o manage strategic risk and regional stakeholder relations. <p>The TSRA Members constitute 'officials' under the PGPAA, they are bound by the relevant 'duties' that have been set out in the PGPAA (please see page 41 - 42 for more information);</p>	Annual Report 2019 – 20

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members - objectives and governance (cont.)	<ul style="list-style-type: none"> • (Board Charter) the TSRA is governed by a 'Board Charter' (Charter) which was adopted (in its second edition) in 2016. The Charter brings together all the resources that TSRA members require to enable them to exercise their powers and responsibilities. The Charter is based on ethical standards and good governance and contains key documents such as the Code of Conduct, Charter of Representation, Performance and Accountability, and the terms of reference relating to committees; • (purpose) the purpose of the TSRA is to "progress towards Closing the Gap for Torres Strait Islander and Aboriginal people living in the Torres Strait region through development planning, coordination, sustainable resource management, and preservation and promotion of Indigenous culture;" and • (functions) the TSRA has the following functions: <ul style="list-style-type: none"> ○ to recognise and maintain the special and unique Ailan Kastom of Torres Strait Islanders living in the Torres Strait area; ○ to formulate and implement programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area; ○ to monitor the effectiveness of programs for Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area, including programs conducted by other bodies; ○ to develop policy proposals to meet national, State and regional needs and priorities of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area; ○ to assist, advise and co-operate with Torres Strait Islander and Aboriginal communities, organisations and individuals at national, State, Territory and regional levels; ○ to advise the Minister on matters relating to Torres Strait Islander affairs, and Aboriginal affairs, in the Torres Strait area, including the administration of legislation and the co-ordination of the activities of other Commonwealth bodies that affect Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; ○ when requested by the Minister, to provide information or advice to the Minister on any matter specified by the Minister; ○ to take such reasonable action as it considers necessary to protect Torres Strait Islander and Aboriginal cultural material and information relating to the Torres Strait area if the material or information is considered sacred or otherwise significant by Torres Strait Islanders or Aboriginal persons; ○ at the request of, or with the agreement of, the Australian Bureau of Statistics but not otherwise, to collect and publish statistical information relating to Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area; 	Section 142A of the ATSI Act

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members - objectives and governance (cont.)	<ul style="list-style-type: none"> ○ such other functions as are conferred on the TSRA by the ATSI Act or any other Act; ○ such other functions as are expressly conferred on the TSRA by a law of a State or of an internal Territory and in respect of which there is in force written approval by the Minister under section 142B of the ATSI Act; ○ to undertake such research as is necessary to enable the TSRA to perform any of its other functions; and ○ to do anything else that is incidental or conducive to the performance of any of the preceding functions. 	See above.
Body of members - powers	<p>The TSRA has the “power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions,” which include, but are not limited to, the following powers:</p> <ul style="list-style-type: none"> • to accept gifts, grants, bequests and devises made to it; • to act as trustee of money and other property vested in it on trust; • to negotiate and co-operate with other Commonwealth bodies and with State, Territory and local government bodies; • to enter into an agreement for making a grant or loan under section 142GA of the ATSI Act to the State of Queensland or an authority of that State (including a local government body); • to enter into an agreement (other than an agreement under section 142GA of the ATSI Act referred to in the preceding paragraph) with a State or a Territory; • to make a grant of money, grant an interest in land, grant an interest in personal property, or make a loan of money (whether secured or unsecured), to an individual, or a body corporate (other than a Regional Council), or an unincorporated body, for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; and • to make a loan of money or grant of money to the State of Queensland or an authority of the State of Queensland (including a local government body) for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area. 	<p>Section 142C of the ATSI Act</p> <p>Section 142F of the ATSI Act</p> <p>Section 142GA of the ATSI Act</p>
Body of members - delegation	<p>We note the following key information in respect of the delegation of authorities of the TSRA:</p> <ul style="list-style-type: none"> • (delegation of certain functions and powers) the TSRA may delegate any or all of its functions to the TSRA CEO or to a member of staff of the TSRA, except for the following powers: <ul style="list-style-type: none"> ○ its power to give consent to the disposal of interests in land for the purposes of section 142J of the ATSI Act; ○ its power to make declarations under section 143R of the ATSI Act; and 	Section 144F of the ATSI Act

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members – delegation (cont.)	<ul style="list-style-type: none"> ○ its power to reconsider matters under section 195A (i.e. if a delegate of the TSRA refuses a loan under section 142F to an individual or refuses to give a guarantee under section 142G in respect of a loan made or to be made to an individual. <p>If the TSRA delegates a function or power to the CEO, he or she may, by writing, sub-delegate the function or power to a member of the staff of the TSRA. The CEO must not sub-delegate a function or power if the instrument of delegation prohibits the sub-delegation of that function or power;</p> <ul style="list-style-type: none"> • (related party transactions) the TSRA has in place a Charter of Representation, Performance and Accountability that sets out the roles and responsibilities of members and the TSRA Administration (Administration). The TSRA has delegated responsibility to the Administration, through its CEO, to ensure that funding decisions are made in line with the policies, priorities and general guidelines determined by members of the TSRA. As part of the TSRA’s governance framework, each member is required to complete a Notice of Personal and Financial Interests to the Minister. There is also a requirement for related party disclosure questionnaires to be completed to declare any financial transactions between the TSRA and a member and/or members of the member’s family. A Register of Pecuniary Interests is maintained to assist the Chairperson and other members of the TSRA to manage conflicts of interest that may arise; and • (advisory committees) the TSRA can establish one or more advisory committees to advise the TSRA in relation to the performance of its functions. Three advisory committees operated in 2019 – 20, being: <ul style="list-style-type: none"> ○ (Audit Committee) an Audit Committee, as required under section 45 of the PGPAA. The TSRA is responsible for appointing the Audit Committee to provide independent advice and assistance to the TSRA on the risk control and compliance frameworks, as well as the TSRA’s external accountability responsibilities. The Audit Committee consists of four members. The Chairperson of the Audit Committee is an independent member, Mr Adrian Kelly from Charterpoint Pty Ltd; ○ (Finfish Quota Management Committee) the Finfish Quota Management Committee, which provides advice on leasing arrangements in the Torres Strait finfish fishery following the transfer of the fishery to 100 per cent ownership by Torres Strait Islander and Aboriginal Traditional Owners; and ○ (Fisheries Regional Ownership Framework Steering Committee) the Fisheries Regional Ownership Framework Steering Committee, which was first appointed in 2018-2019 as an informal committee to work on the Fisheries Regional Ownership Framework Project. The committee was established as a formal advisory committee in November 2018. 	<p>See above.</p> <p>Annual Report 2019 – 20</p> <p>142M of the ATSI Act Annual Report 2019 – 20</p>

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members - appointment	<p>The following requirements (in addition to the requirements noted below) apply in respect of the appointment of the members to the TSRA:</p> <ul style="list-style-type: none"> the Minister may, by legislative instrument, make provision for and in relation to how the TSRA is to be constituted; the Minister may, after consulting the TSRA, appoint a person to act in the office of a member of the TSRA during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office; and a member of the TSRA holds office on such terms and conditions (if any) in respect of matters not provided for by the ATSI Act as are determined by the Minister by notice in the Gazette. 	<p>Section 142S of the ATSI Act Section 143M of the ATSI Act Section 143V of the ATSI Act</p>
Body of members - composition, cultural requirements and expertise requirements	<p>The Minister may fix the eligible number of members of the TSRA by notice in the Gazette. The number fixed must be at least 20 and not more than 23. Members are elected by way of TSRA elections under Division 5 of Part 3A of the ATSI Act. The election of members is subject to any legislative instrument in force by the Minister that makes provision for and in relation to how the TSRA is to be constituted (including any provision for members elected to be representatives of a specified kind). Generally, each member represents the designated number of wards that form part of the Torres Strait area, which are defined in Part 1 of the Election Rules.</p> <p>The TSRA elections must be held every 4 years. If the number of candidates nominated for election as the member or members for a TSRA ward is more than the designated number for the ward, a poll must be held. A person is not qualified to stand for election, or to be elected, as a member of the TSRA for a ward if:</p> <ul style="list-style-type: none"> the person is not entitled to vote at the TSRA ward election concerned; or the person is a member of the staff of, or a consultant to, the TSRA; or the person is bankrupt; or there is in operation a personal insolvency agreement with the person's creditors under the law relating to bankruptcy; or (subject to section 142V(2) of the ATSI Act) the person was convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or (subject to section 142V(2) of the ATSI Act) the person was convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer. 	<p>Annual Report 2019 – 20 Sections 142R and 142S of the ATSI Act Sections 142V, 142Y and 143A of the ATSI Act</p>

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members - composition, cultural requirements and expertise requirements (cont.)	<p>For completeness, we note that a person is entitled to vote at a TSRA ward election if the person is a Torres Strait Islander or an Aboriginal person, and either:</p> <ul style="list-style-type: none"> the person's name is on the Commonwealth Electoral Roll and the person's place of living as shown on that Roll is within the ward concerned; or the person is entitled to vote at the election under rules made under the Election Rules concerning the matters outlined in subsection 143G(3) of the ATSI Act. 	Section 142U of the ATSI Act
Body of members – voting	<p>Questions arising at a meeting of the TSRA must be determined by a majority of the votes of the members of the TSRA present and voting. The person presiding at a meeting of the TSRA (determined in accordance with 144E(7)) has a deliberative vote and, if the votes are equal, also has a casting vote.</p>	Section 144E of the ATSI Act
Body of members - quorum	<p>At a meeting of the TSRA, a quorum is constituted by 12 members of the TSRA (subject to section 144E(5) of the ATSI Act in relation to the disclosure of interest requirement, in which case the quorum must only be at least 8 members of the TSRA).</p>	Section 144E of the ATSI Act
Body of members – suspension and removal from office	<p>TSRA Members may be suspended or removed from office in the following circumstances:</p> <ul style="list-style-type: none"> (suspension of member) The Minister may suspend a member of the TSRA from office because of misbehaviour or physical or mental incapacity if the Minister has consulted the TSRA and, by written notice served on the member, given the member 7 days within which to show cause why the member should not be suspended. The Minister must cause a statement identifying the member and setting out the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension. If such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member of the TSRA ought to be restored to office. If each House so passes such a resolution, the Minister must terminate the suspension. If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Minister may remove the member of the TSRA from office. (removal of member) the Minister must remove a member of the TSRA from office if the member: <ul style="list-style-type: none"> is convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for one year or longer; or is convicted of an offence against a Commonwealth, State or Territory law involving dishonesty and sentenced to imprisonment for 3 months or longer; or who is the Chairperson of the TSRA, is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or 	Section 143S of the ATSI Act

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members – suspension and removal from office (cont.)	<ul style="list-style-type: none"> ○ who is a part-time member, has been absent from 3 consecutive meetings of the TSRA without leave of the Minister and without reasonable excuse; or ○ fails, without reasonable excuse, to comply with section 29 of the PGPAA (which deals with the duty to disclose interests) or rules made for the purposes of that section; or ○ becomes bankrupt; or ○ applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or ○ compounds with his or her creditors; or ○ makes an assignment of his or her remuneration for the benefit of his or her creditors; • (removal by petition) if the Minister receives a valid petition that contains more than 66% of the number of persons who would be entitled to vote at an election for a member of the TSRA calling for the removal of that member of the TSRA from office, the Minister must remove that member from office as soon as possible. 	<p>See above.</p> <p>Section 143T of the ATSI Act</p>
Body of members - resignation	<p>A member of the TSRA may resign by writing signed by him or her and sent to the Minister. A member of the TSRA is taken to have resigned from TSRA in the following circumstances:</p> <ul style="list-style-type: none"> • if the TSRA declares that a member of the TSRA holding office under an instrument under section 142S of the ATSI Act does not live in the Torres Strait area and has not lived in the Torres Strait area at all during the immediately preceding period of 6 months; • if the TSRA declares that a member of the TSRA for a TSRA ward does not live in the ward and has not lived in the ward at all during the immediately preceding 6 months; or • if the TSRA declares that a member of the TSRA has become an employee of, or a consultant to, the TSRA. 	<p>Sections 143Q and 143R of the ATSI Act</p>
Body of members - meetings	<p>The Minister may, at any time, convene a meeting of the TSRA. The TSRA Chairperson must convene:</p> <ul style="list-style-type: none"> • at least 4 meetings of the TSRA in each financial year and may convene other meetings if, in the Chairperson’s opinion, necessary for the efficient performance of the TSRA’s functions; and • a meeting of the TSRA upon receipt of a written request for a meeting signed by at least 8 TSRA members. 	<p>Section 144E of the ATSI Act</p>

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Body of members - remuneration	<p>The TSRA members are entitled to remuneration and allowances in accordance with the following:</p> <ul style="list-style-type: none"> the holder of the office shall be paid such remuneration as is determined by the Remuneration Tribunal; if no determination of that remuneration by the Remuneration Tribunal is in operation, the holder of the office shall be paid such remuneration as is determined by the Minister by legislative instrument; and the holder of the office shall be paid such allowances as are determined by the Minister by legislative instrument. 	Sections 143K and 194 of the ATSI Act
CEO	<p>The CEO is appointed by the Minister (with agreement by the TSRA) and the appointed person is not to remain in that position for a period not longer than 5 years. The CEO is entitled to remuneration and allowances in the same manner as TSRA members (described above). The CEO holds office on such terms and conditions (if any) in respect of matters not provided for by the ATSI Act by the Minister (with agreement by the TSRA). The Minister may (with agreement by the TSRA) terminate the appointment of the CEO because of incompetence, misbehaviour or physical or mental capacity. The Minister must terminate the appointment of the CEO if one of the circumstances outlined in the provisions of section 144P(2)(a)-(g) of the ATSI Act occur, which are that the TSRA CEO:</p> <ul style="list-style-type: none"> is absent from duty, except on leave granted under section 144K for 14 consecutive days or for 28 days in any period of 12 months; becomes bankrupt; applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; compounds with his or her creditors; makes an assignment of his or her remuneration for the benefit of his or her creditors; fails, without reasonable excuse, to comply with disclosure of interest duties; and/or engages in paid employment outside the duties of the office of TSRA CEO without the written consent of the Minister given after consulting the TSRA. 	Part 3A, Division 7 of the ATSI Act
Staff and consultants	<p>The staff required to assist the TSRA in the performance of its functions are to be engaged under the PSA. The TSRA may engage consultants provided the consultant has suitable qualifications and experience. The terms and conditions on which consultants are engaged are to be determined in writing by the TSRA.</p>	Part 3A, Division 8 of the ATSI Act
Chairperson, Deputy Chairperson and Executive Committee and Executive Committee	<p>The TSRA formed an Executive Committee in September 2016 to assist the Chairperson to carry out the Chairperson's functions. The portfolio structure of the Executive Committee is aligned to the TSRA's eight programmes. Executive Committee meetings are held quarterly, immediately prior to each regular TSRA meeting of members. The Chairperson may call for additional Executive Committee meetings should they be required. The Executive Committee members are the Deputy Chairperson, the Alternate Deputy Chairperson and portfolio members who represent each programme. The Chairperson is a full-time Principal Executive Officer, while other members are part-time officials.</p> <p>The Executive Committee's objectives are to:</p>	Section 143L of the ATSI Act Annual Report 2019 - 20

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Chairperson, Deputy Chairperson and Executive Committee (cont.)	<ul style="list-style-type: none"> ensure that policies and future directives are made in accordance with the ATSI Act, the PGPAA and other relevant legislation; advocate for improved outcomes in the Torres Strait region; represent the views of the TSRA on internal and external committees; and assist the Chairperson to communicate to Torres Strait communities government policies and TSRA decisions and achievements as they relate to the Executive Committee’s portfolio responsibilities. <p>The Chairperson, Deputy Chairperson and Executive Committee members are elected by the members of the TSRA at their first meeting following the TSRA elections.</p>	See above.
Appointment of Administrator	<p>If there are fewer than seven members of the TSRA, the Minister may, by notice in the Gazette:</p> <ul style="list-style-type: none"> remove the remaining members (if any) of the TSRA from office; and appoint a TSRA Administrator to administer the affairs of the TSRA. <p>This power does not apply if:</p> <ul style="list-style-type: none"> there are casual vacancies in the membership of the TSRA; and some or all of those vacancies will be able to be filled in accordance with the TSRA election rules; and when those casual vacancies are filled, the TSRA will have at least 7 members. 	Section 142R of the ATSI Act
Other	<p>We further note the following key information we have identified in respect of the TSRA while conducting our due diligence:</p> <ul style="list-style-type: none"> (directions by Minister) the TSRA must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister; (Torres Strait Development Plan) the TSRA must formulate, and revise from time to time, the Torres Strait Development Plan (the Plan) to improve the economic, social and cultural status of Torres Strait Islanders, and Aboriginal persons, living in the Torres Strait area. The Plan must outline the strategies and policies that the TSRA intends to adopt in order to implement the Plan, including, but not limited to, a marine strategy for the Torres Strait area. Each Plan must be reviewed regularly and must relate to a period of at least 3 years and not more than 5 years. The TSRA must consult with the Minister in relation to the Plan; (money payable to the TSRA) money that Parliament appropriates from time to time is payable to the TSRA. The Finance Minister may give directions as to the amounts in which, and the times at which, money so appropriated is to be paid to the TSRA; (application of money of the TSRA) the TSRA must apply its money only: <ul style="list-style-type: none"> in payment or discharge of the costs, expenses and other obligations incurred by the TSRA in the performance of its functions or the exercise of its powers under the ATSI Act or any other law; and 	<p>Section 142E of the ATSI Act</p> <p>Section 142D of the ATSI Act</p> <p>Section 144TA of the ATSI Act</p> <p>Section 144U of the ATSI Act</p>

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Other (cont.)	<ul style="list-style-type: none"> ○ in payment of any remuneration and allowances payable to any person under the ATSI Act or any other law; and ○ in making any other payments which the TSRA is authorised or required to make under the ATSI Act or any other law; • (TSRA Housing Fund) the TSRA Housing Fund is established under the ATSI Act. Money in the TSRA Housing Fund may only be applied (subject to the investment of money under section 59 of the PGPAA): <ul style="list-style-type: none"> ○ in making housing loans to individuals or bodies; or ○ in making loans to individuals or bodies to enable the individuals or bodies to provide housing for Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area; or ○ in making grants of money for the purposes of enabling Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area to obtain housing loans from lenders operating on a commercial basis; • (TSRA Land and Natural Resources Fund) the TSRA Land and Natural Resources Fund (LNR Fund) is established under the ATSI Act. Money in the LNR Fund may be spent only (subject to the investment of money under section 59 of the PGPAA): <ul style="list-style-type: none"> ○ in developing and implementing the marine strategy referred to in subsection 142D(3) of the ATSI Act; or ○ in developing or maintaining real estate; or ○ in acquiring an interest in land under subsection 142F(3) of the ATSI Act; or ○ in making a grant of money under section 142F or 142GA of the ATSI Act on condition that the money be spent for a purpose described in the preceding sub-paragraphs; • (annual report) the annual report must be prepared in accordance with the ATSI Act and given to the Minister under section 46 of the PGPAA. The annual report: <ul style="list-style-type: none"> ○ must include details of any directions given by the Minister under section 142E of the ATSI Act and details of any consultants engaged, as well as the details of any grant made by the TSRA; ○ must not disclose matters known to the TSRA to be held sacred by Torres Strait Islanders or Aboriginal Persons; and ○ must also be prepared in accordance with section 46 of the PGPAA and section 17BE of the <i>Public Governance, Performance and Accountability Rule 2014</i> (Cth). As a corporate Commonwealth entity, the annual report must also be prepared in accordance with the requirements of other legislation, namely the <i>Commonwealth Electoral Act 1918</i> (Cth), the EPBC Act and the <i>Work Health and Safety Act 2011</i> (Cth); 	<p>See above.</p> <p>Section 144V of the ATSI Act</p> <p>Section 144W of the ATSI Act</p> <p>Section 144ZB of the ATSI Act Annual Report 2019 - 20</p>

Torres Strait Regional Authority

Governance Arrangement	Commentary	Source
Other (cont.)	<ul style="list-style-type: none"> • (finance directions by the Minister) the Minister must give written directions about the administration of TSRA's finances, which must not be inconsistent with the ATSI Act (or the regulations made under that Act) or the PGPAA (or any legislative instruments made under that Act); • (review of ATSI Act) the TSRA may, from time to time review such aspects of the operation of Part 3A of the ATSI Act and the remaining provisions of the ATSI Act, in so far as they relate to the TSRA and report to the Minister accordingly (which may include suggestions for amendments of the ATSI Act); • (conferred function by the Prime Minister) for the purpose of furthering the social, economic or cultural development of Torres Strait Islanders, or Aboriginal persons, living in the Torres Strait area, the Prime Minister may confer a function previously been performed by a Department of State of the Commonwealth on the TSRA; • (corporate plan) as the TSRA is a corporate Commonwealth entity under PGPAA, it is required to develop a corporate plan each year; • (Programme Steering Committee) the TSRA has in place a Programme Steering Committee (PSC) to monitor the performance of its programmes and operations. The TSRA's programmes manage projects and ongoing activities contributing to the outcomes outlined in the Torres Strait Development Plan and the Torres Strait and Northern Peninsula Area Regional Plan 2009-2029. The PSC considers programme resources and ensures that strategies and operational activities align with the TSRA's overall outcomes. The PSC consists of the TSRA's CEO, programme managers and Chief Financial Officer. The PSC meets on a quarterly basis and as required to consider specific project risks and issues; • (risk management) the TSRA has standardised its processes for the identification, documentation and management of risks and issues. All TSRA projects and managed activities include risk assessments as part of the planning and approval process. The TSRA's risk management system is based on the better practice principles and processes outlined in ISO 31000:2018 Risk Management – Guidelines; • (fraud control) the TSRA has implemented a fraud control framework in accordance with section 10 of the PGPAA; • (directors' interests policy) in accordance with the PGPAA and the <i>Public Governance, Performance and Accountability Rule 2014</i> (Cth), the TSRA has a policy and process to manage all direct and indirect conflicts of interest, including a register of all directors' pecuniary interests and a requirement that directors make a formal declaration of their interests at each TSRA meeting of members (see sub-heading 'related party transactions' on page 106 for more information); • (freedom of information) the TSRA is subject to the <i>Freedom of Information Act 1982</i> (Cth) and displays on its website a plan showing the information it publishes under that Act; and • (insurance) the TSRA holds directors' and officers' liability insurance cover through Comcover, the Australian Government's self-managed fund. The TSRA has an annual insurance renewal process. 	<p>Section 144ZD of the ATSI Act</p> <p>Section 142L of the ATSI Act</p> <p>Section 142AA of the ATSI Act</p> <p>Annual Report 2019 - 20</p>

Yamatji Southern Regional Corporation Limited

To understand the corporate governance structure of YSRC (or the **Company**), we have reviewed the following sources:

- the Australian Charities and Not-for-profits register (<https://www.acnc.gov.au/charity/607a33380890f4bbcb213f7596874b72#overview>); and
- the constitution of the YSRC (**Constitution**).

The following pages set out the relevant governance arrangements we have identified for YSRC.

Governance Arrangement	Commentary	Source
Organisation type	Based on an ASIC search we have conducted, we understand that the YSRC is a public company limited by guarantee under the Corporations Act. The YSRC is also a registered charity under the ACNC, which administers (and therefore, the YSRC is subject to) the ACNC Act, ACNC Consequential and Transitional Act, ACNC Regulations and the Charities Act. We note that the YSRC charity's subtype is as a Public Benevolent Institution (PBI), advancing education and advancing culture.	ACNC Charity Register
Corporate structure	<p>The YSRC is an entity that comprises the governance structure for the Yamatji Southern Regional Community, also referred to in the Constitution as the "Yamatji Nation." The Constitution states that the governance structure of the Yamatji Nation is to be comprised of:</p> <ul style="list-style-type: none"> • a Regional Entity; • an Aboriginal Corporation; • an Economic Arm; • a Yamatji Trustee; • a Charitable Trust; and • a Cultural Authority, <p>(together, the Group Entities), and is to be governed by joint governance principles (Joint Governance Principles) that have been determined under Indigenous Land Use Agreement (ILUA) entered into by the State, the Native Title Claim Group (as defined in the ILUA) and the Company, which is entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act.</p> <p>Please see the corporate structure diagram below available on the YSRC website. For completeness, we note that the diagram does not explicitly include the Charitable Trust or Cultural Authority noted above as part of the corporate structure diagram despite its requirement to form part of the governance structure for the Yamatji Nation.</p>	Schedule 3 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Corporate structure (cont.)	<pre> graph TD YSRC[YAMATJI Southern Regional Community] --- YSRC_LTD[YAMATJI SOUTHERN REGIONAL CORPORATION LTD Company Limited by Guarantee has members of the community as Members] YSRC_LTD --- CT[Corporate Trustee to be established] YSRC_LTD --- EE[Economic Entity to be established] YSRC_LTD --- BYAC[BUNDI YAMATJI ABORIGINAL CORPORATION ORIC entity will become the RNTBC has YSRC Ltd as Member] YSRC_LTD --- D1[Directors Shirley McPherson Fred Taylor Carol Martin Ross Councillor Leedham Papertalk Snr Glenda Jackamarra Raylene Bellottie Delveen Whitby Debbie Millard Steven Lennon] BYAC --- D2[Directors Shirley McPherson Fred Taylor Carol Martin Leedham Papertalk Snr Glenda Jackamarra] </pre>	https://www.yamatjicentral.com.au/corporate-structure
Company - objectives and governance	<p>The objects of the YSRC (Objects) are defined in the constitution as representing, assisting and supporting the Yamatji Nation by:</p> <ul style="list-style-type: none"> • providing direct relief from poverty, sickness, suffering, misfortune, disability, destitution, helplessness and disadvantage among Aboriginal people, especially the Yamatji Nation; • maintaining, protecting, promoting and supporting the traditions, laws, languages, culture, native title traditions and customs, development, interests and social progress of the Yamatji Nation; • providing environmental, social, economic and cultural benefits to the Yamatji Nation; • supporting and providing education, training and employment for the Yamatji Nation; • managing the rights and obligations arising under the ILUA, YGSHA and YPSHA (as defined in the ILUA) for so long as the Company is the Regional Entity for the purposes of the ILUA; • undertaking any activities that the BYAC delegates to the Company including land management under a Management Order and conservation activities in relation to the Yamatji Conservation Estate under a Joint Management Agreement; and • undertaking any other things or activities which are incidental or ancillary to the attainment of the above objects. 	Clause 3 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Company - objectives and governance (cont.)	As a public company limited by guarantee and a registered charity under the ACNC, the Company must operate solely for the purpose of promoting and advancing the Objects. Further, the income and property of YSRC must be applied solely towards the Objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, to any Director of Member except in good faith in promotion of the Objects. These Objects must be approved by the ACNC to allow YSRC to qualify for PBI endorsement status and any amendment to these Objectives may result in the ACNC reviewing and revoking PBI endorsement status.	See above.
Company - powers	<p>The YSRC has the “powers conferred on it by the Corporations Act to do all things that are necessary incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.”</p> <p>We note that the Bundi Yamatji Aboriginal Corporation (BYAC) also has the ability to delegate any required powers to the Company, as permitted by law. The BYAC is the Aboriginal corporation nominated by the Yamatji Nation People to become the Registered Native Title Body Corporate pursuant to section 56 of the Native Title Act. BYAC takes the form of the Prescribed Body Corporate (PBC) for the Yamatji Nation native title holders. When a native title determination is made, the Native Title Act requires that a PBC be established to manage and protect the native title rights and interests.</p> <p>In exercising its functions and powers, the directors of the YSRC “can make a decision to enter into a binding agreement or arrangement that will materially affect land or waters within the Region or materially impact the rights of Yamatji Nation People under Law and Custom, including a decision to grant an interest to a third party in respect of land or waters or under a Management Order (Decision to Proceed) no earlier than thirty days after giving written notice to the Cultural Authority (this is an advisory committee that the YSRC Board must establish) of the proposed Decision to Proceed (that is, the directors of YSRC can only proceed with a decision they have made after giving at least 30 days written notice to the Cultural Authority). Where the Cultural Authority provides written advice to the YSRC regarding a proposed Decision to Proceed, YSRC must consider the advice.</p> <p>The Company may seek guidance from the Cultural Authority in relation to:</p> <ul style="list-style-type: none"> • a dispute between an applicant for Membership and the Company; • a dispute between a Member and the Company; • requests to the Company for a cultural heritage survey; • requests for a cultural activity; • development of the Company’s strategic plan; • the location of General Meetings; and • any other matter as agreed in writing between the Board and the Cultural Authority Executive. 	<p>Clause 4 of the Constitution</p> <p>Schedule 2 of the Constitution</p>

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Company - policy	<p>Under the Constitution, YSRC must prepare, maintain and act in accordance with a land access policy (Land Access Policy) that addresses the following matters:</p> <ul style="list-style-type: none"> • how the Yamatji Entities will comply with their obligations under the <i>Land Administration Act 1997</i> (WA) in relation to management orders held in respect of the Yamatji Land Estate; • how the Yamatji Entities will comply with their obligations under the <i>Conservation and Land Management Act 1984</i> (WA) in relation to Yamatji Conservation Estate; • how the Yamatji Entities will make decisions about granting interests to Yamatji Nation People or Third Parties in respect of use (including by way of lease or licence) of managed reserves in the Yamatji Land Estate including: <ul style="list-style-type: none"> ○ the process that will apply; ○ the factors that will be considered; ○ how to ensure that opportunities to use managed reserves are first offered to Yamatji Nation People; ○ how the interests of Yamatji Nation People will be balanced; ○ where an interest is granted to a Third Party, ensuring the Third Party enters into an arms-length arrangement with market value consideration; ○ how to obtain the appropriate consents before an interest is granted to a Yamatji Nation Person, or associated, related or connected with a Yamatji Nation Person, and it is not an arms-length arrangement with market value consideration; ○ how the holding costs of the managed reserve will be managed; and ○ how income and costs from such use will be managed. 	Clause 4.4 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Company – group charter	<p>The YSRC as one of the Group Entities must act in accordance with a group charter which addresses:</p> <ul style="list-style-type: none"> • the Joint Principles and Governance Framework; • the key principles and values for the Governance Structure; • the roles and responsibilities of each Group Entity; • the means by which the Group Entities will communicate with one another; • the process for developing and adopting the strategic plan for the Governance Structure; • the reporting obligations of each Group Entity to others within the Governance Structure; • decisions of the Group Entities that require the Company’s prior written approval; • the operation of the Common Operational Platform; • governance training requirements for the Group Entities; and • how disputes between Group Entities will be managed. <p>Where there are any inconsistencies between the group charter and the Constitution, the Constitution prevails.</p>	Clause 5 of the Constitution
Company – group sharing of information	<p>The YSRC is obliged to provide a copy of the Annual Report, audit report, strategic plan, annual plan, budgets and modified Constitution to each Group Entity, the State and the Professional Trustee Company.</p> <p>We note that as of the date of this report YSRC has not lodged any reports with the ACNC due to this not being required the same year as registration.</p>	Clause 6 of the Constitution
Membership	<p>We note the following key information in respect to the membership of the YSRC as a public company limited by guarantee:</p> <ul style="list-style-type: none"> • (eligibility) the Company consists of both Ordinary Members and Associate Members. The eligibility of these member categories is as follows: <ul style="list-style-type: none"> ○ Ordinary Membership is open to any person who is an individual who is at least 18 years of age and a Yamatji Nation Person; ○ Associate Membership is open to any person who is: a spouse or parent of a Yamatji Nation Person; between 16 and 18 years of age and who would otherwise be eligible to be a Member once over 18 years; or a guardian or caregiver of any of the above, or any other person, determined by Special Resolution at a General Meeting; 	Clause 8 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Membership (cont.)	<ul style="list-style-type: none"> • (initial members) the Company's initial members are the initial directors of the Company; • (membership application) the Constitution provides for any person to apply to the Board for membership of the Company, with membership to not be unreasonably withheld should they meet the specified criteria; • (membership appeals) the Constitution provides for an appeal process for membership that involves consulting the Cultural Authority to determine the potential Yamatji Nation Person status of an applicant; • (membership expulsion) the Constitution provides for the Board to be able to expel any member who fails to comply with the Constitution or whose conduct otherwise is considered detrimental to the interests of the Company as determined by the Board. We note that this decision may be appealed by a member through an appeal process consisting of the appealing member making representations at a General Meeting no more than 90 days after having lodged their appeal. 	Clause 9 of the Constitution
Register of members	The Company is required to keep an up to date register of the members as required by the Constitution and Corporations Act.	Clause 8.6 of the Constitution Section 169 of the Corporations Act
Board – composition, cultural requirements and expertise requirements	<p>The YSRC Board is to be comprised of no more than 12 directors and is YSRC's primary decision-making body. The criteria for directors is separated into the categories of Director, Member Director and Expert Director (each, of which have been defined below).</p> <p>The YSRC Board should be comprised of the following :</p> <ul style="list-style-type: none"> • up to six Member Directors; • at least one and up to three Expert Trust Directors who shall also be appointed as directors of the Yamatji Nation Trustee Company, provided that up to 2 must be Members and 1 must be Independent; and • at least one and up to three Expert Economic Directors who shall also be appointed as directors of the Economic Arm, provided that up to two must be Members and one must be Independent. <p>The eligibility of Member Directors is that they must be a member and have demonstrated expertise in a specified area stated in the Constitution, including:</p> <ul style="list-style-type: none"> • corporate governance; • community development; • communication; • leadership; 	Clause 11 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Board – composition, cultural requirements and expertise requirements (cont.)	<ul style="list-style-type: none"> • negotiation; • strategic planning and implementation; • heritage; and • land management. <p>The eligibility of both Directors and Expert Directors has more stringent criteria including:</p> <ul style="list-style-type: none"> • at least 18 years of age; • an Australian resident; • not disqualified from managing either corporations under the Corporations Act or the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) or incorporated associations under the <i>Associations Incorporation Act 2015</i> (WA) or under any other equivalent legislation in another Australian jurisdiction; • not disqualified from being a responsible entity for the purposes of the ACNC Act; • able to produce a National Police Certificate which is acceptable to the Nominations Committee in its discretion; • not an employee of the Company, the Economic Arm, the Yamatji Nation Trustee Company, the Professional Trustee Company or the YAC; and • does not have commitments that would conflict with the commitments of a director of the Company. <p>We note that Expert Directors have a further criteria of demonstrating relevant expertise in being director of a Company for two of the last five years.</p>	<p>Clause 11 of the Constitution</p>
Board – rotation and term	<p>The duration of a term is to be until the fourth general meeting after the director was appointed, subject to that term not succeeding a continuous period of more than 12 years.</p>	<p>Clause 11 of the Constitution</p>
Board - termination	<p>The members may remove any director from office for any reason and appoint a replacement, subject to compliance with section 203D of the Corporations Act.</p>	<p>Clause 11 of the Constitution</p>
Board - delegation	<p>The directors may delegate any of their powers to any person for any period of time and on any terms, conditions and restrictions they see fit and may revoke, withdraw, alter or vary the delegation of any of those powers.</p>	<p>Clause 12 of the Constitution</p>

Yamatiji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Board - appointment	<p>The appointment of directors, other than independent directors, is done through elections at an Annual General Meeting based on a list of candidates provided by the Nominations Committee.</p> <p>An independent director is appointed by a resolution of the Board based on a list provided by the Nominations Committee.</p>	Clause 11 of the Constitution
Board – voting	Questions arising at a meeting of the YSRC Board are to be determined by a majority of the votes of the YSRC directors present and voting. Where votes on a proposed resolution is equal, the chairperson does not have a casting vote in addition to his or her vote as a director.	Clause 13.6 of the Constitution
Board - quorum	<p>The quorum for a YSRC Board meeting is four, consisting of:</p> <ul style="list-style-type: none"> two Member Directors; and two Expert Directors, one of whom must be an Independent Director. 	Clause 13 of the Constitution
Board - chairperson	The YSRC Board must elect a director to the position of Chairperson for a minimum two year term.	Clause 13 of the Constitution
Board members - remuneration	Each director is entitled to reasonable remuneration to the extent permitted by law under the ACNC Act and as the Members decide in General Meeting by resolution.	Clause 12.5 of the Constitution
Annual general meetings	<p>The YSRC must hold an Annual General Meeting as required under the Corporations Act within six months of the end of the financial year. The business of this meeting is to include:</p> <ul style="list-style-type: none"> confirmation of the minutes of the previous General Meeting, except at the first Annual General Meeting; the consideration of the reports that are required under the ACNC Act; the appointment and remuneration of the Auditor; and asking questions about the management of the Company and asking questions of the Auditor (if any). 	Clause 15 of the Constitution
General meetings	<p>General meetings may be convened by either the Board at any time or if the requirements of sections 249E or 249F of the Corporations Act are satisfied. This includes if the lesser of 50 Ordinary Members, or Ordinary Members with at least 5% of the votes that may be cast at a General Meeting, sign a written request to the Company for a General Meeting to be held.</p> <p>We note that the Quorum of these meetings is to be the lesser of 100 Ordinary Members or 10% of Ordinary Members (rounded down to the nearest whole number).</p>	Clause 16 of the Constitution

Yamatji Southern Regional Corporation Limited

Governance Arrangement	Commentary	Source
Advisory committees	<p>The YSRC Board has been provided under the Constitution with the power to establish advisory committees based on matters relating to the company. Should the Board establish a committee for a matter then it must obtain the opinion of said committee though the opinion shall not be binding on the Board.</p> <p>We note that the Board must exercise this power in the formation of a Nominations Committee and a Cultural Authority as mentioned above.</p>	Clause 17 of the Constitution
Nominations committee	<p>As mentioned above, the YSRC Board is required to maintain and support a Nominations Committee to handle the logistics of appointments to the Board in a fair and transparent way. We note the Constitution specifies the composition of this committee should be between three to five persons consisting of:</p> <ul style="list-style-type: none"> • at least one Independent person to be chair; • a current Expert Director of the Company who is Independent and not being considered for re-appointment; and • up to three Members Directors who are not being considered for re-election. 	Clause 18 of the Constitution
Cultural authority	<p>The YSRC Board is required to take reasonable steps to establish and support a Cultural Authority which is not inconsistent with the Joint Governance Principles and Governance Framework. This Cultural Authority is an entity within the YSRC that will be utilised for disputes and general board advice regarding the Yamatji people.</p>	Clause 19 of the Constitution
CEO	<p>The YSRC CEO is to be appointed by the YSRC Board on the terms (e.g. term, remuneration etc.) as stipulated by the Constitution. The appointment of a CEO by the Board must be from a list of appropriately qualified and CEO candidates provided by the Nominations Committee.</p>	Clause 20 of the Constitution
Accounts audit and records	<p>As a company limited by guarantee, the YSRC must keep proper accounts and records. This includes producing financial reports appropriately audited by an appointed auditor at the cost of the Company.</p>	Clause 23 of the Constitution and Chapter 2M of Corporations Act
Joint governance principles	<p>The Joint Governance Principles were developed by the parties in partnership to agree on how best to support the Yamatji Nation's desire for self-determination through a set of best practice governance principles to empower Yamatji Entities to succeed and prosper. The Joint Governance Principles provide the guidance for the Yamatji Nation to make changes to the governance structure as the Yamatji Entities develop.</p>	Schedule 2 of the Constitution



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