



COPY

SENATOR THE HON MATHIAS CORMANN
Minister for Finance

C14/3578

Dr Dawn Casey, PSM, FAHA
Chair, Indigenous Land Corporation
Office of the Chairperson
PO Box 586
Curtin ACT 2605

Dear Dr Casey

I am responding to your letter, received 4 November 2014, asking that I consider initiating proceedings for a declaration of contravention under clause 6 of Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* (CAC Act). You allege that 4 former officers of the Indigenous Land Corporation (ILC) have breached their duty of care and diligence under section 22(1) of the CAC Act relating to the purchase of the Ayers Rock Resort (ARR). You have also advised that ILC believes that it has a civil cause of action against these former officers, on which you have suspended further action pending my response.

I am appreciative of the detailed letter and attachments that you sent. However, I am advised that the allegations you have made require further investigation before I can reach a determination whether there are sufficient grounds for proceedings that would lead to a declaration of contravention against the former officers of ILC under the CAC Act.

In reading the material you provided, it appears that investigations will also need to consider whether there have been breaches of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), under which the purchase of ARR was authorised, as well as possible breaches of both civil and criminal law.

Given that these allegations are broader than just the possible CAC Act breaches, I think it is important for the investigation to have a wider look at the purchase of ARR and related actions by former officers of the ILC and other parties involved. Such an investigation would pursue all the allegations made, rather than the limited focus of CAC Act breaches by the 4 officers named in your letter. I also think it is important that the entire facts of the purchase and related actions are investigated by the Government itself.

Accordingly, I have written to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, on this matter. As the portfolio Minister responsible for ILC and also for the ATSI Act, he is more appropriately placed to conduct any investigation of the broader issues through his department. He may of course choose to engage entities such as the Australian Government Solicitor to assist or to request that the Auditor-General conduct a

performance audit which might further inform the need or otherwise for actions at law. On conclusion of any investigation, I have asked Minister Scullion to provide me with any further evidence relevant to the CAC Act issues you have raised.

As you are aware, I have been following the performance of ARR in the quarterly reports provided by you. I thank you for your continued provision of that information and look forward to the outcome of the upcoming investigation.

Copies of this letter have been given to the Prime Minister, the Attorney-General and the Parliamentary Secretary to the Prime Minister.

Kind regards |

Mathias Cormann
Minister for Finance

LP December 2014



SENATOR THE HON MATHIAS CORMANN
Minister for Finance

C14/3578

Senator the Hon Nigel Scullion
 Minister for Indigenous Affairs
 Parliament House
 Canberra ACT 2600

Office of the Minister for Indigenous Affairs	
<input checked="" type="checkbox"/> Reply by Minister	<input checked="" type="checkbox"/> Brief Req'd
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<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> Reply by Advisor
22 DEC 2014	
<input type="checkbox"/> Reply by Dept	<input type="checkbox"/> NFA
Referral:
Instructions: <i>due date 21 Jan</i>
<i>Revia allocate 2015</i>

RECEIVED
 24 DEC 2014
 MCJ

Nigel
 Dear Minister

to Maya Stuart-Fox's branch.

I am writing to you in regard to a letter dated 29 October 2014 from Dr Dawn Casey, Chair of the Indigenous Land Corporation (ILC), which was also copied to you. Dr Casey asked me to consider exercising my powers under clause 6 of Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) with respect to the actions of 4 former officers of ILC in the purchase of the Ayers Rock Resort (ARR).

However, Dr Casey makes a number of allegations and the material provided raises issues that are broader than breaches of the CAC Act. They encompass responsibilities that the then Board of ILC had under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act), as well as possible breaches of civil and criminal law. Furthermore, ILC believes it has a civil case against the former officers under the *Civil Dispute Resolution Act 2011*, and Dr Casey advises that she has deferred action on this pending a response.

I am advised that my department has received advice from the Australian Government Solicitor (AGS) that, while there is insufficient evidence for me to make a decision regarding possible CAC Act breaches at this time, if the information contained in Dr Casey's letter is correct, further investigation is warranted.

As you are aware, both current and former ILC board members have publicly expressed their views around the merits of the decision to purchase ARR and subsequent actions taken. This includes the parties commissioning their own reports, being the McGrathNicol and the Aegis reports respectively. It is time the entire events around the purchase of ARR, including any breaches of the ATSI Act the CAC Act or any other law, are examined and addressed by the Government itself.

Given the breadth of the allegations raised by Dr Casey, it is appropriate that you, as the responsible Minister for ILC and the ATSI Act, instigate an investigation regarding the purchase of ARR and related actions. This would include alleged breaches of the ATSI Act, the CAC Act and the full range of allegations about the process failure raised

by Dr Casey's letter. It would be prudent if this investigation was conducted with some urgency to assess these serious allegations. AGS has also advised that the responsible Minister, under section 19 of the PGPA Act, could require the accountable authority of ILC to provide any reports, documents or information relevant to the investigation.

In considering your options for the investigation, I am advised that the AGS has offered their services in examining documentation available surrounding the purchase. A further option for an independent review may involve asking the Auditor-General to conduct a performance audit of the ARR purchase and the related issues raised by Dr Casey.

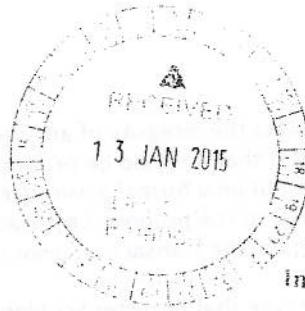
If the result of your investigation finds that there may be grounds for further action under the CAC Act, I would ask that you advise me with some urgency.

I have sent a copy of this letter to the Prime Minister.

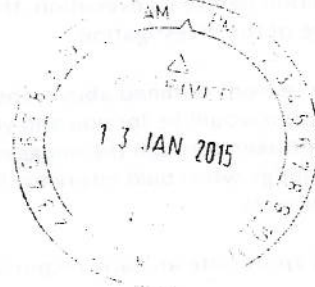
Kind regards

Mathias Cormann
Minister for Finance

19 December 2014



Australian Government
Indigenous Land Corporation



Senator the Hon Mathias Cormann
Minister for Finance
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your response dated 19 December 2014 to my correspondence dated 4 November 2014 relating to the acquisition of the Ayers Rock Resort and the administration of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Your letter raises a number of issues which require a response.

The Indigenous Land Corporation (ILC) has been seeking an investigation of or inquiry into the transaction for over two years. Minister Scullion wrote to us on behalf of the Prime Minister on 20 December 2013 rejecting this request. Accordingly the ILC Board is pleased that the Government has now seen fit to accept that the issues involved are deserving of formal investigation.

Our letter requested you to take appropriate action to fulfill your regulatory responsibilities in relation to the conduct of four ILC Directors and General Manager in approving the acquisition of the Ayers Rock Resort. Regulatory responsibility for public sector corporations under the CAC Act are allocated to you under the Administrative Arrangements Orders by the Prime Minister.

In this context, I bring to your attention the findings of the Royal Commission into the Home Insulation Program of the previous Government which were critical of the previous Government's failure to take proper responsibility for the regulation of its own program (refer findings 11.5.5 and 11.5.6 of the Commissioner's Report). The issues we raised which involve the loss of in excess of \$100 million in Commonwealth funds in extraordinarily questionable circumstances, go as much to public sector accountability generally as to the particulars of this transaction, and are not in themselves inherently related to Indigenous affairs.

In delegating the establishment and oversight of the investigation to Minister Scullion, you have not provided the ILC with any assurances in relation to the terms of reference of the proposed investigation, nor the independence and qualifications of the proposed investigator. A more general investigation may well identify desirable policy reforms of one kind or another, but would be unlikely to focus on the then ILC Directors' and General Manager's individual responsibilities under the law, and thus would fail to establish clear expectations in relation to the conduct of public sector Directors.

There are a number of statements by Senator Scullion in the Parliament (prior to becoming a Minister) which confirm he had established relationships with a number of the Directors and officers involved in the transaction. Further, Minister Scullion wrote to the ILC requesting that Mr David Baffsky be reappointed to the Board of Voyages Indigenous Tourism Australia and has recently appointed Ms Shirley McPherson to the Board of Indigenous Business Australia. Both of these actions occurred subsequent to the ILC expressing serious concerns to the Minister regarding the conduct of the former Board in relation to the acquisition.

Moreover, to protect the integrity of any investigation on the terms you have proposed, we respectfully suggest that it would be prudent for you (as the Minister responsible for public sector accountability) to obtain a formal assurance from Minister Scullion that he was not privy to information related to the proposed transaction nor personally involved in discussions related to the financing or merits of the transaction prior to its execution in October 2010.

Were it to be the case that Minister Scullion had been involved in discussions relating to the transaction before its execution, then it would not be appropriate for him or his Department to have carriage of the investigation.

For the reasons outlined above, the ILC Board's preferred model for an investigation into the transaction would be for you and your Department to take carriage of the investigation, and for it to be undertaken through the engagement of an independent and experienced Senior Counsel or retired judge who could interview key players and assess the evidence against the applicable legal requirements.

I would appreciate an early response to this letter.

I have provided a copy of this letter to the Prime Minister and the Attorney General.

Yours sincerely

Dr Dawn Casey, PSM, FAHA
Chairperson

12 January 2015



MINISTER FOR INDIGENOUS AFFAIRS

Reference: C15/1011

Senator the Hon Mathias Cormann
Minister for Finance
Parliament House
CANBERRA ACT 2600

MATHIAS
Dear Minister

Thank you for your letter of 19 December 2014, in which you request I instigate an investigation regarding the purchase of the Ayers Rock Resort (ARR) by the Indigenous Land Corporation (ILC), including any potential breaches of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

I appreciate the need for you to respond to allegations put to you. In this case, significant scrutiny of the ILC's decision to purchase the ARR and subsequent decisions has already been undertaken, which addresses these allegations.

In relation to the purchase of the ARR:

- The ILC purchased the ARR in May 2011 for \$317 million from the GPT Group.
- ILC provided assurance to the then Minister that it had undertaken extensive due diligence and that care to ensure that the proposed purchase was compliant with the ILC's obligations under the ATSI Act and CAC Act.
- Following the purchase, trading results were significantly lower than forecast, noting that the overall tourism market suffered as a response to the global financial crisis and that occupancy rates were impacted by decisions by Qantas to reduce air capacity into the ARR in mid-2012.
- In September – October 2013 the value of the ARR was written down by \$62 million, and further written down to approximately \$202 million in March 2014.
- More recently there has been an improvement in the ARR's financial performance and I note that the value has subsequently been written up to \$225 million, highlighting that valuations of any company can fluctuate up and down significantly over time.
- The ARR has also increased its Indigenous employment numbers from 2 to 252 Indigenous employees since the acquisition by the ILC.

The purchase and subsequent actions by the ILC Board has been subject to a high level of Government and independent scrutiny:

- In 2013 the ANAO conducted a performance audit of the ILC's administration of the Land Acquisition Programme. The audit included consideration of the ARR transaction and did not make significant negative conclusions in this regard.
- In 2013 the ILC themselves commissioned McGrathNicol to conduct a review of the financial performance and acquisition of the ARR. The report does not outline a clear case for any breaches of either the CAC Act or ATSI Act.
- In 2014 former ILC directors commissioned Aegis Consulting to review the transaction and subsequent commentary about the transaction. This report noted that many of the criticisms of the purchase process were not valid.

These reports are enclosed for your consideration.

I have reviewed the issues raised by the Chair of the ILC in her letter to you of 29 October 2014. I note that the Chair raises no new facts, further to those investigated in the above reports.

In particular, I note the McGrathNicol Report (the Report) examined the specific matters raised by the Chair in her correspondence. The Report findings are based on information provided by the ILC, discussions held with ILC management, the ILC Oversight Committee, current and previous ILC directors, consultants and stakeholders, and publicly available information regarding the ILC and its past and current Board of Directors.

The Report concluded, based on the comprehensive analysis conducted by the (then) Board, the due diligence conducted into the transaction, and recommendations of key advisors, that there is no evidence to suggest that the ILC Board acted contrary to their CAC Act duties. On the basis of this and in the absence of any new evidence, I am satisfied that all issues raised by the Chair of the ILC, including possible breaches of the CAC Act by the ILC Board, have been comprehensively and independently investigated and that there is no merit in conducting a further investigation into this matter. As Minister with responsibility for administration of the ATSI Act there is no further action I intend to take.

My position has been, and remains, that the ILC and Government as a whole is best served by working collaboratively to make the resort a success, and build on the positive recent financial performance and Indigenous employment outcomes.

I look forward to your advice on how to proceed.

Yours sincerely

NIGEL SCULLION

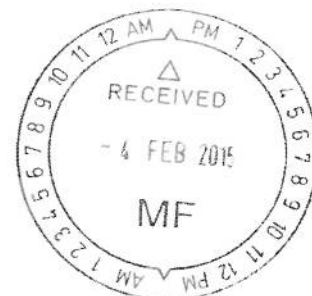
3rd February 2015



CONFIDENTIAL AND PRIVILEGED

3 February 2015

Senator the Hon Mathias Cormann
Minister for Finance
Parliament House
CANBERRA ACT 2600



Dear Minister

On behalf of the Board of the Indigenous Land Corporation (ILC), I am writing further to my letter to you dated 12 January 2015 in relation to the Government's investigation into the former ILC Board's acquisition of the Ayers Rock Resort (ARR).

In that letter I sought an assurance as to the independence and qualifications of the proposed investigator to examine the ARR transaction, and indicated that the ILC Board's preferred model for an investigation would be for you and your Department to take carriage of the investigation, and for it to be undertaken through the engagement of an independent and experienced Senior Counsel or retired judge.

At its next meeting on 25 February 2015, the ILC Board needs to consider its next steps in relation to this matter, particularly in relation to the potential legal avenues available to the ILC in order to recover its loss resulting from the ARR transaction. In order to inform these discussions, the ILC Board would appreciate your early response (prior to 25 February 2015) to my letter to you dated 12 January 2015.

Please do not hesitate to contact me if I can provide any further information in relation to this matter.

Yours sincerely

Dr Dawn Casey, PSM, FAHA
Chairperson



SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: MC15-000208

Senator the Hon Nigel Scullion
Leader of The Nationals in the Senate
Minister for Indigenous Affairs
Parliament House
CANBERRA ACT 2600


Dear Minister

Thank you for your letter of 3 February 2015, in which you detailed your consideration of the issues raised by the Chair of the Indigenous Land Corporation (ILC), Dr Dawn Casey, in her letter to me of 29 October 2014. You sought my advice on how to proceed.

I agree with your conclusion that the Chair of ILC raises no new facts in relation to the purchase of Ayers Rock Resort, further to those considered as part of the various reviews identified in your letter. I note that the ILC's own independent review (McGrathNicol, 2013) finds "no evidence to suggest that the [former] ILC Board have acted contrary to their [*Commonwealth Authorities and Companies Act 1997*] CAC Act duties". However, in Dr Casey's letters of 29 October 2014 and 3 February 2015 (attached), Dr Casey claims that the ILC has grounds to take civil action against former ILC officers. Based on this assertion, it is not clear to me whether Dr Casey is in possession of further evidence that has not been provided to government. Neither is it clear to me whether such information, if it is in her possession, is relevant to the allegations she has made in relation to the CAC Act or the *Aboriginal and Torres Strait Islander Act 2005*.

In view of Dr Casey's recent letter reiterating these claims, in my view it would be prudent for you, as the responsible Minister, to request, under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), that Dr Casey provide you and me with any information that would support the basis of any further legal action ILC proposes to take, and ask that you are notified as soon as practicable after the ILC makes a decision to initiate any legal action.

Dr Casey, as part of the accountable authority of ILC, is obliged under section 19 of the PGPA Act to "keep the responsible Minister informed of the activities of the entity and any subsidiaries of the entity" and "give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires".

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I would ask that you keep me informed of any further information that arises from any enquiry you may choose to undertake.

Kind regards

Mathias Cormann
Minister for Finance

12 February 2015

FOR OFFICAL USE ONLY



MINISTER FOR INDIGENOUS AFFAIRS

Reference: C14/89536

Dr Dawn Casey, PSM, FAHA
Chairperson
Indigenous Land Corporation
PO Box 586
CURTIN ACT 2605

Dear Dr Casey

Thank you for your letter of 29 October 2014 on behalf of the Board of the Indigenous Land Corporation (ILC), advising of the Board's consideration of legal action to recover the ILC's loss arising from the purchase of the Ayers Rock Resort (ARR) by the former ILC Board, and of your request to the Minister for Finance to exercise his powers under the *Commonwealth Authorities and Companies Act 1997* (CAC Act), as in force at that time, in relation to this purchase.

Your letter indicates that the ILC Board has formed a view that the ILC has a cause of action and standing to pursue the recovery of loss arising from the ARR purchase through civil litigation.

I note that your letter of 29 October 2014 does not raise new facts, further to those investigated by previous reviews of the ARR purchase. It is unclear to me whether the Board is in possession of further relevant information that has not been to date disclosed to Government.

Therefore, as required under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), I would ask that you provide to me as soon as possible any additional information not previously provided that would support the basis of any legal action the ILC proposes to take, including any relevant legal advice the Board may have obtained in this regard. I intend to share any information you may provide with the Minister for Finance as the minister responsible for the former CAC Act and now PGPA Act.

I would also ask, under section 19 of the PGPA Act, that you notify me as soon as practicable once the ILC Board makes a decision to initiate any legal action.

My position has been, and remains, that the ILC and Government as a whole is best served by working collaboratively to make the resort a success, and build on the positive recent financial performance and Indigenous employment outcomes of the AAR.

I look forward to your advice. I have provided a copy of this letter to the Minister for Finance.

~~Yours sincerely~~

NIGEL SCULLION

17/11 February 2015